2025

Notice of Annual Meeting of Stockholders and Proxy Statement

November 26, 2025, 9:00 a.m. Pacific Daylight Time

EVOFEM BIOSCIENCES®

Science with a Soul®

Evofem Biosciences is committed to
commercializing innovative products that
address unmet needs in women's sexual and reproductive health.

Our Mission

To improve the quality of lives of women worldwide by delivering
innovative solutions that provide them with
more control over their sexual and reproductive health.

We are shattering the hormone glass ceiling with
PHEXX® (lactic acid, citric acid, and potassium bitartrate),
the first and only FDA-approved, hormone-free contraceptive vaginal gel.

In the U.S. alone, 23 million women of reproductive age will not use hormones.

We are empowering women with bacterial vaginosis (BV) and people with
trichomoniasis with our "one and done" single-dose oral treatment
SOLOSEC® (secnidazole) 2g oral granules,
FDA-approved to treat both of these common sexual health conditions.

An estimated 29% of women in the U.S. have BV;
global prevalence among women of reproductive age ranges from 23 to 29%.

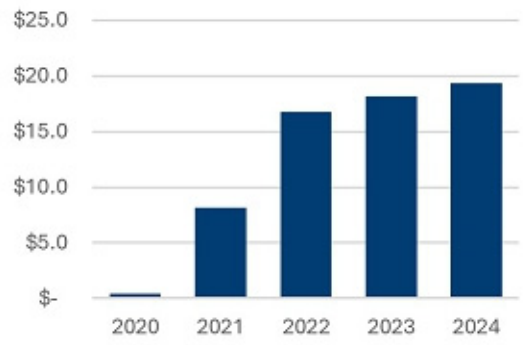
Trichomoniasis affects 8.7% of the U.S. population, infecting roughly 2.1 million women and 3.3 million men annually. It is the most common non-viral STI in the world; the WHO estimates there are 156.3 million new cases worldwide each year.

Letter to Our Stockholders

To My Fellow Stockholders:

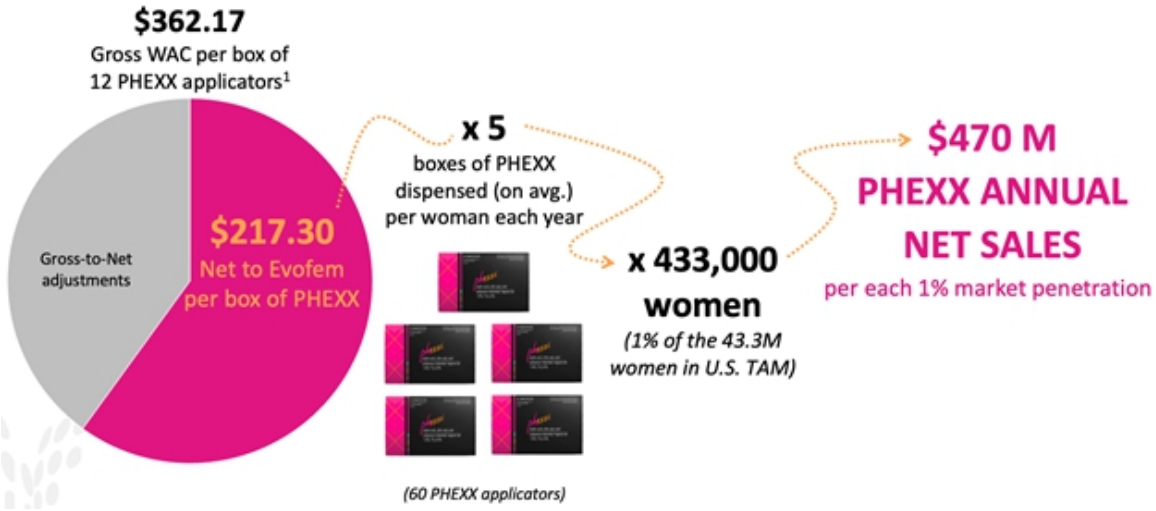
Evofem continues to execute our strategy to increase net product sales year over year. We are driving growth both organically – meaning by growing net sales of PHEXX® (lactic acid, citric acid, and potassium bitartrate), our hormone-free Rx contraceptive vaginal gel, in the U.S. – and through strategic acquisitions and alliances that diversify and expand our revenue stream with new products and from new markets around the world.

Organic Growth of PHEXX®



2024 was our fourth consecutive year of increased net product sales, and we expect this trend to continue in 2025. For the past two years, this growth has been modest due to ongoing fiscal austerity measures, which have limited our ability to invest in PHEXX®. Without appropriate investment in sales and marketing, any brand is at risk for market share erosion. This is especially true in promotionally sensitive categories like contraception. It is a testament to the creativity and tenacity of our commercial team that PHEXX® has held its market share and net sales have increased each and every year since launch.

There is significant upside opportunity for PHEXX® in the U.S. We are focused in 2025 on driving PHEXX® growth through social media campaigns, participation in strategic medical conferences, and initiatives to expand use of our hormone-free, on-demand contraceptive among women who take oral birth control pills in conjunction with GLP-1 prescription medications like Ozempic, Mounjaro, and Zepbound for weight loss. Between TikTok posts going viral and the Say Vagina campaign, plus solid “earned” media coverage in 2025, we have garnered visibility for Evofem and PHEXX® that we expect will have a lasting and meaningful impact.



Expanding Our U.S. Commercial Portfolio

In July 2024, we acquired global rights to a second FDA-approved product - SOLOSEC® (secnidazole) 2g oral granules - adding a valuable and synergistic sexual health asset to our commercial portfolio. SOLOSEC® is a single-dose oral antimicrobial agent that provides a complete course of therapy with just one dose for the treatment of two sexual health conditions:

- Bacterial vaginosis, a common vaginal infection, in females 12 years of age and older, and
- *Trichomonas vaginalis*, a common sexually transmitted infection (STI), in people 12 years of age and older

SOLOSEC® has the same call point as PHEXX®, enabling us to leverage our commercial infrastructure and strong relationships with physicians and allied healthcare providers (HCPs) in the U.S. Since re-launching the brand in November 2024, SOLOSEC® continues to grow and to exceed our projections.

Bacterial Vaginosis

Bacterial vaginosis (BV) is a pernicious condition that affects 29% of women in the U.S. Global prevalence in women of reproductive age is 23-29%, ranging as high as 41% in the Middle East and North Africa. Symptoms include vaginal odor and discharge, and BV is associated with an increased risk of acquisition of HIV and other STIs as well as pelvic inflammatory disease and adverse birth outcomes. SOLOSEC® treats BV with just one dose taken one time. The granules are stirred into applesauce or pudding and consumed within 30 minutes. Treatment complete.

BV frequently recurs within 12 months due to factors including antimicrobial resistance in BV-associated bacteria. Such resistance is associated with overuse of and improper adherence to the necessary treatment regimens of certain BV treatments including metronidazole and tinidazole; these require multiple doses at set time points. A full course of metronidazole treatment for BV requires 14 doses to be taken twice daily over seven days. However, research has shown that as many as 50% of patients do not take all 14 doses. 58% of women who do not complete therapy will have a recurrence of BV within one year. Noncompliance to a multiple-day metronidazole regimen is a contributing factor to persistent BV.

In 2025, an investigator-led study in 24 women with recurrent BV found that once-weekly dosing with SOLOSEC® demonstrated efficacy matching or potentially surpassing outcomes of current CDC-recommended suppressive treatments for recurrent BV. These results underscore SOLOSEC's potential to redefine the standard of care for recurrent BV by offering women and their HCPs a simpler treatment option for long-term symptom control. We look forward to publication of this study in a peer-reviewed journal in due course.

Trichomoniasis

SOLOSEC® is also indicated to treat trichomoniasis, the most common non-viral STI in the world, in both men and women. Despite the availability of anti-infectives approved to treat *Trichomonas vaginalis*, the parasite that causes trichomoniasis, in 2020 the WHO estimated 156.3 million new cases of trichomoniasis worldwide: 73.7 million in females and 82.6 million in males. Undiagnosed infections and lack of compliance with multi-day treatment regimens are critical contributing factors. Both sexual partners must be treated at the same time to prevent recurrence. The CDC notes that up to 70% of people infected with trichomoniasis are unaware that they are infected and may unwittingly pass the parasite to sexual partners.

A National Institutes of Health (NIH)-funded, investigator-led study is evaluating SOLOSEC® (one dose administered one time) versus metronidazole (14 doses to be taken twice daily over seven days) for the treatment of trichomoniasis. This is a Phase 4 study, meaning both products are already approved to treat *T. vaginalis*. The purpose of the study is to compare the rate of repeat infections with *T. vaginalis* and evaluate relative pharmaco-economics of the two products. Study investigators hypothesize that the rate of repeat infections with *T. vaginalis* will be 1.75 lower in people treated with SOLOSEC® versus metronidazole, and that single-dose SOLOSEC® will have a higher initial cost but will be more cost effective compared to multi-dose metronidazole, largely due to lower breakthrough rates of infection.

Building a Global Business

Evofem's long-standing mission is to improve the quality of lives of people worldwide by providing them with more control over their sexual and reproductive health. Our strategy is to develop new geographies through strategic alliances, building off our core U.S. base. We are proud to have closed two transactions in the past 15 months that will bring PHEXX® and SOLOSEC® to people in new parts of the world while diversifying and expanding our revenue. These agreements cover commercial rights for our products in the Middle East and North Africa (MENA). Our licensee will initially commercialize PHEXX® and SOLOSEC® in the United Arab Emirates (UAE), Kuwait, Saudi Arabia, Qatar, Oman, and Jordan, with potential to expand into 15 other countries in the region thereafter.

Pharma 1 filed for regulatory approval of PHEXX® and SOLOSEC® in the UAE in June and September 2025, respectively. We look forward to supporting the launch of – and revenues from – both products in the UAE in 2026. Meanwhile, work is already underway on subsequent filings in the licensed territory.

We intend to continue exploring additional opportunities to further expand the global reach of our products and maximize their global potential.

Cost Reduction Initiatives

Growing product sales is only part of the equation for Evofem's long-term success; we have prioritized reducing cost of goods for both PHEXX® and SOLOSEC®.

We continue to manufacture PHEXX® with our long-time U.S. contract manufacturer. However, to enable us to establish commercially viable partnerships for certain global markets, we must significantly reduce cost of goods (COGs). We therefore are working to establish and validate a second supplier to manufacture our hormone-free contraceptive. In addition to lowering COGs by more than 55% from current levels, adding this second manufacturer will also reduce PHEXX® supply chain risk.

In 2025, we activated our contract manufacturer for SOLOSEC® to ensure uninterrupted supply next year, when we will transition from selling finished goods inventory that we are buying from the SOLOSEC seller at a fixed price-per-unit to selling new-made goods. We expect SOLOSEC® COGs will be cut by at least 50% beginning in 2027.

The Path Ahead

As announced in October 2025 the merger with Aditxt, Inc., was terminated.

We are now pursuing a new path that we believe will better position us to deliver value for our stockholders. We aim to re-list our stock on the Nasdaq or a comparable national market and complete a fundraising round to provide critical capital for sales and marketing initiatives designed to catalyze our net sales growth over the next 18 to 24 months. With the appropriate growth capital and successful execution of our commercial strategy, we expect to be EBITDA positive on a sustainable basis in 2027 and beyond.

A critical first step is that to meet Nasdaq listing standards, we must increase our share price. As of the Record Date, we have 126,685,925 shares issued and outstanding and our Common Stock is trading at $0.01 per share. The Board of Directors determined that it is in the best interests of Evofem and its stockholders to effect a reverse stock split under our Certificate of Incorporation. Approval of the reverse split is critically important to Evofem's future.

This is just one of six proposals on which we are asking you to vote. We appreciate your time both in reviewing these important proposals and in casting your vote at our upcoming Annual Meeting of Stockholders. We are asking for your support to remain a viable force by delivering innovation in sexual and reproductive healthcare and improving choices for women everywhere. Please ensure your voice is heard by voting promptly - online or by mail - following the instructions on the proxy card or voting instruction form sent to you.

Thank you,

Saundra Pelletier
President and Chief Executive Officer
October 29, 2025

Notice of Annual Meeting of Stockholders

Date and Time
November 26, 2025
9:00 a.m. Pacific Time

Location
12636 High Bluff Drive,
Suite 400
San Diego, CA 92130

Who Can Vote
Record owners of Evofem Biosciences, Inc. Common Stock and our Series E-1 and Series G-1 Convertible Preferred Stock at the close of business on October 24, 2025.

Voting Item Proposal	Board Vote Recommendation	For Further Details
1. To elect four directors to serve three-year terms expiring 2026 through 2028.	"FOR ALL"	Page 12
2. To approve, on a non-binding advisory basis, the compensation of our named executive officers ("Say-on-Pay").	"FOR"	Page 29
3. To consider and vote upon a proposal to approve the 2025 Equity Incentive Plan.	"FOR"	Page 53
4. To amend the Amended and Restated Certificate of Incorporation of Evofem Biosciences, Inc. to effect a reverse stock split of Common Stock at a ratio between 1-for-500 and 1-for-1,500, with the exact ratio to be set at a whole number within this range by the Board of Directors in its sole discretion.	"FOR"	Page 57
5. To ratify the appointment of BPM LLP as Evofem Biosciences, Inc.'s independent registered public accounting firm for the fiscal year ending December 31, 2025.	"FOR"	Page 64
6. To consider and vote upon a proposal to authorize our Board, in its discretion, to adjourn the Annual Meeting to another place, or a later date or dates, if necessary or appropriate, to solicit additional proxies in favor of the proposals listed above at the time of the Annual Meeting.	"FOR"	Page 65

All stockholders are cordially invited to attend the 2025 Annual Meeting of Stockholders (the "Annual Meeting"). **Whether you plan to attend the Annual Meeting or not, we urge you to read the proxy statement and to vote as quickly as possible to ensure your vote is recorded**. You may change or revoke your proxy at any time before it is voted at the meeting.

This proxy statement (the "Proxy Statement") is furnished in connection with the solicitation of proxies by the Board of Directors (the "Board") of Evofem Biosciences, Inc., a Delaware corporation (the "Company," "Evofem," "we" or "us"), for use at the Annual Meeting to be held on November 26, 2025, at 9:00 a.m. Pacific Time. For further information about the Annual Meeting, please see the important Information About the Annual Meeting and Voting section of this Proxy Statement, beginning on Page 8. This Proxy Statement and the enclosed proxy card will be made available to our stockholders on or about October 29, 2025.

Only stockholders of record at the close of business on October 24, 2025 (the "Record Date") are entitled to notice of, and to vote at, the Annual Meeting. At the close of business on the Record Date, 126,685,925 shares of Evofem's Common Stock, par value $0.0001 per share, 2,651 shares of Evofem's E-1 Convertible Preferred Stock, which in aggregate has voting power equal to 172,125,530 shares of Common Stock, and 1,592 shares of Evofem's G-1 Convertible Preferred Stock, which in aggregate has voting power equal to 103,578,948 shares of Common Stock, were issued and outstanding. At the close of business on the Record Date, outstanding shares of Evofem's Common Stock were held by approximately 14 stockholders of record. Shares cannot be voted at the Annual Meeting unless the holder thereof is present or represented by proxy. The presence, virtually or by proxy, of the holders of one-third of the voting power of all issued and outstanding shares of Common Stock of Evofem as of the Record Date will constitute a quorum for the transaction of business at the Annual Meeting and any adjournment or postponement thereof.

Our Board has selected Saundra Pelletier to serve as the holder of proxies for the Annual Meeting. The shares of Common Stock represented by each executed and returned proxy will be voted by Ms. Pelletier in accordance with the directions indicated on the proxy. If you sign your proxy card without giving specific instructions, Ms. Pelletier will vote your shares "FOR" each of the Proposals. The proxy also confers discretionary authority to vote the shares authorized to be voted thereby on any matter that may be properly presented for action at the Annual Meeting; we currently know of no other business to be presented.

Any proxy given may be revoked by the person giving it at any time before it is voted at the Annual Meeting. If you have not voted through your broker, there are four ways for you to revoke your proxy and change your vote. You may:

1) send a written notice to the Company's Secretary stating that you would like to revoke your proxy;
2) re-vote online as per the instructions herein;
3) complete and submit a new proxy card, which must bear a later date than your original proxy card; and
4) vote in person at the Annual Meeting. However, your attendance at the Annual Meeting will not, by itself, revoke your proxy. If you have instructed a broker to vote your shares, you must follow the directions you receive from your broker to change your vote.

Your last submitted proxy will be the proxy that is counted.

We will provide copies of this Proxy Statement and accompanying materials to brokerage firms, fiduciaries, and custodians for forwarding to beneficial owners and will reimburse these persons for their costs of forwarding these materials. Our directors, officers, and employees may solicit proxies by telephone, facsimile, or personal solicitation. We will not pay additional compensation for any of these services.

You may change or revoke your proxy at any time before it is voted at the Annual Meeting. If your shares are held in "street name," that is, held for your account by a broker or other nominee, you will receive instructions from the holder of record that you must follow for your shares to be voted.

If you would like to request documents, please do so no later than November 17, 2025 to receive them before the Annual Meeting. Please be sure to include your complete name and address in your request. Please see "*Where You Can Find Additional Information*" to find out where you can find more information about Evofem.

If you have any questions or require any assistance with completing your proxy, please contact Evofem Biosciences' investor relations by email at ir@evofem.com. A list of stockholders of record as of the Record Date will be available at the Annual Meeting and during the 10 days prior to the Annual Meeting at the Company's headquarters at 12636 High Bluff Drive, Suite 400, San Diego, California 92130.

Whether you plan to attend the Annual Meeting or not, it is important that you cast your vote either in person or by proxy.

BY ORDER OF THE BOARD OF DIRECTORS

Ivy Zhang
Secretary and Chief Financial Officer
October 29, 2025

Special Note About Forward-Looking Statements

This proxy statement includes statements regarding future plans, expectations, beliefs, intentions, and prospects that are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may appear throughout this proxy statement. The words "will," "expects," "could," "would," "may," "anticipates," "intends," "plans," "believes," "seeks," "targets," "estimates," "looks for," "looks to," "continues" and similar expressions, as well as statements regarding our focus for the future, are generally intended to identify forward-looking statements. Each of the forward-looking statements we make in this proxy statement involves risks and uncertainties that could cause actual results to differ materially from these forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" of our Forms 10-K and 10-Q. Undue reliance should not be placed on these forward-looking statements, which speak only as of the date of this proxy statement. We undertake no obligation to publicly release any revisions to the forward-looking statements or reflect events or circumstances after the date of this proxy statement, except as required by law.

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Special Note About Forward-Looking Statements

This proxy statement and the documents incorporated by reference herein include statements regarding future plans, expectations, beliefs, intentions, and prospects that are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may appear throughout this proxy statement. The words "will," "expects," "could," "would," "may," "anticipates," "intends," "plans," "believes," "seeks," "targets," "estimates," "looks for," "looks to," "continues" and similar expressions, as well as statements regarding our focus for the future, are generally intended to identify forward-looking statements. Each of the forward-looking statements we make in this proxy statement involves risks and uncertainties that could cause actual results to differ materially from these forward-looking statements. These statements are also subject to the risks related to stockholder approval of the proposals described in this proxy statement, our ability to implement corporate actions such as the reverse stock split or equity incentive plans, and our access to capital markets. Additional information concerning risks and uncertainties that could affect our business, financial condition, and results of operations can be found in our most recent Annual Report on Form 10-K, subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other filings with the SEC.

Nothing in this proxy statement and the attachments hereto should be regarded as a representation by any person that the forward-looking statements set forth herein will be achieved or that any of the contemplated results of such forward-looking statements will be achieved. Investors and securityholders of Evofem should not place undue reliance on forward-looking statements in this proxy statement and the attachments hereto, which speak only as of the date they are made and are qualified in their entirety by reference to the cautionary statements herein and the risk factors discussed in our Forms 10-K and 10-Q. Except as required by applicable securities laws, we undertake no obligation to update or revise any forward-looking statements to reflect subsequent events, new information, or future circumstance.

Market and Industry Data

Certain information contained in this Proxy Statement relates to or is based on studies, publications, surveys, and other data obtained from third-party sources and Evofem's own internal estimates and research. While we believe these third-party sources to be reliable as of the date of this Proxy Statement, we have not independently verified the market and industry data contained in this Proxy Statement or the underlying assumptions relied on therein. Finally, while we believe our own internal research is reliable, such research has not been verified by any independent source.

Trademarks

This document contains references to trademarks, trade names and service marks belonging to other entities. Solely for convenience, trademarks, trade names and service marks referred to in this Proxy Statement may appear without the ® or TM symbols, but such references are not intended to indicate, in any way, that the applicable licensor will not assert, to the fullest extent under applicable law, its rights to these trademarks and trade names. We do not intend our use or display of other companies' trade names, trademarks, or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

Important Information About the Annual Meeting and Voting

Why is the Company Soliciting My Proxy?

The Board is soliciting your proxy to vote at the Annual Meeting of Stockholders (the "Annual Meeting") of the Company to be held at the Company's headquarters at 12636 High Bluff Drive, Suite 400, San Diego, California 92130 on November 26, 2025 at 9:00 a.m. Pacific Time and any adjournments of the meeting, which we refer to as the Annual Meeting. The proxy statement along with the accompanying Notice of Annual Meeting of Stockholders (the "Notice") summarizes the purposes of the meeting and the information you need to know to vote at the Annual Meeting.

We have made available to you on the Internet or have sent you this Proxy Statement, Notice, and proxy card because you owned shares of the Company's Common Stock, E-1 Preferred Stock, and/or G-1 Preferred Stock on the Record Date. The Company intends to commence distribution of the Proxy materials to stockholders on or about October 29, 2025.

Who Can Vote?

Only stockholders who owned our Common Stock and/or our Series E-1 and Series G-1 at the close of business on October 24, 2025 (the "Record Date") are entitled to vote at the Annual Meeting. On this Record Date, there were 1) 126,685,925 shares of our Common Stock outstanding and entitled to vote; 2) 2,651 shares of our Series E-1 entitled to vote, and; 3) 1,595 shares of our Series G-1 entitled to vote. The Series E-1 and Series G-1 have voting power equal to the number of shares of Common Stock into which they may be converted, taking into account applicable beneficial ownership limitations.

You do not need to attend the Annual Meeting to vote your shares. Shares represented by valid proxies, received in time for the Annual Meeting and not revoked prior to the Annual Meeting, will be voted at the Annual Meeting. For instructions on how to change or revoke your proxy, see "May I Change or Revoke My Proxy?" below.

How Many Votes Do I Have?

Each share of our Common Stock that you own entitles you to one vote on each proposal.

Each one share of Series E-1 and Series G-1 has voting rights on each proposal equal to the number of shares of Common Stock into which the Series E-1 or Series G-1 were convertible, subject to customary 4.99%, 9.99% or 19.99% beneficial ownership limitations, as of the Record Date. All Series E-1 holders together, after accounting for the beneficial ownership limitations, will have 14.2% of the Evofem combined voting power as of the Record Date. All Series G-1 holders together, after accounting for the beneficial ownership limitations, will have 38.6% of the Evofem combined voting power as of the Record Date.

How Do I Vote?

Whether you plan to attend the Annual Meeting or not, we urge you to vote by proxy. All shares represented by valid proxies that we receive through this solicitation, and that are not revoked, will be voted in accordance with your instructions on the proxy card or as instructed online. You may specify whether your shares should be voted for, against, or abstain with respect to the proposals. If you properly submit a proxy without giving specific voting

instructions, your shares will be voted in accordance with the Board's recommendations as noted below. Voting by proxy will not affect your right to attend the Annual Meeting.

If your shares are registered directly in your name through our stock transfer agent, Pacific Stock Transfer, Inc., or you have stock certificates registered in your name, you may vote:

- **Online** (https://annualgeneralmeetings.com/evfm2025). Use the Internet to transmit your voting instructions and for electronic delivery of information. Have your proxy card and 12-digit control number(s) in hand when you access the website and follow the instructions to obtain your records and to create an electronic voting instruction form.
- **By mail.** If you received a proxy card by mail, you may vote by mail by completing, signing, dating, and returning the proxy card as instructed on the card.
- **In person at the Annual Meeting.** If you attend the Annual Meeting, you may deliver a completed proxy card in person or you may vote by completing a ballot, which will be available at the Annual Meeting.

Online voting facilities for stockholders of record will be available 24 hours a day and will close at 11:59 p.m. Eastern Time on November 25, 2025.

If your shares are held in "street name" (held in the name of a bank, broker, or other holder of record), you will receive instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted.

Online voting will also be offered to stockholders owning shares through certain banks and brokers.

If your shares are not registered in your own name and you plan to vote your shares in person at the Annual Meeting, you should contact your broker or agent to obtain a legal proxy or broker's proxy card and bring it to the Annual Meeting in order to vote.

How Does the Board Recommend That I Vote on the Proposals?

The Board recommends that you vote as follows:

- "FOR" the election of all four directors.
- "FOR" the compensation of our named executive officers.
- "FOR" the 2025 Equity Incentive Plan.
- "FOR" the reverse stock split.
- "FOR" the appointment of BPM LLP as our independent registered public accounting firm.
- "FOR" the authorization of the Board to Adjourn the Annual Meeting, in their discretion, to solicit additional proxies.

If any other matter is presented at the Annual Meeting, your proxy provides that your shares will be voted by the proxy holder listed in the proxy in accordance with his or her best judgment. At the time this proxy statement was first made available, we knew of no matters that needed to be acted on or that would be brought before the Annual Meeting, other than those discussed in this proxy statement.

May I Change or Revoke My Proxy?

If you give us your proxy, you may change or revoke it at any time before the Annual Meeting. You may change or revoke your proxy in any one of the following ways:

- if you received a proxy card, by signing a new proxy card with a date later than your previously delivered proxy and submitting it as instructed above;
- by re-voting online as instructed above;
- by notifying the Company's Secretary in writing before the Annual Meeting that you have revoked your proxy; or
- by attending the Annual Meeting and voting at that time. Attending the Annual Meeting will not in and of itself revoke a previously submitted proxy. You must specifically request at the Annual Meeting that it be revoked.

Your most current vote, whether submitted online or by proxy card, is the one that will be counted.

What if I Receive More Than One Notice or Proxy Card?

You may receive more than one Notice or proxy card if you hold shares of our Common Stock and/or our Series E-1 and Series G-1 in more than one account, which may be in registered form or held in street name. Please vote in the manner described above under "How Do I Vote?" for each account to ensure that all of your shares are voted.

Will My Shares be Voted if I Do Not Vote?

If your shares are registered in your name or if you have stock certificates, they will not be counted if you do not vote as described above under "How Do I Vote?"

If your shares are held in street name and you do not provide voting instructions to the bank, broker or other nominee that holds your shares as described above, the bank, broker or other nominee that holds your shares does not have the authority to vote your unvoted shares on the proposal set forth in this proxy statement without receiving instructions from you. Therefore, we encourage you to provide voting instructions to your bank, broker, or other nominee. This ensures your shares will be voted at the Annual Meeting. A "broker non-vote" will occur if your broker cannot vote your shares on a particular matter because it has not received instructions from you.

What Vote is Required to Approve the Proposals and How are Votes Counted?

Proposal 1: Elect Directors	The nominees for director who receive the most votes (also known as a "plurality" of the votes cast) will be elected. You may vote either FOR ALL, WITHHOLD ALL, or FOR ALL EXCEPT for the nominee. Votes that are withheld will not be included in the vote tally for the election of directors. Abstentions will have no effect on the results of this vote. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name for the election of the directors. As a result, any shares not voted by a customer will be treated as a broker non-vote. These broker non-votes will have no effect on the results of this vote.
Proposal 2: Non-Binding Advisory Vote to Approve the Compensation of Our Named Executive Officers ("Say-on-Pay")	The affirmative vote of a majority of the votes cast, either affirmatively or negatively, at a meeting at which a quorum is present, is required to approve this non-binding advisory proposal. Abstentions will have no effect on the results of this vote. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name for the approval of the non-binding advisory vote to approve the compensation of our named executive officers.
Proposal 3: 2025 Equity Incentive Plan	The affirmative vote of a majority of the votes cast, either affirmatively or negatively, at a meeting at which a quorum is present, is required to approve this proposal. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name for the approval of the 2025 Equity Incentive Plan. As a result, any shares not voted by a customer will be treated as a broker non-vote. Such broker non-votes will have no effect on the results of this vote. Abstentions will have no effect on the results of this vote.
Proposal 4: Reverse Stock Split	The affirmative vote of a majority of the combined voting power of the outstanding shares of Common Stock, Series E-1 Preferred Stock, and Series G-1 Preferred Stock, voting together as a single class, and the affirmative vote of a majority of the outstanding shares of each Series E-1 and Series G-1, at a meeting at which a quorum is present, is required to approve this proposal. Abstentions and broker non-votes are not counted in determining the number of shares voted for or against this proposal. However, abstentions and broker non-votes will be counted as entitled to vote and will, therefore, have the same effect as a vote "against" this proposal.
Proposal 5: Appointment of Independent Registered Public Accounting Firm	The affirmative vote of a majority of the votes cast, either affirmatively or negatively, at a meeting at which quorum is present, is required to ratify the selection of our independent registered public accounting firm. Abstentions will have no effect on the results of this vote. Brokerage firms have authority to vote customers' unvoted shares held by the firms in street name on this proposal. If a broker does not exercise this authority, such broker non-votes will have no effect on the results of this vote. We are not required to obtain the approval of our stockholders to select our independent registered public accounting firm. However, if our stockholders do not ratify the selection of BPM LLP as our independent registered public accounting firm for 2025, the Audit Committee of our Board will reconsider its selection.
Proposal 6: Adjournment	The affirmative vote of a majority of the votes cast, either affirmatively or negatively, at a meeting at which a quorum is present, is required to approve this Adjournment proposal. Abstentions will have no effect on the results of this vote.

The holders of Series E-1, in aggregate, have 14.2% of the Evofem combined voting power as of the Record Date. The holders of Series G-1, in aggregate, have 38.6% of the Evofem combined voting power as of the Record Date. Other Investors may only vote such Common Stock held as of the Record Date. They may, at their sole discretion, elect to convert their notes, warrants, or other convertible instruments into Common Stock which, if owned as of the Record Date, could then be voted, with the caveat that beneficial ownership of each other note, warrant, or other convertible instrument holders is capped at either 4.99%, 9.99% or 19.99%, as applicable, of the shares of Common Stock outstanding immediately after giving effect to such conversion.

Where Can I Find the Voting Results of the Annual Meeting?

The preliminary voting results will be announced at the Annual Meeting, and we will publish preliminary, or final results if available, in a Current Report on Form 8-K within four (4) business days of the Annual Meeting. If final results are unavailable when we file the Form 8-K, then we will file an amended report on Form 8-K to disclose the final voting results within four (4) business days after the final voting results are known.

What Are the Costs of Soliciting these Proxies?

We will pay all of the costs of soliciting these proxies. Our directors and employees may solicit proxies in person or by telephone, fax, or email. We will pay these employees and directors no additional compensation for these services. We will ask banks, brokers and other institutions, nominees, and fiduciaries to forward these proxy materials to their principals and to obtain authority to execute proxies. We will then reimburse them for their expenses. Such reimbursement will not be submitted to a vote of the stockholders.

What Constitutes a Quorum for the Annual Meeting?

The presence, in person or by proxy, of the holders of one-third of the voting power of all outstanding shares of our Common Stock entitled to vote at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting. Votes of stockholders of record who are present at the Annual Meeting in person or by proxy, abstentions, and broker non-votes are counted for purposes of determining whether a quorum exists.

In accordance with our amended and restated bylaws, the chairperson of the Annual Meeting or a majority of the shares so represented may adjourn the Annual Meeting from time to time, whether or not there is such a quorum.

Attending the Annual Meeting

The Annual Meeting will be held at 9:00 a.m., Pacific Time, on November 26, 2025, at the Company's headquarters at 12636 High Bluff Drive, Suite 400, San Diego, California 92130. You do not need to attend the Annual Meeting in order to vote.

As always, we encourage you to vote your shares as early as possible prior to the Annual Meeting.

What Happens if I Sell my Shares of Company Common Stock Before the Annual Meeting?

The Record Date for stockholders entitled to vote at the Annual Meeting is earlier than the date of the Annual Meeting. If you transfer your shares of Company Common Stock after the Record Date but before the Annual Meeting, you will, unless special arrangements are made, retain your right to vote at the Annual Meeting.

Householding of Annual Disclosure Documents

U.S. Securities and Exchange Commission (SEC) rules concerning the delivery of proxy statements allow us or your broker to send a single set of proxy materials or, if applicable, a single set of proxy materials to any household at which two or more of our stockholders reside, if we or your broker believe that the stockholders are members of the same family. This practice, referred to as "householding," benefits both you and us. It reduces the volume of duplicate information received at your household and helps to reduce our expenses. The rule applies to our notices, annual reports, proxy statements and information statements. Once you receive notice from your broker or from us that communications to your address will be "householded," the practice will continue until you are otherwise notified or until you revoke your consent to the practice. Stockholders who participate in householding will continue to have access to and utilize separate proxy voting instructions.

If your household received a single set of proxy materials, but you would prefer to receive your own copy, please contact our transfer agent, Pacific Stock Transfer, Inc., by calling their toll-free number, 1-800-785-7782.

If you do not wish to participate in householding and would like to receive your own Notice or, if applicable, set of the Company's proxy materials in future years, please follow the instructions described below. Conversely, if you share an address with another Company stockholder and together both of you would like to receive only a single Notice or, if applicable, set of proxy materials, follow these instructions:

- If your Company shares are registered in your own name, please contact our transfer agent, Pacific Stock Transfer, Inc., and inform them of your request by calling them at 1-800-785-7782, emailing them at info@pacificstocktransfer.com, or writing them at Pacific Stock Transfer, Inc., 6725 Via Austi Pkwy Suite 300, Las Vegas, NV 89119.
- If a broker or other nominee holds your Company shares, please contact the broker or other nominee directly and inform them of your request. Be sure to include your name, the name of your brokerage firm and your account number.

Who do I Contact if I have Questions?

If you have any questions or need assistance completing your proxy or voting instruction form, please email ir@evofem.com or call our Investor Relations team at (917) 673-5775. If your brokerage firm, bank, trust, or other nominee holds your shares in "street name," you should also call your brokerage firm, bank, trust, or other nominee for additional information.

Corporate Governance Matters

PROPOSAL 1

Election of Directors

The Board has nominated (i) Kim Kamdar, Ph.D., (ii) Colin Rutherford, (iii) Lisa Rarick, M.D., and (iv) Tony O'Brien each for election at the Annual Meeting. The Board currently consists of eight (8) seats, with five (5) currently filled, and is classified into three classes as follows: Class III is director Saundra Pelletier, with a term expiring at the 2026 annual meeting; Class I directors include Kim Kamdar, Ph.D., Colin Rutherford, and Lisa Rarick, M.D. with terms expiring at the upcoming Annual Meeting; and Class II director Tony O'Brien with a term expiring at the upcoming Annual Meeting.

Class III director Saundra Pelletier will serve until the annual meeting of Stockholders to be held in 2026 and until their respective successors have been elected and qualified or until their death, resignation, or removal.

Unless authority to vote for this nominee is withheld, the shares represented by the enclosed proxy will be voted FOR the election as directors of (i) Kim Kamdar, Ph.D., (ii) Colin Rutherford, (iii) Lisa Rarick, M.D., and (iv) Tony O'Brien. In the event that a nominee becomes unable or unwilling to serve, the shares represented by the enclosed proxy card will be voted for the election of such other person as the Board may recommend in the nominee's place. We have no reason to believe that the nominees will be unable or unwilling to serve as a director.

The director nominees must be elected by an affirmative vote of a plurality of shares present at the Annual Meeting and entitled to vote on the election of directors.

Recommendation

The Board recommends a vote "FOR" the election of all four nominees as directors, and proxies solicited by the Board will be voted in favor thereof unless a stockholder has indicated otherwise on the proxy.

The Board of Directors

Our Board currently consists of eight seats with three vacancies (two for Class II and one for Class III). Vacancies on the Board may be filled by potential candidates nominated by the Nominating and Corporate Governance Committee of the Board, who may seek out potential candidates that meet the criteria for selection as a Board nominee and have the specific qualities or skills being sought, and one or more of such candidates may be appointed as directors as appropriate and in accordance with the Company's organizational documents. The vacancies, if filled, will be filled until the end of the class term. Our Board is divided into three classes as set forth below, each serving staggered three-year terms until their respective successors are duly elected and qualified:

- Our Class I directors are Kim Kamdar, Ph.D., Colin Rutherford, and Lisa Rarick, M.D. and their terms expire at the upcoming Annual Meeting;
- Our Class II director is Tony O'Brien and his term expires at the upcoming Annual Meeting; and
- Our Class III director is Saundra Pelletier and her term expires at the annual meeting of stockholders in 2026.

Kim Kamdar, Ph.D., Colin Rutherford, Lisa Rarick, M.D., and Tony O'Brien are being nominated for re-election as directors at this year's Annual Meeting. Directors are elected by a plurality of the votes cast at the Annual Meeting. The nominees have indicated their willingness to serve if elected, but if any of the nominees should be unable to serve or for good cause will not serve, the shares represented by proxies may be voted for a substitute nominee as the Board may designate, unless a contrary instruction is indicated in the proxy.

There are no familial relationships among our current directors and executive officers.

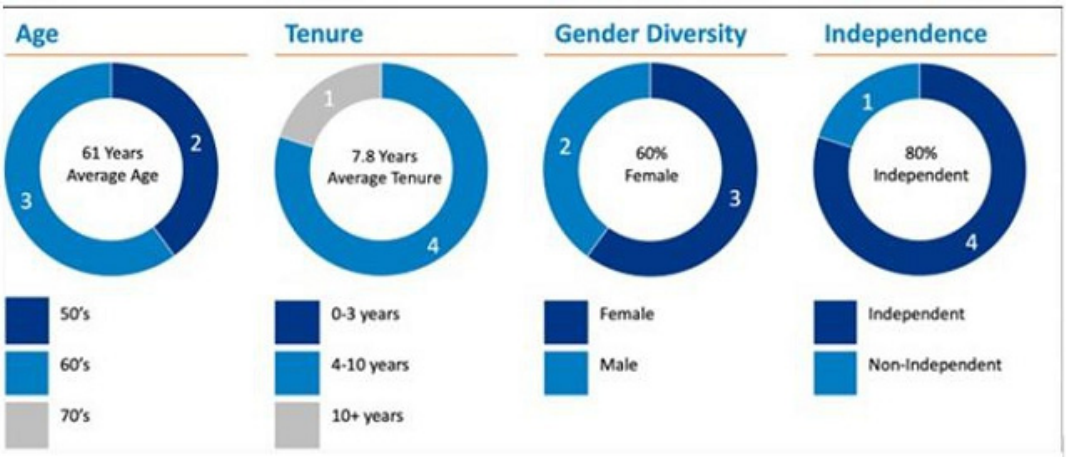
The following table lists the names, ages as of October 24, 2025, and positions of the individuals who serve as our directors:

	Name and Principal Occupation	Age	Director Since	Board Committees	Other Current Public Directorships
	Class I Director Nominees				
	Kim Kamdar, Ph.D. | Independent Managing Partner, Domain Associates, LLC	58	2011	**A, C, N★**	Seraphina Therapeutics, Inc.; Truvian Sciences
	Lisa Rarick, M.D. | Independent Obstetrician/ Gynecologist and Regulatory Affairs Expert	65	2020	**N**	
	Colin Rutherford | Independent Current member of the board of Spanish based Biopharma Hifas da Terra SA	66	2015	**A★**	New River REIT, PLC
	Class II Director Nominee				
	Tony O'Brien | Independent Former Director General of Ireland's Health Service Executive	62	2018	**A, C★**	Global Leadership and Governance Solutions Limited
	Class III Director				
	Saundra Pelletier | Interim Chair of the Board of Directors President and Chief Executive Officer, Evofem Biosciences, Inc.	56	2013		Windtree Therapeutics, Inc.; IMAC Holdings, Inc.;

A Audit Committee
C Compensation Committee
N Nominating and Corporate Governance Committee
★ Committee Chair

Board Demographics

The charts below represent certain demographics of the current composition of our directors.



Nominees for Election as Class I and Class II Directors

We discuss in the Non-employee Directors section below the qualifications, attributes, and skills that led our Board to conclude that each of our directors should serve as a director.

Kim Kamdar, Ph.D., 58

Independent

Director Since: April 2011 (Private Evofem); January 2018 (Evofem Biosciences)

Committees:

- Audit
- Compensation Committee
- Nominating and Corporate Governance (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe Dr. Kamdar is qualified to serve on our Board based on her extensive experience working and serving on the boards of directors of life sciences companies and her experience working in the venture capital industry.

CAREER HIGHLIGHTS

- Managing Partner of Medical Excellence Capital, LLC (since 2021)
- Managing Partner of Domain Associates, LLC, a life sciences venture capital firm (since 2005)
- Chair of the board of directors of Seraphina Therapeutics, Inc., and Truvian Sciences
- Member of the board of directors of private companies including Alume, Epic Sciences, Epitel, and Pleno Inc.
- Member of the board of directors of several public companies including NASDAQ: SERA and NASDAQ: OMIC
- Past investments include Ariosa (acquired by Roche), Corthera (acquired by Novartis), BiPar Sciences (acquired by Sanofi-Aventis), and Omniome (acquired by NASDAQ: PACB)
- Kauffman Fellow with MPM Capital (MPM) (2003 through 2004)
- Research director at Novartis, where she built and led a research team that focused on the biology, genetics, and genomics of model organisms (1995 to 2003)
- Author of ten papers; the inventor of seven patents
- Advisory board member of Dr. Eric Topol's NIH supported Clinical and Translational Science Award for Scripps Medicine

EDUCATION

- B.A. from Northwestern University
- Ph.D. in Biochemistry and Genetics from Emory University

Lisa Rarick, M.D., F.A.C.O.G., 65

Independent

Director Since:
February 2020

Committees:

- Nominating and Corporate Governance

KEY EXPERIENCE AND QUALIFICATIONS

We believe that Dr. Rarick is qualified to serve as a member of our Board because of her extensive experience in health care/women's health matters as well as her vast prior experience with regulatory matters and the life sciences industry.

CAREER HIGHLIGHTS

- Obstetrician/gynecologist and regulatory affairs expert with 35 years' experience in women's health and 15 years' experience leading several offices within the U.S. Food and Drug Administration (FDA)
- Began her career at the FDA as a Medical Officer, responsible for the management of products indicated for a variety of reproductive health conditions, including oral, transdermal, and vaginal contraceptives (1988)
- Director for the Division of Reproductive and Urologic Products (DRUP) at the FDA (1996)
- Held several management roles in the Center for Drug Evaluation and Research (CDER), including Deputy Director of the Office of Drug Evaluation 2 and Associate Director in the Office of the Center Director
- Focused on HIV prevention, pregnancy prevention, pre- and post-pregnancy care, and menopausal therapy in her final year at the FDA in the Office of Women's Health
- Reproductive health and regulatory affairs consultant, helping numerous companies navigate the development of their products from early-stage development through FDA approval
- Member of the Scientific Advisory Committee for the National Institute of Child Health and Human Development, Contraceptive Development Branch (since 2004)
- Member of the board of directors for Alliance Partners 360 from (2017 to 2019)
- Family Planning clinical care provider (2020 to 2023)

EDUCATION

- B.S. and M.D. from the Loma Linda University School of Medicine
- Completed residency training in Obstetrics and Gynecology at Georgetown University

Colin Rutherford, 66

Independent

Director Since:
November 2015
(Private Evofem);
January 2018
(Evofem Biosciences)

Committees:

- Audit (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe that Mr. Rutherford is qualified to serve as a member of our Board because of his prior experience as a member of Private Evofem's board of directors and his many years of finance and operations leadership experience in the health care and life sciences industries.

CAREER HIGHLIGHTS

- Former Chairman and CEO of LSE quoted European finance specialist Euro-Sales Plc (with 18 offices across Europe), sold to Royal Bank of Scotland Plc (2000 to 2002)
- Former Chairman of SGI Funds, a Guernsey-, Cayman- and Hong Kong-based diversified fund management group (2004 to 2009)
- Former Chairman and CEO of the LSE quoted UK fund management group, MAM Funds Plc (2008 to 2011)
- Former Member of the board and Audit Committee Chairman of Mitchells & Butlers Plc, the LSE's largest quoted hospitality group (2013 to 2021)
- Former Member of the board and Audit Committee Chairman of the MSE quoted Oil & Gas shipping logistics business, Renaissance Services SAOG, based in Muscat and Dubai (2007 to 2019)
- Former Chairman of European Health Care Group before its acquisition by two U.S.-based hedge funds (2012 to 2014)
- Current Member of the Board of Meallmore Health Care Group (2014 to Present)
- Current Member of the Board of Spanish based Biopharma Hifas da Terra SA, a leader in the field of mycotherapy-related oncology products (2018 to Present)
- Current Chairman of Brookgate Limited, a UK property development business backed by Goldman Sachs and Sixth Street (2010 to Present)
- Former visiting Professor at Edinburgh University's Business School

EDUCATION

- A member of the Scottish Institute of Chartered Accountants, he graduated in Accountancy and Finance from Heriot Watt University in 1980 and qualified with Deloitte (formerly Touche Ross) in 1984.
- Harvard Business School Alumni, having attended over a 10-year period and subsequently Chairing the HBS/YPO Presidents leadership seminar for 5 years.

Tony O'Brien, 62

Independent

Director Since:
January 2018

Committees:

- Audit
- Compensation (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe Mr. O'Brien's extensive experience as an executive and member of the boards of directors for health care and life sciences companies qualifies him to be a member of our Board.

CAREER HIGHLIGHTS

- Director General of Ireland's Health Service Executive (HSE), an organization responsible for the provision of health and personal social services for the residents of Ireland (2012 to 2018)
- Chief Operating Officer of the Department of Health's Special Delivery Unit and a member of the Department's Management Board (2011 to 2014)
- Director of Clinical Strategy and Programs in the HSE (2011 to 2012)
- Chief Executive Officer of the National Treatment Purchase Fund (2011 to 2013)
- Chief Advisor to the HSE on the implementation of the National Cancer Control Strategy (2006 to 2010)
- Project Director for the National Plan for Radiation Oncology (2005 to 2008)
- Chairman of the National Cancer Registry Board (2009 to 2012)
- Founding Chief Executive Officer of the National Cancer Screening Service (2007 to 2011)
- Director of BreastCheck, CervicalCheck (2002 to 2010)
- Associate and Interim Director of the National Cancer Control Programme (2007 to 2011)
- Chief Executive of the Irish Family Planning Association (1991 to 2002)
- Chief Executive of the UK Family Planning Association (1995 to 1996)
- Chartered Director of the Institute of Directors in Ireland
- Adjunct Assistant Professor in Health Strategy and Management at Trinity College Dublin

OTHER PROFESSIONAL EXPERIENCE AND COMMUNITY INVOLVEMENT

- Director and owner of Global Leadership and Governance Solutions Limited, a private limited company organized in the Republic of Ireland

EDUCATION

- M.Sc. in Management Practice from Trinity College, University of Dublin

Continuing Director

Saundra Pelletier, 56

Chief Executive Officer

Director Since:
February 2013
(Private Evofem);
January 2018
(Evofem Biosciences)

KEY EXPERIENCE AND QUALIFICATIONS

Ms. Pelletier's service as Evofem's CEO and extensive experience in women's health care bring Evofem's Board of Directors invaluable guidance and insight. With more than twenty-five years providing broad executive leadership, including successes in driving multiple, billion-dollar product launches, expanding commercial capabilities in global markets, and advocating for women's health, Ms. Pelletier continues to lead the Board of Directors with a clear focus on successful execution of the Company's growth strategy.

Since joining Evofem, Ms. Pelletier has led the Company's rapid growth and evolution, including its transition to the public market in January 2018; the approval of PHEXX® (lactic acid, citric acid, and potassium bitartrate), the first and only hormone-free, on-demand prescription contraceptive vaginal gel; the acquisition of SOLOSEC® (secnidazole) 2 g oral granules, an oral antibiotic approved to treat bacterial vaginosis and trichomoniasis with just one dose; and four consecutive years of net sales growth.

CAREER HIGHLIGHTS

- President and Chief Executive Officer of Evofem Biosciences, Inc. (since January 2018)
- President and Chief Executive Officer of Private Evofem (2013 to 2018)
- Founding CEO of WomanCare Global (WCG Cares), an international nonprofit organization focused on creating sustainable supply chains that delivered products to women in more than 100 developing countries
- Corporate Vice President and Global Franchise Leader for G.D. Searle, where she managed women's health care business and teams
- Presenter and speaker at the Harvard T. H. Chan School of Public Health, the Davos World Economic Forum, the Clinton Global Initiative, the International Conference on Climate Change, the MAKERS Conference, Women Deliver, the International Conference on Family Planning, Reproductive Health Supplies Coalition, the University of Virginia's Darden School of Business, the National Community Oncology Dispensing Association, Fearless in Pharma, the Women's Health Innovation Summit, the University of Oregon's Lundquist School of Business, Husson University and the Rady School of Management at the University of California, San Diego
- Independent, non-executive director of Windtree Therapeutics, Inc., (Nasdaq: WINT) serving as Chair of the Compensation Committee and as a member of the Audit Committee
- Independent, non-executive director of IMAC Holdings, Inc. (OTCQB: BACK)

AWARDS AND RECOGNITION

- Honorary Doctor of Business Administration from Husson University (2022, 2020)

- Named one of San Diego's "Top 50 Most Influential Women over 50" by the San Diego Business Journal (2022)
- Awarded San Diego Magazine's Woman of the Year (2021)
- Director of the Year Honoree from the San Diego Corporate Directors Forum (2021)
- Received the Lifetime Legacy Award from the National Women of Influence (2021)
- Girls Inc. San Diego – SHE LEADS Trailblazer Award (2021)
- Recognized as a Women of Influence in Life Sciences by the San Diego Business Journal (2021)
- MM+M Hall of Femme Honoree (2021)
- PharmaVoice 100 Most Inspiring People (2021, 2020)
- Business Intelligence Group (BIG) Innovation Award (2021)
- Enterprising Women of the Year Honoree (2021)
- Recognized as One of the 500 Most Influential People in San Diego by the San Diego Business Journal (2020, 2021)
- Inc. Magazine's Female Founders 100 List (2020)
- San Diego Business Journal's Business Woman of the Year (2019)
- Awarded the Athena San Diego Pinnacle Award for Life Sciences
- Named a "New Champion for Reproductive Health" by the United Nations Foundation

EDUCATION

- Bachelor of Science in Business Administration – Husson University
- Bachelor of Science in Communications – New England School of Communications

Director Nomination Process and Board Diversity

While we do not have a stand-alone diversity policy, when considering whether to recommend any director nominee, including candidates recommended by stockholders, we believe that the backgrounds and qualifications of the directors, considered as a group, should provide a significant mix of experience, knowledge, and abilities that will allow our Board to fulfill its responsibilities. Evaluation criteria generally include, among other things, an individual's business experience and skills (including skills in core areas such as operations, management, technology, accounting and finance, strategic planning, and international markets), as well as independence, judgment, knowledge of our business and industry, professional reputation, leadership, integrity, and the ability to represent the best interests of our stockholders. In addition, the Nominating and Corporate Governance Committee will consider the ability to commit sufficient time and attention to the activities of the Board, as well as the absence of any potential conflicts of interest. The Nominating and Corporate Governance Committee does not intend to assign specific weights to particular criteria and no particular criterion is necessarily applicable to the prospective nominee. Our Board will be responsible for selecting candidates for election as directors based on the recommendation of the Nominating and Corporate Governance Committee.

Director Independence

While our Common Stock is currently listed on the OTCID, we have elected to continue to adhere to the more stringent rules of the Nasdaq stock exchange. Under Nasdaq rules, independent directors must comprise a majority of a listed company's board of directors. In addition, Nasdaq rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and governance committee be independent. Audit committee and compensation committee members must also satisfy the enhanced independence criteria set forth in Rules 10A-3 and 10C-1 under the Securities Exchange Act of 1934, as amended (the Exchange Act), respectively, and corresponding Nasdaq rules.

Based on information requested from and provided by each director concerning his or her background, employment and affiliations, our Board has determined that each of Dr. Kamdar, Mr. O'Brien, Mr. Rutherford, and Dr. Rarick are independent directors within the meaning of applicable Nasdaq rules, and that each member of our audit committee and compensation committee satisfies the enhanced independence requirements of applicable Nasdaq and SEC rules. In making this determination, the current and prior relationships of each non-employee director with our Company and all other facts and circumstances deemed relevant were considered, including their beneficial ownership of our capital stock and any related party relationships involving our Company and any such director, as described in the "Related Person Transactions" section below.

There are no family relationships among any of our current directors and executive officers, and there are no arrangements or understandings between any nominee and any other person pursuant to which such nominee was or is selected as a director or nominee.

Board Meeting Attendance

During the fiscal year ended December 31, 2024, our Board met fifteen (15) times. The Board has adopted a policy under which each member of the Board makes every effort to, but is not required to attend, each annual meeting of our stockholders. All of our directors attended our most recent Annual Meeting, which was held in September 2023.

Average director attendance at fiscal 2024 Board meetings:

95%	**100%**
Board	Audit

Note that the other Board Committees did not meet in 2024.

Board Composition

Evofem provides board diversity disclosure consistent with Nasdaq Rule 5606, including a Board Diversity Matrix setting forth gender and demographic information for directors.

Board Structure and Responsibilities

Board Leadership Structure

Our corporate governance practices do not indicate a particular board structure, and our Board has the flexibility to select its chair and our chief executive officer in the manner that it believes is in the best interests of our stockholders. Accordingly, the positions of Chair and the Chief Executive Officer may be filled by either one individual or two individuals. The Board has elected to separate the positions of Chair and Chief Executive Officer. However, our CEO is currently serving as the interim Chair of the Board until another Chair is appointed and elected by the Board. Mr. Tony O'Brien is currently serving as the Independent Lead Director until an Independent Director is elected as the new Chair of the Board.

Responsibilities of the Chair of our Board
• Leads the CEO succession planning process. • Facilitates communication with the Board and presides over regularly conducted executive sessions of the independent directors and sessions where the Chief Executive Officer is not present. • Reviews and approves matters, such as schedule sufficiency, and where appropriate, information provided to other Board members. • Serves as liaison between Chief Executive Officer and the independent Directors. • Has authority to call meetings of the independent Directors. • Leads the Board's evaluation of the CEO (when the Chair is not filled by Ms. Pelletier). • Reviews and guides agenda items for Board meetings. • Encourages effective Director participation by fostering an environment of open dialogue and constructive feedback among independent Directors. • Is involved in selection and interviewing of new Board members. • If requested by major stockholders, ensures that he/she is available for consultation and direct communication as needed. • If required, represents independent Board members externally. • Performs such other duties as the Board may determine from time to time.

Board Oversight

Oversight of Risk

One of the key functions of our Board is informed oversight of our risk management process. The Board does not have a standing risk management committee, but rather administers this oversight function directly through the Board as a whole, as well as through various standing committees of our Board that address risks inherent in their respective areas of oversight.

Board of Directors
Our Board is responsible for monitoring and assessing strategic risk exposure.

Board Committees

Audit Committee	Nominating Committee	Compensation Committee
Considers our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. Also monitors compliance with legal and regulatory requirements as well as related party transactions.	Monitors the effectiveness of our corporate governance practices, including whether they are successful in preventing illegal or improper liability-creating conduct.	Assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking.

Management
Management works with the finance department to identify risks that could affect achievement of business goals and strategy. Our Chief Executive Officer and Chief Financial Officer review and discuss the consolidated risk profile with senior management. Senior management makes the analysis of the risk profile available to the full Board on a quarterly basis.

Oversight of Other Key Areas

Oversight of Cybersecurity

We recognize the importance cybersecurity has to the success of our business. We also recognize the need to continually assess cybersecurity risk and evolve our response in the face of a rapidly and ever-changing environment. Accordingly, we protect our business operations, including customer records and information, against known and evolving cybersecurity threats.

We have established policies and processes for assessing, identifying, and managing material risk from cybersecurity threats, and have integrated these processes into our overall risk management systems and processes. We routinely assess material risks from cybersecurity threats, including any potential unauthorized occurrence on or conducted through our information systems that may result in adverse effects on the confidentiality, integrity, or availability of our information systems or any information residing therein.

We conduct periodic risk assessments to identify cybersecurity threats, as well as assessments in the event of a material change in our business practices that may affect information systems that are vulnerable to such cybersecurity threats. These risk assessments include identification of reasonably foreseeable internal and external risks, the likelihood and potential damage that could result from such risks, and the sufficiency of existing policies, procedures, systems, and safeguards in place to manage such risks. Following these risk assessments, we re-design, implement, and maintain reasonable safeguards to minimize identified risks; reasonably address any identified gaps in existing safeguards; and regularly monitor the effectiveness of our safeguards.

As part of our overall risk management system, we monitor and test our safeguards and train our employees on these safeguards, in collaboration with the Information Technology team and management. Personnel at all levels and departments are made aware of our cybersecurity policies through trainings.

We engage consultants, or other third parties in connection with our risk assessment processes if required. These service providers assist us in designing and implementing our cybersecurity policies and procedures. We require each third-party service provider to certify that it has the ability to implement and maintain appropriate security measures, consistent with all applicable laws, to implement and maintain reasonable security measures in connection with their work with us, and to promptly report any suspected breach of its security measures that may affect our company.

Our Audit Committee has oversight responsibility over our cybersecurity measures. The Audit Committee is briefed regularly on current cybersecurity matters and initiatives to improve the cybersecurity infrastructure. The Audit Committee regularly briefs the full Board on these matters.

ESG Strategy and Oversight Framework

We completed a comprehensive assessment to update our priority environmental, social, and governance (“ESG”) issues in 2021 and continue to monitor and stay current with new guidance on ESG issues. One key insight from the assessment was the interconnectedness of many key ESG issues, such as the impact that inclusion and diversity, climate change, and financial resiliency have on important priorities like colleague attraction and retention and community resiliency. From these findings, we developed a framework to drive our ESG strategy moving forward. Evofem’s Board engages with senior leaders on near and long-term business strategy and reviews management’s performance in delivering on our framework for long-term value creation, including as it relates to sustainability.

Oversight of Strategy

Oversight of the Company’s business strategy and strategic planning is a key responsibility of the Board. The Board believes that overseeing and monitoring strategy is a continuous process and takes a multilayered approach in exercising its duties. The Board meets receives updates on, and approves as necessary, management’s strategy and financial results at least quarterly. Specific policies are presented to the Board for approval at least annually, or as changes occur, as appropriate.

Committees of the Board of Directors

Audit Committee

Chair: Colin Rutherford

Members: Kim Kamdar, Ph.D.; Tony O'Brien

Meetings in 2024: 4

Our Audit Committee's role and responsibilities are set forth in the Audit Committee's written charter.

Principal Responsibilities:

- Reviews annual financial statements;
- Considers matters relating to accounting policy and internal controls;
- Reviews the scope of annual audits;
- Assists the Board in its oversight of Evofem's financial statements, including internal control over financial reporting;
- Reviews and discusses with senior management the guidelines and policies by which Evofem assesses and manages risk;
- Assists the Board in its oversight of the qualifications, independence, and performance of Evofem's independent registered public accounting firm, including responsibility for the appointment, compensation, retention, and oversight of the work of the firm;
- Assists the Board in its oversight of the performance of Evofem's internal audit function, including responsibility for the appointment, replacement, reassignment, or dismissal of, and being involved in the performance reviews of, Evofem's internal auditor; and
- Assists the Board in its oversight of Evofem's compliance with legal and regulatory requirements, including reviewing periodically with management any significant legal, compliance, and regulatory matters that have arisen or that may have a material impact on Evofem's business, financial statements, or compliance policies, Evofem's relations with regulators and governmental agencies, and any material reports or inquiries from regulators and government agencies.

The Board has determined that Mr. Rutherford is an "audit committee financial expert," as the SEC has defined that term in Item 407 of Regulation S-K. Please also see the report of the Audit Committee set forth elsewhere in this proxy statement.

A copy of the Audit Committee's written charter is publicly available on our website at www.evofem.com.

Compensation Committee

Chair:	Members:	Meetings in 2024: 0
Tony O'Brien	Kim Kamdar, Ph.D.	

Our Compensation Committee's role and responsibilities are set forth in the Compensation Committee's written charter.

Principal Responsibilities:

- Reviews, approves, and makes recommendations regarding our compensation policies, practices, and procedures to ensure that legal and fiduciary responsibilities of the Board are carried out and that such policies, practices, and procedures contribute to our success;
- Administers our Amended and Restated 2014 Equity Incentive Plan (the "Amended and Restated 2014 Plan"), and our Amended and Restated 2018 Inducement Equity Incentive Plan (the "2018 Inducement Equity Incentive Plan"), and will administer our 2025 Employee Equity Incentive Plan, if approved;
- Recommends to the Board the compensation of our Chief Executive Officer and conducts its decision-making process with respect to that issue without the Chief Executive Officer present;
- Oversees Evofem's compensation programs generally;
- Reviews and approves incentive award performance metrics and goals relevant to the compensation of Evofem's Chief Executive Officer's performance and determines and approves the compensation awarded to the Chief Executive Officer (subject to ratification by the Board);
- Reviews and approves the incentive award performance metrics relevant to the compensation of the other senior executives under its purview (which includes the named executives listed in the 2022 Summary Compensation Table) and, based on the recommendation of the Chief Executive Officer, approves the compensation of each such senior executive;
- Reviews reports about the compensation of other key corporate officers of Evofem, as the Compensation Committee deems appropriate;
- Oversees Evofem's management development and succession planning programs for the Chief Executive Officer and her direct reports and consults with the Chair of the Nominating and Corporate Governance Committee with respect to Chief Executive Officer succession planning;
- Reviews and approves compensation-related disclosures for inclusion in Evofem's annual Proxy Statement;
- Oversees the assessment of the risks related to Evofem's compensation policies and programs;
- Reviews periodic updates from management on initiatives and progress in the area of human capital, including diversity, equity, and inclusion; and
- Engages the services of an independent compensation consultant to advise on executive compensation matters.

Although our stock is listed on OTCID, the Board has elected to apply the independence standards of the Nasdaq Stock Market in assessing director independence, as such standards apply specifically to members of compensation committee.

In establishing compensation amounts for executives, the Compensation Committee seeks to support the Company's overall business strategy and objectives, attract, and retain key executives, link compensation with business objectives and organizational performance, and provide competitive compensation opportunities. The Compensation Committee may delegate authority to one or more members of the Compensation Committee or to one or more executives of the Compensation Committee, except that the Compensation Committee may not delegate authority to approve compensation of the Company's chief executive officer or its other Section 16 officers to any person or committee.

A copy of the Compensation Committee's written charter is publicly available on our website at www.evofem.com.

Nominating and Corporate Governance Committee

Chair: Kim Kamdar, Ph.D.

Members: Lisa Rarick, M.D.

Meetings in 2024: 0

The Nominating and Corporate Governance Committee's role and responsibilities are set forth in its written charter.

Principal Responsibilities:

- Evaluates and makes recommendations to the full Board as to the size and composition of the Board and its committees, evaluating and making recommendations as to potential candidates, and evaluating current Board members' performance;
- Identifies individuals qualified to become Board members, consistent with criteria approved by the Board, and recommends these individuals to the Board for nomination, election, or appointment as members of the Board and Board Committees;
- Considers board refreshment in light of various factors, including expected director departures, the Board's mix and interplay of skills, experience, and attributes, including diversity, and individual director performance; and
- Oversees the annual evaluation of the Board, individual directors, and Board Committees.

Although our stock is listed on OTCID, the Board has elected to apply the independence standards of the Nasdaq Stock Market in assessing director independence.

A copy of the Nominating Committee's written charter is publicly available on our website at www.evofem.com.

Board Accountability and Processes

Stockholder Communications with the Board of Directors

Evofem takes every effort to ensure that the views of stockholders are heard by the Board or individual directors, as applicable, and that appropriate responses are provided to stockholders in a timely manner. You may communicate with the Board, its Chair, or the Chair of any committee by sending your communication to our Corporate Secretary, Evofem Biosciences, Inc., 7770 Regents Road, Suite 113-618, San Diego, California 92122-1967, and all appropriate communications will be forwarded as requested. Items that are unrelated to the duties and responsibilities of the Board may be excluded, such as:

- junk mail and mass mailings;
- resumes and other forms of job inquiries;
- surveys; and
- solicitations or advertisements.

In addition, any material that is unduly hostile, threatening, or illegal in nature may be excluded, provided that any communication that is filtered out will be made available to any outside director upon request.

Fostering long-term relationships with our stockholders and maintaining their trust is a priority for the Board. Direct engagement with stockholders helps us gain useful feedback on a wide variety of topics, including corporate governance, executive compensation, sustainability and corporate responsibility, human capital management matters, business strategy, and performance related matters. Stockholder feedback also helps us to better tailor the public information we disclose to address the interests and inquiries of stockholders.

Board Self-Evaluation

The Board believes that self-evaluations of the Board and Board Committees are important elements of corporate governance and essential to ensure a well-functioning Board. Pursuant to Evofem's Corporate Governance Guidelines, the Board, acting through the Nominating and Corporate Governance Committee and under the general oversight of the Chairman of the Board, conducts an annual self-evaluation and an evaluation of each committee of the Board.

Code of Conduct and Ethics

We have adopted a Code of Business Conduct and Ethics that applies to our officers, directors, and employees, which is available on our website at www.evofem.com and will be made available to stockholders without charge, upon request, in writing to our Corporate Secretary, Evofem Biosciences, Inc., 7770 Regents Road, Suite 113-618, San Diego, California 92122-1967. The Code of Business Conduct and Ethics contains general guidelines for conducting the business of our company consistent with the highest standards of business ethics and is intended to qualify as a "code of ethics" within the meaning of Section 406 of the Sarbanes-Oxley Act of 2002 and Item 406 of Regulation S-K. In addition, disclosure regarding any amendments to, or waivers from, provisions of our Code of Business Conduct and Ethics that apply specifically to our directors, principal executive officer and principal financial officer will be included in a Current Report on Form 8-K within four business days following the date of the amendment or waiver, unless website posting or the issuance of a press release of such amendments or waivers is then permitted by the rules of the OTCID or other exchange on which our stock is listed.

Corporate Governance Matters

Board Composition

- Balanced and effective Board composition is a priority for Evofem. The selection of a qualified group of directors with an appropriate mix of skills, experience, and attributes is essential to the Board's successful oversight of Evofem's journey. The Board manages Board composition and refreshment with significant support from the Nominating and Corporate Governance Committee.

Board Effectiveness

- The Board considers director attendance at Board and Board Committee meetings an essential duty of a director.
- There were 15 meetings of the Board during 2024. The independent directors meet in executive session, without the Chief Executive Officer present as needed, in conjunction with each regularly scheduled Board meeting. There were a total of 4 meetings of the Audit Committee of the Board during 2024 and no meetings of the other Board Committees. For 2024, all of the directors attended 95% of all meetings of the Board and 100% of the Board Committees on which they served.
- Pursuant to Evofem's Corporate Governance Guidelines, all directors are generally expected to attend the Annual Meeting. All directors who stood for election at the previous Annual Meeting attended such meeting.

Engaged Oversight

- The Board fulfills its oversight role with respect to Evofem's strategy through year-round discussions and presentations covering company-wide and business unit specific updates. The Board also provides oversight with respect to other key areas, including management succession planning, human capital management (including diversity, equity, and inclusion), sustainability (including climate-related issues), corporate social responsibility, lobbying and public policy, risk management, and cybersecurity.

Accountability

- Evofem proactively engages with significant stockholders throughout the year. Dialogue, transparency, and responsiveness are the cornerstones of our stockholder engagement strategy.
- Interactive investor dialogue provides perspective on investor concerns.

Board Structure

- Evofem aims to maintain a balanced and independent Board that is committed to representing the long-term interests of Evofem's stockholders and has the substantial and diverse expertise necessary to oversee Evofem's strategic and business planning as well as management's approach to addressing significant risks and challenges facing Evofem.

Director Compensation

The following table sets forth the compensation (cash and equity) earned by our non-employee directors during the year ended December 31, 2024. Note that no equity awards have been granted in 2023 or 2024.

Name	Fees Earned or Paid in Cash[1]	Stock Awards ($)	Option Awards ($)	Totals
Kim Kamdar, Ph.D.	$ 78,750	$ –	–	$ 78,750
Tony O'Brien	$ 75,000	$ –	–	$ 75,000
Lisa Rarick, M.D.	$ 55,000	$ –	–	$ 55,000
Colin Rutherford	$ 70,000	$ –	–	$ 70,000

[1] Amounts represent the fees earned in the current year. Earned fees have not been paid quarterly and the $0.5 million owed to the non-employee directors is a part of the accrued expenses line in the Consolidated Balance Sheet as of December 31, 2024.

The following table shows the outstanding equity awards held by our non-employee directors as of December 31, 2024.

Name	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Un-exercisable	Option Exercise Price	Grant Date	Option Expiration Date
Kim Kamdar, Ph.D.	47	–	$ 2,343.75	5/12/2021	5/12/2031
	48	–	$ 308.75	5/4/2022	5/4/2032
	6	–	$ 13,106.25	5/8/2018	5/8/2028
	13	–	$ 70,762.50	1/17/2018	1/17/2028
	26	–	$ 11,343.75	6/5/2019	6/5/2029
	26	–	$ 9,487.50	5/12/2020	5/12/2030
Tony O'Brien	47	–	$ 2,343.75	5/12/2021	5/12/2031
	48	–	$ 308.75	5/4/2022	5/4/2032
	13	–	$ 13,668.75	3/12/2018	3/12/2028
	6	–	$ 4,331.25	7/24/2018	7/24/2028
	26	–	$ 11,343.75	6/5/2019	6/5/2029
	26	–	$ 9,487.50	5/12/2020	5/12/2030
Lisa Rarick, M.D.	47	–	$ 2,343.75	5/12/2021	5/12/2031
	48	–	$ 308.75	5/4/2022	5/4/2032
	40	–	$ 10,968.75	2/25/2020	2/25/2030
	26	–	$ 9,487.50	5/12/2020	5/12/2030
Colin Rutherford	47	–	$ 2,343.75	5/12/2021	5/12/2031
	48	–	$ 308.75	5/4/2022	5/4/2032
	21	–	$ 13,668.75	3/12/2018	3/12/2028
	6	–	$ 13,106.25	5/8/2018	5/8/2028
	2	–	$ 3,937.50	7/31/2018	7/31/2028
	26	–	$ 11,343.75	6/5/2019	6/5/2029
	26	–	$ 9,487.50	5/12/2020	5/12/2030

Our Non-Employee Director Compensation Policy

In February 2022, our Compensation Committee amended the Non-Employee Director Compensation Policy, as described below, which took effect April 1, 2022 and will remain the policy until such time as the Compensation Committee makes additional amendments.

- Each non-employee director will receive an annual cash retainer in the amount of $40,000 per year.
- The Chairperson of the Board will receive an additional annual cash retainer in the amount of $30,000 per year.
- The Chairperson of the Audit Committee will receive additional annual cash compensation in the amount of $20,000 per year for such chairperson's service on the Audit Committee. Each non-chairperson member of the Audit Committee will receive additional annual cash compensation in the amount of $10,000 per year for such member's service on the Audit Committee.
- The Chairperson of the Compensation Committee will receive additional annual cash compensation in the amount of $15,000 per year for such chairperson's service on the Compensation Committee. Each non-chairperson member of the Compensation Committee will receive additional annual cash compensation in the amount of $7,500 per year for such member's service on the Compensation Committee.
- The Chairperson of the Nominating and Corporate Governance Committee will receive additional annual cash compensation in the amount of $10,000 per year for such chairperson's service on the Nominating

and Corporate Governance Committee. Each non-chairperson member of the Nominating and Corporate Governance Committee will receive additional annual cash compensation in the amount of $5,000 per year for such member's service on the Nominating and Corporate Governance Committee.

- Each non-employee director will receive a stock option grant with an initial grant equal to 48 shares of the Company's Common Stock upon a director's initial appointment or election to the Board, vesting quarterly over a three-year period and an annual stock option grant equal to 48 shares of the Company's Common Stock on the date of each annual meeting of stockholders thereafter, fully vesting one year from the date of grant. Note that due to the low price of the Company's stock, no annual grants have been made since 2022.

Our Compensation Committee periodically reviews non-employee director compensation and believes the current levels are appropriate given the Company's size, complexity, and market practices.

Executive Officers of Evofem Biosciences, Inc.

Set forth below is certain information regarding our executive officers as of October 24, 2025. Executive officers are elected annually by our Board of Directors and serve at its discretion. See "Proposal 1 – Election of Directors" for information regarding our executive officer who is also a director (Saundra Pelletier, President and Chief Executive Officer). All executive officers are at-will employees.

Ivy Zhang

Chief Financial Officer

Age: 48

Background

- Ivy Zhang is a trusted leader who is dedicated to advancing Evofem Biosciences' mission of addressing the unmet sexual and reproductive health needs of women. She has more than 16 years of financial and accounting experience spanning diverse industries, including pharmaceuticals and medical devices, and leads the Company's finance organization and financial activities including financial planning and analysis, accounting, external audit, tax, controllership, and treasury functions.
- Ms. Zhang re-joined Evofem as Chief Financial Officer and Secretary in April 2023 from HUYABIO International, where she served as Vice President Controller.
- Previously Ms. Zhang held increasingly senior finance roles at Evofem from March 2018 until November 2022. She served as Director of SEC Reporting and SOX Compliance until her promotion to Controller in April 2020.
- Earlier in her career, she served in finance positions for approximately seven years at Ernst & Young LLP, and for more than two and a half years at SeaSpine Holdings Corporation (a public medical and therapeutic technology and device company).
- Ms. Zhang holds a Master's in Assurance from Virginia Tech and a Master's in Economics from the University of Victoria, Canada. She is a certified public accountant (CPA) in the state of California.

As of October 24, 2025, Ms. Pelletier and Ms. Zhang were our only executive officers. There are no family relationships among any of our executive officers and directors, and there are no arrangements or understandings pursuant to which any officer was selected.

Executive Compensation Matters

PROPOSAL
2

Non-Binding Advisory Vote to Approve the Compensation of Our Named Executive Officers

This proposal gives our stockholders the opportunity to express an advisory opinion on the compensation of our named executive officers as disclosed in this proxy statement. Section 14A of the Exchange Act requires that we provide our stockholders with the opportunity to vote to approve, on a non-binding, advisory basis, not less frequently than once every three years, the compensation of our named executive officers as disclosed in this proxy statement in accordance with the compensation disclosure rules of the SEC.

Our compensation programs are designed to effectively align our executives' interests with the interests of our stockholders by focusing on long-term equity incentives that correlate with the growth of sustainable long-term value for our stockholders. Stockholders are urged to read the sections titled "Base Salary," "Equity Incentive Compensation" and "Summary Compensation Table" in this proxy statement, which discuss how our executive compensation policies and practices implement our compensation philosophy and contain tabular information and narrative discussion about the compensation of our named executive officers. The Compensation Committee believes that the objectives of our executive compensation program, as they relate to our named executive officers, are appropriate for a company of our size and stage of development and that our compensation policies and practices help meet those objectives. In addition, the Compensation Committee believes that our executive compensation program, as it relates to our named executive officers, achieves an appropriate balance between fixed compensation and variable incentive compensation. Our Board and our Compensation Committee believe that our policies and practices are effective in implementing our compensation philosophy and in achieving our compensation program goal. Accordingly, we are asking our stockholders to approve the compensation of our named executive officers.

The vote on this resolution is not intended to address any specific element of compensation; rather, the vote relates to the compensation of our named executive officers, as described in this proxy statement in accordance with the compensation disclosure rules of the SEC.

Accordingly, we are asking our stockholders to vote on the following resolution at the Annual Meeting:

> RESOLVED, that the stockholders of Evofem Biosciences, Inc. approve, on an advisory basis, the compensation of the Company's named executive officers as disclosed in the Proxy Statement for the 2025 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the Securities and Exchange Commission.

Approval of this advisory proposal requires the affirmative vote of a majority of votes cast by the holders of our Common Stock at the meeting at which a quorum is present. Because the vote is advisory, it is not binding on the Company, the Board of Directors, or the Compensation Committee. However, the Compensation Committee and the Board will consider the results of the vote when making future compensation decisions.

The vote is advisory, which means that the vote is not binding on the Company, our Board, or our Compensation Committee. To the extent there is any significant vote against our named executive officer compensation as disclosed in this proxy statement, our Compensation Committee will evaluate whether any actions are necessary to address the concerns of stockholders.

Recommendation

The Board recommends a vote "**FOR**" the approval, on a non-binding advisory basis, of the compensation of the company's named executive officers, as disclosed in this proxy statement.

Compensation Overview

We are a "smaller reporting company" as such term is defined in Rule 405 of the Securities Act of 1933, as amended (the "Securities Act"), and Item 10 of Regulation S-K. Accordingly, and in accordance with relevant SEC rules and guidance, we have elected, with respect to the disclosures required by Item 402 (Executive Compensation) of Regulation S-K, to comply with the disclosure requirements applicable to smaller reporting companies. We are providing this "Compensation Overview" section in order to aid our stockholders' understanding of our compensation programs and policies for our executive officers as well as the Compensation Committee's role in the design and administration of these programs and policies in making specific compensation decisions for our executive officers, including our "named executive officers."

Roles and Compensation-Setting Process

Our executive compensation program is administered by the Compensation Committee, with guidance and input from our Chief Executive Officer.

Historically, the Compensation Committee has made most of the significant adjustments to annual compensation for the next fiscal year, determined bonus and equity awards, and established new performance objectives for the next fiscal year at one or more meetings held during the fourth quarter of the year. However, the Compensation Committee also considers matters related to individual compensation, such as compensation for new executive hires, adjustments to the compensation of existing executives, as well as high-level strategic issues, such as the efficacy of the Company's compensation strategy, potential modifications to that strategy and new trends, plans or approaches to compensation, at various meetings throughout the year.

Generally, the Compensation Committee's process comprises two related elements: (i) the determination of specific compensation packages for our executive officers, and (ii) the establishment of performance objectives for the next year. For executives other than the Chief Executive Officer, the Compensation Committee solicits and considers evaluations and recommendations submitted by the Chief Executive Officer for the Compensation Committee's review and approval. In the case of the Chief Executive Officer, the evaluation of her performance is conducted by the Compensation Committee in consultation with the Board, and the Compensation Committee recommends to the Board for approval any adjustments to her compensation as well as equity awards to be granted. Also, in each case, the Compensation Committee obtains and considers input from Anderson, including benchmarking data discussed below. Ms. Pelletier plays no role in determining her own salary, annual cash performance bonus or equity compensation.

Our Compensation Committee has the sole authority and responsibility to review and determine, or recommend to the full Board for determination, the compensation package of our Chief Executive Officer (Saundra Pelletier) and each of our other named executive officers (currently Ivy Zhang). Our Compensation Committee is composed entirely of independent directors who have never served as officers of the Company and operates under a written charter adopted and reviewed annually by our Board.

Role of Independent Compensation Consultant; Benchmarking

The Compensation Committee has the authority to directly retain the services of independent consultants and other experts to assist in fulfilling its responsibilities. The Compensation Committee has engaged Anderson to review our executive compensation programs and to assess our executive officers' base salaries, target and actual total cash bonuses, long-term incentives, and total compensation from a competitive standpoint. Anderson also assists the Compensation Committee in benchmarking our director compensation program and practices against those of our peers. For such services, we paid Anderson an immaterial amount in 2023 and did not use their services in 2024 nor have we done so in 2025 to-date. Anderson performs services solely on behalf of the Compensation Committee and has no relationship with the Company or management relating to compensation

or other human resources related services except as it may relate to performing such services. The Compensation Committee has assessed the independence of Anderson pursuant to SEC rules and the corporate governance rules of Nasdaq and concluded that no conflict of interest exists that would prevent Anderson from independently advising the Compensation Committee. Anderson also assisted the Compensation Committee in defining the appropriate group of peer companies for analysis of our executive compensation and practices and in benchmarking our executive compensation program against the peer group.

Roles of Management in Determining Executive Compensation

The Compensation Committee periodically meets with our Chief Executive Officer and/or other executive officers to obtain recommendations with respect to compensation programs for executives and other employees. Our Chief Executive Officer makes recommendations to the Compensation Committee on the base salaries, target cash bonuses and performance measures, and equity compensation for our executives and other key employees. The Compensation Committee considers, but is not bound to accept, management's recommendations with respect to executive compensation. Our Chief Executive Officer and certain other executives attend most of the Compensation Committee's meetings, but the Compensation Committee also holds private sessions outside the presence of members of management and non-independent directors. The Compensation Committee discusses our Chief Executive Officer's compensation package with her but makes decisions with respect to her compensation without her present. The Compensation Committee has delegated to management the authority to make certain decisions regarding compensation for employees other than executive officers. The Compensation Committee has not delegated any of its authority with respect to the compensation of the named executive officers.

Stockholder Engagement and Use of Stockholder Feedback

The Compensation Committee informally engages with the Company's stockholders to gain feedback on our stockholders' concerns and internal guidelines regarding executive compensation. The Compensation Committee then seeks to align those interests with the Company's compensation policies.

Use of Compensation Peer Group Data

Each year from 2018 through 2023, the Compensation Committee has engaged Anderson to provide compensation market data and recommendations to be used to establish compensation levels and plans for our executive officers for the following year.

For the 2023 performance cycle, the Compensation Committee engaged Anderson to conduct a competitive review of executive compensation as compared to our peer group. This review and analysis revealed that annual cash salary and cash bonuses fell short of the target goal of the 75th percentile of our peer group. Nevertheless, for 2022, after consideration of stock performance and based in part on direct feedback from our stockholders, the Compensation Committee determined to lower the target pay positioning for both cash and equity from the market 75th percentile to the market 50th percentile for on-target performance. There were no equity grants since 2023.

For 2024, our target goal for annual gross cash salary and potential cash bonus of our named executive officers was $1.9 million.

For 2025, our target goal for annual gross cash salary and potential cash bonus of our named executive officers is $2.0 million, a $0.1 million difference from the prior year.

Our Peer Group

In 2024, the Compensation Committee also worked with Anderson to review our peer group. Each year, the Compensation Committee reviews and approves our selected peer group. The committee considers several factors in development and refinement of the peer group. Key factors include:

- Industry (SIC): Pharmaceutical preparation (2834)
- Stage of business: Early-stage commercialization
- Market capitalization: Target range of under $500M
- Revenue: Target range less than $100M
- Headcount: Target range less than 250 employees
- Geography: National

The Compensation Committee will continue to welcome constructive feedback from stockholders, stockholder advisory groups and other interested parties in consideration of our processes and, in particular, our benchmark peers.

During 2024, our peer group consisted of the following 24 companies:

AcelRx Pharmaceuticals	Eiger BioPharmaceuticals Inc.	Omeros	scPharmaceuticals
Agile Therapeutics	Kala Pharmaceuticals	Otonomy	SCYNEXIS
Chimerix	La Jolla Pharmaceuticals	Paratek Pharmaceuticals	Sensen Bio
Concert Pharmaceuticals	Lexicon Pharmaceuticals	Puma Biotechnology, Inc.	Spectrum Pharmaceuticals
Cyma Bay Therapeutics	MEI Pharma	Reco Pharma	TherapeuticsMD
Eagle Pharmaceuticals	ObsEva	Rigel Pharmaceuticals	Trevena

We believe that our selected peer group provides useful information to help us establish competitive compensation practices and levels of compensation that allow us to attract, retain and motivate a talented executive team and, at the same time, aligns the interests of our executives with those of our stockholders. The executive employment market in our industry in the U.S. is very competitive because there are many high-growth life sciences companies in our region, many of which are larger and more established than we are. We believe our executive compensation must be competitive within such peer groups, yet fully aligned with our current stage of development and our responsibilities to stockholders.

Compensation Objectives and Philosophy

The objective of our executive compensation program is to attract, retain and motivate talented executives who are critical for our continued growth and success and to align the interests of these executives with those of our stockholders so that we can build long-term stockholder value. To achieve this objective, besides annual base salaries, our executive compensation program utilizes a combination of annual incentives through structured cash bonuses based on pre-defined goals as well as long-term incentives through equity-based compensation. In establishing overall executive compensation levels, our Compensation Committee considers a number of criteria, including (i) the applicable executive's scope of responsibilities, (ii) the strategic importance of the applicable executive's role, (iii) the Company's stage of development, (iv) relevant peer group data, (v) attainment of individual and overall company performance objectives, (vi) recruitment and/or retention concerns, and (vii) the results of the advisory vote of the stockholders on the "say-on-pay" proposal at the prior years' annual meeting of the stockholders. Our Compensation Committee believes that substantial portions of executive compensation should be linked to the overall performance of our Company, and that the contribution of individuals over the

course of the relevant period to the goal of building a profitable business and stockholder value should also be considered in the determination of each executive's compensation.

Elements of Compensation

Our executive compensation program consists of the following forms of compensation:

- Base Salary
- Annual Performance Cash Bonus
- Long-term Equity Incentives
- Employee Benefit Program

Base Salary

Annual base salaries compensate our executive officers for fulfilling the requirements of their respective positions and provide them with a level of cash income predictability and stability with respect to a portion of their total compensation. We believe that the level of an executive officer's base salary should reflect the executive's performance, experience and breadth of responsibilities, our understanding of salaries for similar positions within our industry and peer group and any other factors relevant to that particular job.

Base salaries are typically negotiated at the outset of an executive's employment. Salary levels are considered annually as part of our performance review process, but also in cases including promotion or other changes in the job responsibilities of an executive officer. For named executive officers, initial base salaries generally are established in connection with negotiation of an offer of employment and an employment agreement. Increases in base salary have several elements. In addition to promotion and increased responsibilities, merit and Company-wide general increases are also taken into consideration. Salaries of our named executive officers for fiscal year 2023 and certain prior years are also reported in the Summary Compensation Table included under the heading "Summary Compensation Table" in this Annual Report.

The following table shows the base salary for each of our current named executive officers for 2023 and 2024 (in whole dollars):

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Name				
Saundra Pelletier[1]	$ 579,828	$ 568,458	$ 11,370	2.0%
Ivy Zhang[2]	$ 450,000	$ 410,000	$ 40,000	9.8%

(1) Ms. Pelletier's annual base salary was increased by 2% in 2024 in accordance with the Company's decision to give a small cost of living increase to all employees.

(2) Ms. Zhang was appointed Chief Financial Officer and Secretary on April 13, 2023.

Annual Performance Cash Bonuses

Each year, the Compensation Committee recommends, and the Board approves and establishes, the target cash incentive opportunity for each executive officer assuming full achievement of certain performance objectives that are also reviewed and approved by the Board. The following table shows the potential cash bonus incentive for each of our current named executive officers for fiscal 2024 and 2023 (each expressed as a percentage of annual base salary) and in actual dollar awarded:

Name and Principal Position	Year Ended December 31	Cash Incentive % of Annual Salary (Eligible)	Cash Incentive % of Annual Salary (Estimated)	Cash Incentive Bonus (Estimated)	% Change
Saundra Pelletier, Chief Executive Officer	2024	100%	100%	$ 579,828	27%
	2023	100%	76%	$ 455,173	
Ivy Zhang, Chief Financial Officer and Secretary[1]	2024	75%[2]	54%	$ 243,750	158%
	2023	50%	23%	$ 94,439	

[1] Ms. Zhang was appointed Chief Financial Officer and Secretary on April 13, 2023.
[2] This new rate was effective on November 8, 2024.

On a periodic basis, the Compensation Committee reviews the level of the Company's achievement against the applicable performance objectives. In reviewing the Company's level of achievement against the applicable performance objectives for fiscal 2024, Management expects that the incentive bonus payment will be equal to the possible target incentive bonus percentages as set forth in the table above.

As illustrated in the above table, the 2024 compensation program, consistent with prior years, was designed to reward achievement of the performance objectives that build stockholder value. When certain performance objectives are not achieved, the incentive bonus payouts will be reduced. In 2023, only some of these weighted performance objectives were achieved, resulting in an expected partial payout of the potential cash incentive bonus, only when and if approved by the Board.

The performance objectives established by the Compensation Committee for 2024 related to achieving certain level of net revenue, closing a strategic transaction (such as a license or partnership for PHEXX, a product acquisition, or adding a product for co-promotion), and securing a targeted amount of capital. In 2024, all of these weighted performance objectives were achieved, resulting in an expected full payout of the potential cash incentive bonus, only when and if approved by the Board.

For 2025, the Compensation Committee has approved the following performance objectives as those which must be achieved in order for the named executive officers to fully realize their potential annual cash bonus amounts:

- Close a strategic transaction;
- Achieve a certain targeted net revenue figure in 2025; and
- Secure a targeted amount of capital.

Following the determination of corporate achievement of the performance objectives, the Compensation Committee will also consider the performance of each named executive officer in arriving at the individual awards, if any, to be made, provided that no award will exceed the target percentage of annual base salary for annual bonus. The Compensation Committee believes this flexibility is an important tool to aid in the retention of key talent, reward significant achievement by individual executives, motivate executives and recognize management decision-making focused on generating long-term value for stockholders over short-term achievement of the

corporate objectives. The potential total cash bonus amounts for fiscal 2024 and 2023 for our named executive officers are reported in the Summary Compensation Table included under the heading “Summary Compensation Table” herein.

Discretionary Bonuses

From time to time, we have utilized discretionary retention or other bonus awards as a compensation tool to reward extraordinary performance by executives in a given year and to retain key executives. In addition, we believe that signing bonuses are consistent with our overall executive compensation philosophy to achieve our recruiting objectives, so we may award certain signing bonuses to new executives in the future.

Long-term Equity Incentive Awards

We have historically granted stock options and restricted stock to our employees within a competitive range of the market to complement cash salaries and cash incentives, incentivize new hires to achieve our corporate and strategic goals, and align executive compensation with the long-term interests of our stockholders and stock value. We historically provided stock option grants to our named executive officers upon their initial hiring, as negotiated in their employment agreements or offer letters. We have not granted any stock options or restricted stock to any employees since 2023. The Compensation Committee has the discretion to grant stock option awards and restricted stock awards to promote high performance and achievement of our corporate objectives by our executives at any time of the year. The Compensation Committee does not currently have a policy for the automatic awarding of equity awards to the named executive officers or our other employees, nor do we have any formal plan that requires us to award equity or equity-based compensation to any executive on a year-to-year basis. The timing of our typical equity awards is determined in advance. In general, we do not anticipate option grants on dates other than the scheduled meetings of the Compensation Committee. The grant date is established when the Compensation Committee approves the grant and all key terms have been determined.

In granting these awards, the Compensation Committee may establish any conditions or restrictions it deems appropriate in accordance with the Amended and Restated 2014 Plan or the 2018 Inducement Equity Incentive Plan, as the case may be. Our Chief Executive Officer typically provides recommendations to the Compensation Committee for equity grants to the executive officers, taking into account each executive’s performance, achievements, and other criteria deemed relevant. The Compensation Committee reviews the proposed grants but reserves the right to reject or modify such recommendations. In addition, our Chief Executive Officer has limited discretionary authority to grant stock options under the Amended and Restated 2014 Plan to our non-executive employees, subject to certain volume limitations. The Amended and Restated 2014 Plan expired in September 2024 so no further equity awards can be granted under that plan.

We size equity grants based on market data that expresses the awards as a percent of common shares outstanding. This sizing approach is helpful to ensure that the dilutive effects of the grants are reasonable. The exercise price of the stock options will equal the closing price of our Common Stock published by OTCID or other exchange on which our stock is listed on the date of the grant and the term of the options will be 10 years from the date of the grant. The Compensation Committee has taken a two-tiered approach to vesting in order to align executive compensation with long-term stockholder value. The first consists of longer term, time-based vesting for certain awards, and the second relies on performance-based vesting for certain awards that are tied to critical, more immediate goals fundamental to the Company’s mission to achieve commercial success.

Executive Compensation Matters

The following table shows the outstanding equity awards held by our named executive officer as of December 31, 2024. Ms. Zhang did not hold any equity awards as of December 31, 2024.

Name	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Un-exercisable	Option Exercise Price	Grant Date	Option Expiration Date
Saundra Pelletier	20[1]	–	$ 86,925.00	9/28/2016	9/28/2026
	439	–	$ 13,668.75	3/12/2018	3/12/2028
	166	–	$ 3,937.50	7/31/2018	7/31/2028
	151	–	$ 6,468.75	11/28/2018	11/28/2028
	159	–	$ 9,131.25	2/5/2020	2/5/2030
	372	1	$ 6,093.75	2/3/2021	2/3/2031
	298	101	$ 917.50	2/18/2022	2/18/2032

[1] The share numbers and exercise prices reflected are those of options issued to the executive upon completion of the Merger in January 2018 between Neothetics, Inc. and privately-held Evofem Bioscience Operations, Inc. These options were issued upon completion of the Merger in exchange for options to purchase an aggregate of 874 shares of Private Evofem Common Stock at an exercise price of $2,231.25 per share awarded to the executive by Private Evofem in 2016.

Our Chief Executive Officer's Compensation

As set forth above, one of the key drivers in the Compensation Committee's determination of the compensation of our Chief Executive Officer is company performance.

The following table shows the total compensation (including estimated amounts accrued but not yet paid) of our Chief Executive Officer for each of 2024 and 2023, in each case, excluding the value of options (all of which are out-of-the money as of the date hereof).

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Compensation Item				
Salary	$ 579,828	$ 560,338	$ 19,490	3%
Retention Paid	–	450,000	(450,000)	(100)%
Accrued Compensation (unpaid)	579,828	493,747	86,081	17%
All other Compensation	18,182	16,370	1,812	11%
Total	$ 1,177,838	$ 1,520,455	$ (342,617)	(23)%

Benefits Plans

We also provide group life insurance, health, vision, and dental care insurance to all employees, including the executive officers. These benefits do not discriminate in scope, terms, or operation in favor of the named executive officers. All such benefits terminate at the time each individual is no longer employed with the Company or as otherwise provided in the applicable employment agreement. All of our named executive officers are eligible to participate in all of our employee benefit plans, in each case on the same basis as other employees. We maintain a 401(k) defined contribution plan, which is our primary retirement benefit for employees, including executives. The Company makes a safe-harbor contribution of 3% of each employee's gross earnings, including executives,

subject to Internal Revenue Service limitations. Although permitted under the plan, we have not matched employee contributions to the 401(k) plan. We do not provide our executive officers with any type of defined benefit retirement benefit or the opportunity to defer compensation pursuant to a non-qualified deferred compensation plan. We generally do not offer our named executive officers any material compensation in the form of perquisites, but any perquisites provided to our named executive officers and described in the footnote to the Summary Compensation Table included in the Summary Compensation Table included under the heading "Summary Compensation Table" herein are offered to encourage the long-term retention of our executives.

Other Compensation Practices

Limits on Hedging and Pledging

As part of our insider trading policy, all employees, including named executive officers and members of our Board, are prohibited from engaging in certain types of hedging transactions involving our securities, specifically short sales and purchases or sales of puts, calls or other derivative securities. Our insider trading policy also prohibits certain types of pledges of our securities by all employees, including executive officers, and members of our Board, specifically purchases of our securities on margin, borrowing against our securities held in a margin account or pledging our securities as collateral for a loan, with an exception for transactions with the pre-approval of our Chief Compliance Officer.

Clawback Policy

In 2020, the Board resolved to adopt a recoupment or "clawback" policy for annual cash incentive awards, long-term incentive awards (including stock options and restricted stock) and any other incentive awards paid to executive officers under certain circumstances. In February of 2021, the Compensation Committee formally adopted such a clawback policy. Our clawback policy provides that in the event the Company determines it must restate its financial results as reported in a Form 10-K, Form 10-Q, or other report filed with the Securities and Exchange Commission to correct an accounting error due to material noncompliance with any financial reporting requirement under the U.S. federal securities laws (a Restatement), the Company will seek to recover, at the direction of the Compensation Committee after it has reviewed the facts and circumstances that led to the requirement for the Restatement and the costs and benefits of seeking recovery, incentive compensation (cash and equity-based) awarded or paid within one year following the filing of the financial report giving rise to the Restatement to a covered officer whose intentional misconduct caused or contributed to the need for the Restatement for a fiscal period if a lower award or payment would have been made to such covered officer based upon the restated financial results. The Committee will determine in its discretion the amount, if any, the Company will seek to recover from such covered officer.

Summary Compensation Table

The following table summarizes information concerning the compensation awarded to, earned by, or paid for services rendered in all capacities by our named executive officers during the years ended December 31, 2024 and 2023:

Name and Principal Position	Year Ended December 31,	Salary	Retention	Bonus[1]	Equity Awards[11]	All other Compensation[2]	Total
Saundra Pelletier	2024	$579,828	$ –	$ 579,828	$ –	$ 18,182[3]	$ 1,177,838
Chief Executive Officer	2023	$560,338[4]	$ 450,000[5]	$ 493,747	$ –	$ 16,370[6]	$ 1,520,455
Ivy Zhang	2024	$450,000	$ –	$ 243,750	$ –	$ 1,511	$ 695,261
Chief Financial Officer and Secretary	2023	$293,570	$ –	$ 94,439	$ –	$ 50,840[7]	$ 438,849
Justin J. File							
Former Chief Financial Officer	2023	$177,905[8]	$ –	$ –	$ –	$ 175,483[9]	$ 353,388
Katherine Atkinson							
Former Chief Commercial Officer	2023	$ 97,211[10]	$ –	$ –	$ –	$ 38,253	$ 135,464

(1) Consists of estimated bonus compensation amounts that have been accrued, but not yet paid, in respect of the named executive officer's performance and the Company's performance during each respective fiscal year.

(2) All Other Compensation primarily includes premiums paid for group term life insurance, except for Ms. Pelletier, Ms. Zhang, and Mr. File, as discussed in notes (3) and (6), (7), and (9), respectively, below.

(3) In 2024, All Other Compensation for Ms. Pelletier includes (i) a $3,762 premium paid for group term life insurance and (ii) $14,420 in fringe benefits paid on behalf of Ms. Pelletier.

(4) Ms. Pelletier's annual base salary was reduced by 20% in February 2023 and another 20% in March 2023, resulting in a total reduction of 30% as compared to her 2022 salary. The Company ended a portion of the salary reduction in January 2024.

(5) A retention bonus, in amounts approved by the board per each applicable position, was paid to all remaining members of the executive team after the March 2023 RIF, in order to retain experienced staff to salvage the Company and prevent bankruptcy.

(6) In 2023, All Other Compensation for Ms. Pelletier includes (i) a $1,932 premium paid for group term life insurance and (ii) $14,438 in fringe benefits paid on behalf of Ms. Pelletier.

(7) In 2023, All Other Compensation for Ms. Zhang includes a hiring bonus of $50,000.

(8) Mr. File resigned from his position as Chief Financial Officer effective April 3, 2023.

(9) In 2023, All Other Compensation for Mr. File includes an agreed upon payment in conjunction with the end of his employment in addition to the group term life insurance premiums.

(10) Ms. Atkinson was the Chief Commercial Officer until that position was eliminated as part of the March 2023 RIF.

(11) No equity incentive awards were issued in 2023 or 2024.

Employment, Severance, and Separation Agreements

Current Executive Officers

Our current principal executive officer, Saundra Pelletier, was appointed as Chief Executive Officer in January 2018 in connection with the Merger between Neothetics, Inc. and privately-held Evofem Biosciences Operations, Inc. The amounts reported for her in the Summary Compensation Table above include compensation paid to or earned by her pursuant to offer letters for her services provided as our principal executive officer pursuant to her offer letter and subsequent employment agreement described below.

Our current Chief Financial Officer (Ms. Zhang) was appointed to her office in April 2023.

Current Employment Agreements and Severance Obligations

Saundra Pelletier Employment Agreement

The Company and its Chief Executive Officer, Saundra Pelletier, have entered into a new employee agreement (the "Pelletier Agreement") on November 8, 2024 (the "Pelletier Effective Date"). The Pelletier Agreement replaced and superseded all previous employment agreements.

The term of the Pelletier Agreement commenced as of the Pelletier Effective Date and continues thereafter, subject to earlier termination in accordance with the terms of the Pelletier Agreement. Pursuant to the terms of the Pelletier Agreement, Ms. Pelletier shall be entitled to:

- receive an annual base salary of $579,828 per annum (subject to annual review and adjustment) ("Base Salary"). The Company's Board shall review the Base Salary on an annual basis and make adjustments thereto, at its sole discretion;
- receive an annual cash bonus paid out annually if targets are met with a target amount of one hundred percent (100%) of the Base Salary ("Annual Performance Bonus") in the year in which the Annual Performance Bonus relates, subject to approval by the Board which may adjust to be greater or less than pre-stated Annual Performance Bonus;
- receive equity incentive compensation under the Company's equity incentive plan, subject to approval by the Board; and
- be eligible to participate in a number of Company-sponsored benefit plans that may be in effect from time to time.

Pursuant to the Pelletier Agreement, in the event that Ms. Pelletier is terminated for a reason other than for "Cause," (as defined in the Pelletier Agreement) "Good Reason," (as defined in the Pelletier Agreement) or for a Change of Control (as defined in the Pelletier Agreement), Ms. Pelletier, upon signing and returning an effective waiver and release of claims (the "Release"), shall be entitled to receive: (i) a lump sum payment in an amount equal to thirty-six (36) months in value of her then current Base Salary, less all customary and required taxes and relate deductions, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (ii) a lump sum payment equal to the then target Annual Performance Bonus amount multiplied by 1.0, after deduction of all amounts required to be deducted or withheld under applicable law, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (iii) upon the effective date of the Release, vesting of any unvested equity awards held by Ms. Pelletier shall be accelerated such that 100% of such awards shall become fully vested as of the date of such termination; (iv) that portion of Ms. Pelletier's Base Salary accrued prior to termination of Ms. Pelletier's employment with Company that has not yet been paid by the Company; (v) accrued but unused paid time off; (vi) reimbursement for any reasonable out-of-pocket expenses properly incurred by Ms. Pelletier on behalf of the Company prior to any such termination and not yet reimbursed; and (vii) continuation of group health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") at the Company's expense, until the earlier to occur of: (A) twelve (12) months following the termination date of Ms. Pelletier's employment, or (B) the date that Ms. Pelletier becomes eligible for medical benefits with another employer.

Ivy Zhang Employment Agreement

The Company and Chief Financial Officer, Ivy Zhang, have entered into a new employee agreement (the "Zhang Agreement') on November 8, 2024 (the "Zhang Effective Date"). The term of the Zhang Agreement commenced as of the Zhang Effective Date and will continue thereafter, subject to earlier termination in accordance with the terms of the Zhang Agreement. Pursuant to the terms of the Zhang Agreement, Ms. Zhang will be entitled to receive:

- an annual base salary of $450,000 per annum (subject to annual review and adjustment) ("CFO Base Salary"). The Board shall review the CFO Base Salary on annual basis adjust it, at their sole discretion;
- an annual cash bonus with the target amount equal to seventy-five percent (75%) of the CFO Base Salary (the "CFO Annual Performance Bonus") in the year in which the CFO Annual Performance Bonus relates, subject to approval by the Board which may adjust to be greater or less than pre-stated CFO Annual Performance Bonus;
- equity incentive compensation under the Company's equity incentive plan, subject to approval by the Board; and
- eligibility to participate in a number of Company-sponsored benefit plans that may be in effect from time to time.

Pursuant to the Zhang Agreement, in the event Ms. Zhang's employment is terminated for a reason other than for "Cause," "Good Reason," or for a Change of Control (each as defined in the Zhang Agreement), Ms. Zhang, upon signing and returning an effective waiver and release of claims (the "CFO Release"), shall be entitled to receive: (i) a lump sum payment in an amount equal to twenty-four (24) months in value of her then current CFO Base Salary, less all customary and required taxes and related deductions, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (ii) a lump sum payment equal to the then target CFO Annual Performance Bonus amount multiplied by 1.0, after deduction of all mounts required to be deducted or withheld under applicable law, payable in the first payroll following the date on which the CFO Release becomes effective and non-revocable; (iii) upon the effective date of the CFO Release, vesting of any unvested equity awards held by Ms. Zhang shall be accelerated such that 100% of such awards shall become fully vested as of the date of such termination; (iv) that portion of Ms. Zhang's CFO Base Salary accrued prior to termination of Ms. Zhang's employment with Company and that has not yet been paid; (v) accrued but unused paid time off; (vi) reimbursement for any reasonable out-of-pocket expenses properly incurred by Ms. Zhang on behalf of the Company prior to any such termination and not yet reimbursed; and (vii) continuation of group health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") at the Company's expense, until the earlier to occur of: (A) twelve (12) months following the termination date of Ms. Zhang's employment, or (B) the date that Ms. Zhang becomes eligible for medical benefits with another employer.

Severance Tax Matters

All payments made and benefits available to each executive officer in connection with his or her employment agreement will or were intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended, (the "Code") in accordance with the terms of his or her employment agreement. In the event the benefit provided to an employee (i) constitutes "parachute payments" within the meaning of Section 280G of the Code, and (ii) would otherwise be subject to the excise tax imposed by Section 4999 of the Code, then such "Payments" will be reduced. The reduced amount will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the excise tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount results in the executive officer's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in payments or benefits constituting "parachute payments" is necessary to limit or avoid a certain employee's excise tax, the reduction shall occur at the election of such employee (provided, however, that such election shall be subject to our approval if made on or after the effective date of the event that triggers the Payment) and may reduce cash payments, cancel accelerated vesting of stock award, and/or reduce employee benefits in any order or combination that maximizes the amount of such reduced amount. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such executive officer's stock awards unless the executive officer elects a different order for cancellation.

Equity Compensation Plan Information

Equity Incentive Compensation

Historically, we have generally granted stock options to our employees, including our named executive officers, in connection with their initial employment with us. We also have historically granted stock options on an annual basis as part of annual performance reviews of our employees. From time to time, we have also granted, restricted stock awards to our executive management team, including our named executive officers, and certain non-executive employees, which typically vest in accordance with the Company's achievement of certain performance goals in the year.

We believe that the performance-based vesting of restricted stock grants illustrates the alignment between overall executive compensation and building long-term stockholder value. No options, awards, or any other form of equity compensation were granted in 2024 or 2023. Outstanding awards under prior plans remain governed by their existing terms until exercised, forfeited, or expired.

Plan Category	Number of Securities to be Issued Upon Exercise of Awards (a)	Weighted Average Exercise Price of Outstanding Awards	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column (a))
Equity compensation plans approved by Stockholders[1]	3,331	$ 7,191.78	509[2]
Equity compensation plans not approved by Stockholders[3]	41	$ 7,982.47	609
Total	3,372		1,118

(1) Includes the Amended and Restated 2014 Plan. This table does not include the number of shares issuable upon exercise of issued and outstanding awards under the Private Evofem Equity Incentive Plan. No new awards may be issued under either the Amended and Restated 2014 Plan or the Private Evofem Equity Incentive Plan.

(2) As of December 31, 2024, an aggregate of 509 shares were available for issuance under the (currently suspended) 2019 ESPP. The Amended and Restated 2014 Plan contains a provision for an automatic increase to the number of shares available for grant each January 1st until and including January 1, 2024, subject to certain limitations, by a number of shares equal to the lesser of 4% of the number of shares of our Common Stock issued and outstanding on the immediately preceding December 31 or a number of shares set by our Board. The 2019 ESPP contains a provision for an automatic increase to the number of shares available for issuance under the 2019 ESPP each January 1st and including January 1, 2024, subject to certain limitations, by a number of shares equal to the lesser of 533 shares or 2% of our Common Stock issued and outstanding on the immediately preceding December 31 or a number of shares set by our Board. The authorized number of shares available for issuance under the 2019 ESPP was not increased on January 1 in 2023, 2024, or 2025.

(3) Includes the 2018 Inducement Equity Incentive Plan. See "Summary of the 2018 Inducement Equity Plan" below for a narrative description of the 2018 Inducement Equity Incentive Plan.

Summary of the Amended and Restated 2014 Plan

The Company initially adopted the 2007 Stock Plan (the "2007 Plan") in March 2007, under which 113 shares of Common Stock were reserved for issuance to employees, non-employee directors, and consultants of the Company. The Company ceased granting any additional awards under our 2007 Plan, and presently grants equity awards under the Amended and Restated 2014 Plan as described below.

On September 15, 2014, our Board adopted, and our stockholders approved, the 2014 Equity Incentive Plan, as amended and restated (the "Amended and Restated 2014 Plan"). The Amended and Restated 2014 Plan provides incentives that will assist us to attract, retain, and motivate employees, including officers, consultants, and directors. We may provide these incentives through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, and units and other cash-based or share-based awards. In addition, the Amended and Restated 2014 Plan contains a mechanism through which we may adopt a deferred compensation arrangement in the future.

A total of 88 shares of our Common Stock was initially authorized and reserved for issuance under the Amended and Restated 2014 Plan. The Amended and Restated 2014 Plan expired in September 2024; therefore, no shares of our Common Stock are reserved and available for issuance under the Amended and Restated 2014 Plan. No further awards may be granted under the plan and while there are a few options issued prior to 2023 which are still exercisable, they are significantly underwater and as such very unlikely to be exercised prior to expiration. Per the terms of the Amended and Restated 2014 Plan, this reserve automatically increased on each January 1 through 2024, by an amount equal to the smaller of:

- 4% of the number of shares of Common Stock issued and outstanding on the immediately preceding December 31; or
- an amount determined by our Board.

Appropriate adjustments were made in the number of authorized shares and other numerical limits in the Amended and Restated 2014 Plan and in outstanding awards to prevent dilution or enlargement of participants' rights in the event of a stock split or other change in our capital structure. Shares subject to awards which expire or are cancelled or forfeited again became available for issuance under the Amended and Restated 2014 Plan (until its expiration).

The Amended and Restated 2014 Plan is administered by the Compensation Committee of our Board. Pursuant to the provisions of the Amended and Restated 2014 Plan, the Compensation Committee determines, in its discretion, the persons to whom and the times at which awards are granted, the sizes of such awards and all of their terms and conditions. The Compensation Committee has the authority to construe and interpret the terms of the Amended and Restated 2014 Plan and awards granted under it. The Amended and Restated 2014 Plan provides, subject to certain limitations, for indemnification by us of any director, officer, or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the Amended and Restated 2014 Plan.

In the event of a change in control as described in the Amended and Restated 2014 Plan, the acquiring or successor entity may assume or continue all or any awards outstanding under the Amended and Restated 2014 Plan or substitute substantially equivalent awards. The Compensation Committee may provide for the acceleration of vesting of any or all outstanding awards upon such terms and to such extent as it determines, except that the vesting of all awards held by members of the Board who are not employees will automatically be accelerated in full upon a change in control. Any award held by a participant whose service has not terminated prior to a change in control that is not assumed, continued, or substituted for in connection with a change in control or are not exercised or settled prior to the change in control will terminate effective as of the time of the change in control. Notwithstanding the foregoing, except as otherwise provided in an award agreement governing any award, in the discretion of the Compensation Committee, any award that is not assumed, continued, or substituted for in connection with a change in control shall, subject to the provisions of applicable law, become fully vested and exercisable and/or settleable as of a date prior to, but conditioned upon, the consummation of the change in control. The Amended and Restated 2014 Plan also authorizes the Compensation Committee, in its discretion and without the consent of any participant, to cancel each or any outstanding award denominated in shares upon a change in control in exchange for a payment to the participant with respect to each vested share subject to the cancelled award (and each unvested share, if so determined by the Compensation Committee) of an amount equal to the excess of the fair market value of the consideration to be paid per share of Common Stock in the

change in control transaction over the exercise price per share, if any, under the award. The vesting schedules of all outstanding options of the Company, excluding any shares issuable pursuant to the assumed equity incentive plan of Private Evofem, were fully accelerated in connection with the Merger between Neothetics, Inc. and privately-held Evofem Biosciences Operations, Inc. and termination of employment or service arrangement with the Company.

The Amended and Restated 2014 Plan expired in September 2024 and as such no further awards can be issued under this plan. Please see Proposal 3 – 2025 Employee Equity Incentive Plan for a description of the new Equity Incentive Plan shareholders are being asked to approve for any grants the Board deems appropriate going forward.

Summary of the 2018 Inducement Equity Incentive Plan

On July 24, 2018, upon the recommendation of our Compensation Committee, the Board approved our 2018 Inducement Equity Incentive Plan and reserved 133 shares of our Common Stock to be used exclusively for grants of awards to individuals that were not previously employees or directors of the company, as an inducement to the individual's entry into employment with the company within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules. On February 25, 2020, the Board approved an increase to the number of shares of our Common Stock reserved and available for issuance under the 2018 Inducement Equity Incentive Plan to 666 shares. The 2018 Inducement Equity Incentive Plan was adopted without stockholder approval pursuant to Rule 5635(c)(4). The 2018 Inducement Equity Incentive Plan provides for the grant of equity-based awards, including options, restricted and unrestricted stock awards, and other stock- based awards, and its terms are substantially similar to the Amended and Restated 2014 Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award exception.

Summary of the 2019 Employee Stock Purchase Plan

On May 7, 2019, the Board approved the 2019 ESPP, which was approved by stockholders at the 2019 annual meeting held on June 5, 2019 and which authorizes the issuance of up to 266 shares of Common Stock pursuant to purchase rights granted to employees. This authorized number of shares may be increased annually on the first day of each of the Company's fiscal years beginning in 2020 and ending on the first day of 2029, in an amount equal to the lesser of (i) 533 shares, (ii) two percent (2%) of the shares of Common Stock outstanding on the last day of the immediately preceding fiscal year, or (iii) such lesser number of shares as is determined by the Board. The 2019 ESPP enables eligible full-time and part-time employees to purchase shares of the Company's Common Stock through payroll deductions of between 1% and 15% of eligible compensation during an offering period. A new offering period begins approximately every June 15 and December 15. At the last business day of each offering period, the accumulated contributions made during the offering period will be used to purchase shares. The purchase price is 85% of the lesser of the fair market value of the Common Stock on the first or the last business day of an offering period. The maximum number of shares of Common Stock that may be purchased by any participant during an offering period will be equal to $25,000 divided by the fair market value of the Common Stock on the first business day of an offering period.

In October 2022, the Board terminated the offering period ending December 15, 2022, refunded all employee contributions, and suspended future offering periods. Additionally, the authorized number of shares available for issuance under the 2019 ESPP was not increased on January 1, 2023. The Board may in future reinstitute the ESPP if and when our Common Stock resumes trading on a national stock exchange.

Private Evofem Equity Incentive Plan

The Private Evofem Equity Incentive Plan was assumed by the Company in connection with the Merger in January 2018 between Neothetics, Inc. and privately-held Evofem Biosciences, Inc.; shares of Private Evofem Common

Stock issuable pursuant to options previously granted under the Private Evofem Equity Incentive Plan became options to purchase our Common Stock upon completion of the January 2018 Merger. No new awards may be granted under the Private Evofem Equity Incentive Plan and all awards previously granted under the plan have expired.

The Compensation Committee has resolved that, absent unusual circumstances, stock options be granted to new hires with a vesting term of four years, with 25% vesting at the first anniversary of the date of grant and the remaining amount vesting in 36 equal monthly installments thereafter. For existing employees, the Compensation Committee has resolved that, absent unusual circumstances, time-based vesting stock options be granted with a vesting term of four years, vesting in 48 equal monthly installments. For restricted stock generally, vesting is based on achievement of critical performance goals. Further, the Compensation Committee selects these performance goals with a view to aligning executives' performance with long-term stockholder value.

As mentioned above, for 2024, no performance based restricted stock grants have been considered.

Equity awards generally do not accelerate upon a change of control; however, under each of the Amended and Restated 2014 Plan and the 2018 Inducement Equity Incentive Plan, our Board has discretion to accelerate vesting upon a change of control. The Compensation Committee also has sole discretion with respect to the tax treatment for equity awards and may decide to (1) facilitate the sale of a sufficient number of the granted shares to cover taxes, (2) require that shares having a value equal to the tax burden be withheld by the Company with the Company paying the tax in cash to the relevant taxing authority, or (3) require employees to be responsible for their own taxes. The value of any shares used to cover taxes will be calculated based on the closing stock price of the shares on the date of vesting of the shares and will be paid in proportion to the vesting schedule of the shares.

Pay vs. Performance

The following table sets forth information concerning the compensation of our Named Executive Officers and our financial performance for the years ended December 31, 2024 and 2023:

Year	Summary Compensation Table Total for PEO[1]	Compensation Actually Paid to PEO[2]	Average Summary Compensation Table Total for Non-PEO NEOs[3]	Average Compensation Actually Paid to Non-PEO NEOs[2]	Value of Initial Fixed $100 Investment Based on Total Shareholder Return	Net Income (Loss) (in thousands)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
2024	$ 1,177,838	$ 1,177,838	$ 695,261	$ 695,261	$ 0.12[4]	$ (8,860)
2023[5]	$ 1,520,455	$ 1,525,001	$ 309,234	$ 311,857	$ 0.80[6]	$ 52,979

Year	PEO	Non-PEO NEOs
2024	Saundra Pelletier	Ivy Zhang
2023	Saundra Pelletier	Ivy Zhang, Jay File[5], Katherine Atkinson[5]

(1) PEO: Principal Executive Officer. For both 2024 and 2023, Saundra Pelletier was our PEO.

(2) See table below for amounts deducted or added to calculate executive compensation actually paid, inclusive of an accrual for the estimated bonus not yet paid.

(3) NEO: Named Executive Officer.

(4) The closing price of shares of our Common Stock on December 31, 2024 was $0.0099.

(5) The Non-PEO NEOs for 2023 includes Katherine Atkinson and Jay File as they were each employed for a short time in the year.

(6) The closing price of shares of our Common Stock on December 31, 2023 was $0.064.

The amounts reported in the "Compensation Actually Paid to PEO" and "Average Compensation Actually Paid to Non-PEO NEOs" columns do not reflect the actual compensation paid to or realized by our CEO or our non-CEO NEOs during each applicable year. The calculation of compensation actually paid for purposes of this table includes point-in-time fair values of stock awards and these values will fluctuate based on our stock price, various accounting valuation assumptions and projected performance related to our performance awards. See the Summary Compensation Table for certain other compensation of our CEO and our non-CEO NEOs for each applicable fiscal year.

Compensation actually paid to our NEOs represents the "Total" compensation reported in the Summary Compensation Table for the applicable fiscal year, as adjusted as follows:

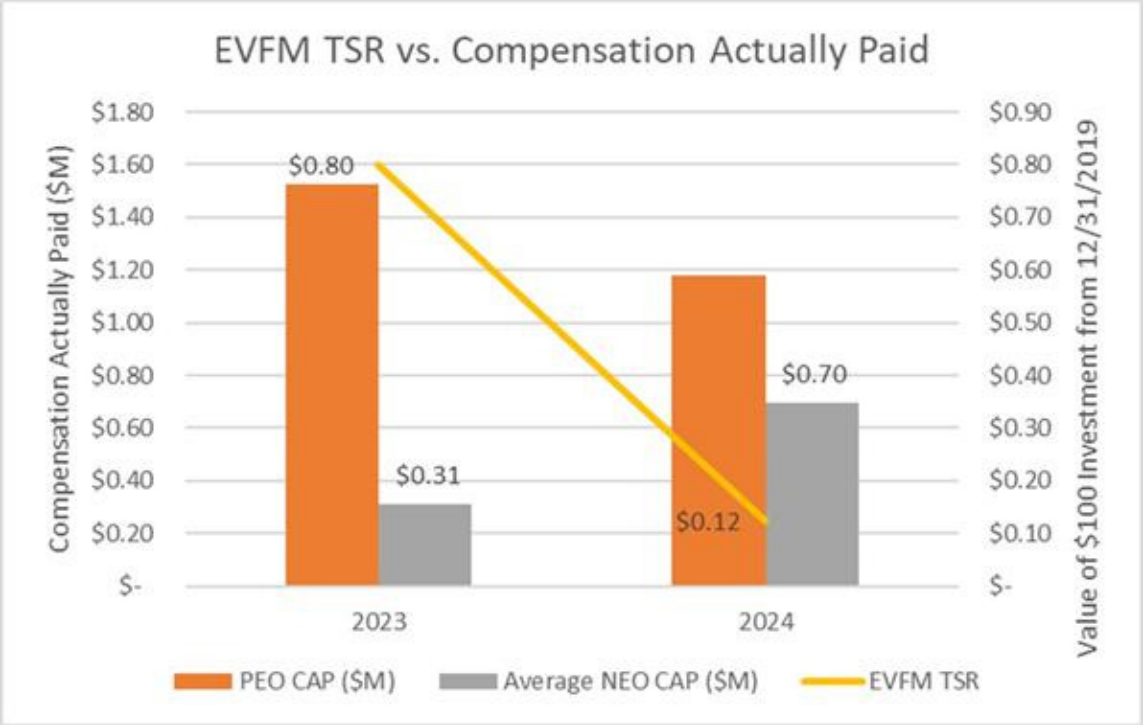
	2024		2023	
Adjustments	**PEO**	**Average Non-PEO NEOs**	**PEO**	**Average Non-PEO NEOs**
Deduction for Amounts Reported under the "Stock Awards" and "Option Awards" Columns in the Summary Compensation Table for applicable FY	$ –	$ –	$ –	$ –
Increase based on ASC 718 Fair Value of Awards Granted during Applicable FY that Remain Unvested as of Applicable FY End, Determined as of Applicable FY End	–	–	–	–
Increase based on ASC 718 Fair Value of Awards Granted during Applicable FY that Vested during Applicable FY, determined as of Vesting Date	–	–	–	–
Increase/deduction for Awards Granted during Prior FY that were Outstanding and Unvested as of Applicable FY End, determined based on change in ASC 718 Fair Value from Prior FY End to Applicable FY End	–	–	(406)	–
Increase/deduction for Awards Granted during Prior FY that Vested During Applicable FY, determined based on change in ASC 718 Fair Value from Prior FY End to Vesting Date	–	–	4,546	2,623
Total Adjustments	$ –	$ –	$ 4,140	$ 2,623

Fair value or change in fair value, as applicable, of equity awards in the "Compensation Actually Paid" columns was determined by reference to a Black Scholes value as of the applicable year-end or vesting date(s), determined based on the same methodology as used to determine grant date fair value but using the closing stock price on the applicable revaluation date as the current market price and with an expected life set equal to the remaining life of the award in the case of underwater stock options and, in the case of in the money options, an expected life equal to the original ratio of expected life relative to the ten year contractual life multiplied times the remaining life as of the applicable revaluation date, and in all cases based on volatility and risk free rates determined as of the revaluation date based on the expected life period and based on an expected dividend rate of 0%. For additional information on the assumptions used to calculate the valuation of the awards, see the Notes to the Consolidated Financial Statements in the 2024 Annual Report and for prior fiscal years. Note that since no grants were made in 2023 or 2024, the adjustments were minimal in 2023 and none were required for 2024.

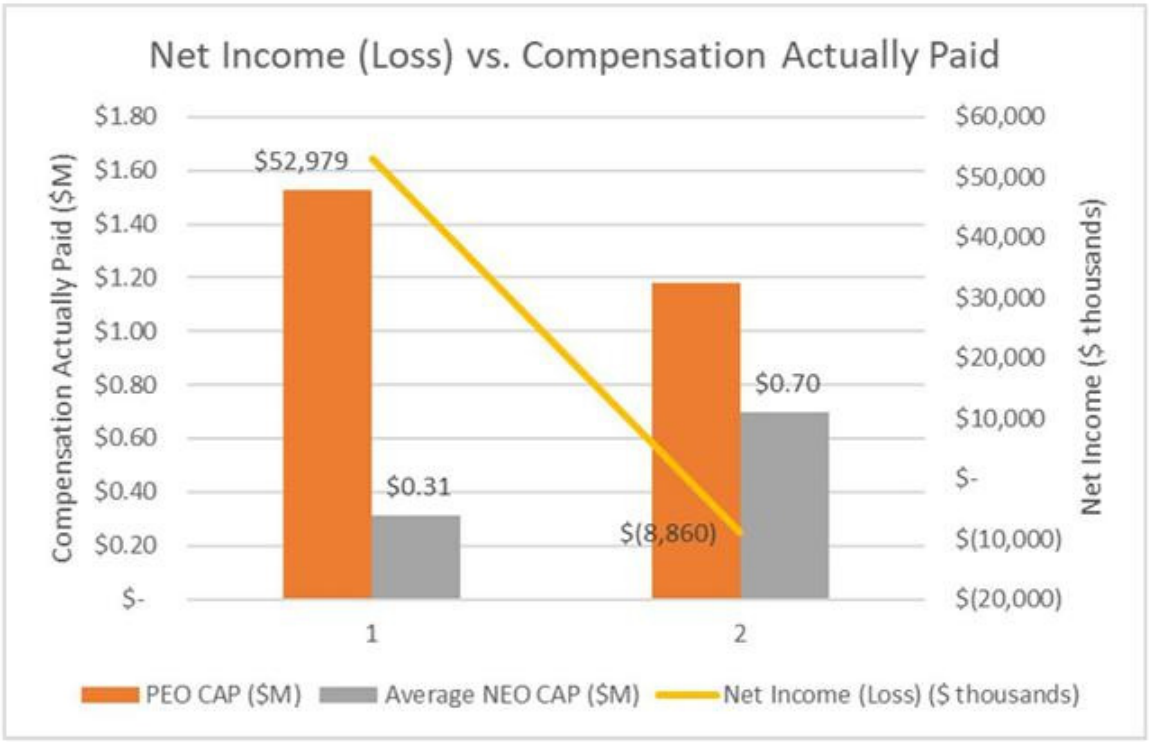
Relationship Between Financial Performance Measures

The graph below compares the compensation actually paid to our PEO and the average of the compensation actually paid to our remaining NEOs, with (i) our cumulative Total Shareholder Return (TSR), and (ii) our net income (loss) for the fiscal years ended December 31, 2024 and 2023. TSR amounts reported in the Pay Versus Performance table above and the graph below assume an initial fixed investment of $100 on December 31, 2023, and that all dividends, if any, were reinvested.

EVFM TSR vs. Compensation Actually Paid



Net Income (Loss) vs. Compensation Actually Paid



See the 'Summary Compensation Table' on page 37 for total compensation amounts used in this reconciliation.

Audit Matters

Report of Audit Committee

The Audit Committee of the Board, which consists entirely of directors who meet the independence and experience requirements of the Nasdaq Stock Market, has furnished the following report:

The Audit Committee assists the Board in overseeing and monitoring the integrity of our financial reporting process, compliance with legal and regulatory requirements and the quality of internal and external audit processes. This committee's role and responsibilities are set forth in our charter adopted by the Board, which is available on our website at www.evofem.com. The Audit Committee reviews and reassesses our charter annually and recommends any changes to the Board for approval. The Audit Committee is responsible for overseeing our overall financial reporting process, and for the appointment, compensation, retention, and oversight of the work of independent registered public accountants. In fulfilling its responsibilities for the financial statements for fiscal year ended December 31, 2024, the Audit Committee took the following actions:

- Reviewed and discussed the audited financial statements for the fiscal year ended December 31, 2024 with management and BPM, LLP ("BPM"), our independent registered public accounting firm for the year ended December 31, 2024;
- Discussed with BPM the matters required to be discussed in accordance with Auditing Standard No. 1301-Communications with Audit Committees; and
- Received written disclosures and the letter from Deloitte regarding its independence as required by applicable requirements of the Public Company Accounting Oversight Board regarding Deloitte communications with the Audit Committee and the Audit Committee further discussed with BPM their independence. The Audit Committee also considered the status of pending litigation, taxation matters, and other areas of oversight relating to the financial reporting and audit process that the committee determined appropriate.

Based on the Audit Committee's review of the audited financial statements and discussions with management and BPM, the Audit Committee recommended to the Board that the audited financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2024 for filing with the SEC.

Members of the Evofem Biosciences, Inc. Audit Committee:

Colin Rutherford, Chair
Kim Kamdar, Ph.D.
Tony O'Brien

Other Information

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information concerning the ownership or voting control of our Common Stock as of October 24, 2025, by (i) those persons who are known to us to be the beneficial owner(s) of more than five percent of our Common Stock, Series E-1, Series F-1, and Series G-1 Preferred Shares (ii) each of our directors and named executive officers and (iii) all of our directors and named executive officers as a group.

As of October 24, 2025, 126,685,925 shares of Common Stock, 26,280 shares of Series F-1 Preferred Stock, 2,651 shares of Series E-1 Convertible Preferred Stock, and, 1,598 shares of Series G-1 Convertible Preferred Stock were issued and outstanding.

Beneficial ownership is determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934 and includes shares over which the person has or shares voting or investment power. In the cases of holders who are not directors, director nominees, and named executive officers, Schedules 13G or 13D filed with the SEC (and, consequently, ownership reflected here) often reflect holdings as of a date prior to October 24, 2025. Under such rules, beneficial ownership generally includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days after October 24, 2025, through the exercise of stock options, warrants or other rights. Unless otherwise indicated in the footnotes to this table, we believe that each of the stockholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned. Unless otherwise noted, the address of the persons in the table below is that of the Company.

Name and Address of Beneficial Owner	Shares Beneficially Owned	Percent of Shares of Class Beneficially Owned
Directors and Named Executive Officers		
Kim Kamdar, Ph.D.[1]	170	*
Tony O'Brien[2]	173	*
Lisa Rarick, M.D.[3]	167	*
Colin Rutherford[4]	180	*
Saundra Pelletier[5]	3,050	*
Ivy Zhang	–	*
Directors and executive officers as a group (6 Persons)[6]	3,740	*
Holders of Greater than 5% of the class (Series E-1 Convertible Preferred Shares)		
Keystone Capital Partners, LLC[7]	810	31%
Mercer Street Global Opportunity Fund, LLC[8]	736	28%
Seven Knots, LLC[9]	221	8%
Walleye Opportunities Master Fund[10]	884	33%
Holders of greater than 5% of the class as a group (4 persons)	2,651	100%
Holders of Greater than 5% of the class (Series F-1 Convertible Preferred Shares)		
Aditxt, Inc.[11]	26,280	100%
Holders of Greater than 5% of the class (Series G-1 Convertible Preferred Shares)		
Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P.[12]	370	23%
Pinz Capital Special Opportunities Fund, LP[13]	184	12%
Stratgyx, LLC[14]	184	12%
Jim Fallon[15]	184	12%
ISJ Capital, LLC[16]	184	12%
Tim Ayer[17]	184	12%
Donald E. Garlikov[18]	184	12%
Holders of greater than 5% of the class as a group (7 persons)	1,474	93%

* Includes beneficial ownership of less than 1% of the outstanding shares of Evofem's Common Stock.

(1) Consists of 170 shares of Common Stock that may be acquired by Dr. Kamdar pursuant to the exercise of stock options within 60 days of October 24, 2025.

(2) Consists of (i) 4 shares of Common Stock held by Mr. O'Brien, and (ii) 169 shares of Common Stock that may be acquired pursuant to the exercise of stock options within 60 days of October 24, 2025.

(3) Consists of (i) 5 shares of Common Stock held by Dr. Rarick, and (ii) 162 shares of Common Stock that may be acquired pursuant to the exercise of stock options within 60 days of October 24, 2025.

(4) Consists of 180 shares of Common Stock that may be acquired by Mr. Rutherford pursuant to the exercise of stock options within 60 days of October 24, 2025.

(5) Consists of (i) 1,493 shares of Common Stock held by Ms. Pelletier, and (ii) 1,557 shares of Common Stock that may be acquired pursuant to the exercise of stock options within 60 days of October 24, 2025.

(6) Consists of (i) 1,502 shares of Common Stock held by our current executive officers and directors, and (ii) 2,238 shares of Common Stock that may be acquired by our current executive officers and directors pursuant to the exercise of stock options within 60 days after October 24, 2025.

(7) Consists of 810 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 13.1% of the then issued and outstanding common shares entitled to vote in shareholder actions. Keystone Capital Partners LLC also holds SSNs that could be converted into 49,025,196 shares of Common Stock, purchase rights that would result in the issuance of 544,303,598 shares of Common Stock upon exercise thereof, and warrants to purchase up to 259,178 shares of Common Stock within 60 days of October 24, 2025. While the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99%, as outlined in the Series E-1 Certificate of Designation, Keystone Capital Partners LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase its maximum beneficial ownership percentage to 9.99%. According to our books and records, the address of Keystone Capital Partners, LLC is 139 Fulton Street, Suite 412, New York, NY, 10038. Keystone Capital Partners, LLC is managed by RANZ Group LLC. Fredric Zaino, the Managing Member of RANZ Group LLC, may be deemed to have investment discretion and voting power over the shares held by Keystone Capital Partners LLC. RANZ Group LLC and Mr. Zaino each disclaim any beneficial ownership of these shares.

(8) Consists of 736 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 11.9% of the then issued and outstanding common shares entitled to vote in shareholder actions. Mercer Street Capital Partners LLC also holds SSNs that could be converted into 60,060,945 shares of common, stock purchase rights that would result in the issuance of 277,154,852 shares of Common Stock upon exercise thereof, and warrants to purchase up to 786,668 shares of Common Stock within 60 days of October 24, 2025. However, while the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99% as outlined in the Series E-1 Certificate of Designation, Mercer Street Capital Partners LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase their maximum beneficial ownership percentage to 9.99%. According to our books and records, the address of Mercer Street Global Opportunity Fund, LLC is 1111 Brickell Ave., Suite 2920, Miami, FL, 33131. Mercer Street Global Opportunity Fund, LLC is managed by Mercer Street Capital Partners LLC, which is managed by Jonathan Juchno. Mercer Street Capital Partners LLC and Mr. Juchno may be deemed to have investment discretion and voting power over the shares held by Mercer Street Global Opportunity Fund, LLC. Mercer Street Capital Partners LLC and Mr. Juchno each disclaim any beneficial ownership of these shares.

(9) Consists of 221 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 3.6% of the then issued and outstanding common shares entitled to vote in shareholder actions. Seven Knots, LLC also holds SSNs that could be converted into 22,429,540 shares of Common Stock, purchase rights that would result in the issuance of 219,925,088 shares of Common Stock upon exercise thereof, and warrants to purchase up to 192,308 shares of Common Stock within 60 days of October 24, 2025. While the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99%, as outlined in the Series E-1 Certificate of Designation, Seven Knots, LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase its maximum beneficial ownership percentage to 9.99%. However, because Seven Knots and Keystone are considered related entities, their combined voting power is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Seven Knots, LLC is 7 Rose Avenue, Great Neck, NY, 11021. Marissa Welner, the Manager of Seven Knots, LLC, holds voting and dispositive power over the shares held by this stockholder. Ms. Welner disclaims any beneficial ownership of these shares.

(10) Consists of 884 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 14.2% of the then issued and outstanding common shares entitled to vote in shareholder actions. Walleye Opportunities Master Fund, Ltd also holds SSNs that could be converted into 173,080,620 shares of Common Stock and warrants to purchase up to 5,893,435 shares of Common Stock within 60 days of October 24, 2025. While, the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99%, as outlined in the Series E-1 Certificate of Designation, Walleye Opportunities Master Fund, Ltd has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase its maximum beneficial ownership percentage to 9.99%. According to our books and records, the address of Walleye Opportunities Master Fund, Ltd. is c/o Walleye Capital, LLC 2800 Niagara Lane North, Plymouth, MN, 55447. Walleye Capital LLC is the investment manager of Walleye Opportunities Master Fund Ltd and may be deemed to beneficially own the shares owned by the Walleye Opportunities Master Fund Ltd. Zachary Sheahan is a Portfolio Manager of Walleye Capital LLC and may be deemed to have voting and dispositive power over the shares owned by the Walleye Opportunities Master Fund Ltd. Walleye Capital LLC and Zachary Sheahan each disclaim any beneficial ownership of these shares.

(11) Consists of 26,280 shares of Series F-1 Shares, with no voting rights. Aditxt, Inc. also holds notes that could be converted into 254,604,846 shares of Common Stock and warrants that could be converted into 242,257,742 shares of Common Stock within 60 days of October 24,

2025. According to our books and records, the address of Aditxt, Inc. is 2569 Wyandotte Street, Suite 101, Mountain View, CA 94043. Amro Albanna is the Chief Executive Officer of Aditxt, Inc.

(12) Consists of 370 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 6.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. also holds convertible notes that could be converted into 2,124,442,229 shares of Common Stock and purchase rights that could be converted into 187,232,318 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of each Series G-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 19.99%. According to our books and records, the address of Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. is 445 Fifth Ave, #20D, New York, NY 10016. Kabeer Aziz, Vice President & Secretary of Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. holds voting and dispositive power over the shares held by this stockholder. Mr. Aziz disclaims any beneficial ownership of these shares.

(13) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Pinz Capital Special Opportunities Fund, L.P. also holds convertible notes that could be converted into 6,344,980 shares of Common Stock, warrants that could be converted into 64,103 shares of Common Stock, and purchase rights that could be converted into 100,000 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of Pinz Capital Special Opportunities Fund, L.P. is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Pinz Capital Special Opportunities Fund, L.P. is 150 East 52nd Street, 29th fl., New York, NY 10022. Matthew Pinz, Managing Partner & CIO of Pinz Capital Special Opportunities Fund, L.P. holds voting and dispositive power over the shares held by this stockholder. Mr. Pinz disclaims any beneficial ownership of these shares.

(14) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Stratgyx, LLC also holds convertible notes that could be converted into 2,201,314 shares of Common Stock and warrants that could be converted into 415,347 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of Stratgyx, LLC is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Stratgyx, LLC is 340 West 86th Street, #9B, New York, NY 10024. Sameer Mithal, Managing Partner of Stratgyx, LLC holds voting and dispositive power over the shares held by this stockholder. Mr. Mithal disclaims any beneficial ownership of these shares.

(15) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Jim Fallon also holds convertible notes that could be converted into 475,080 shares of Common Stock and warrants that could be converted into 24,616 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of Jim Fallon is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Jim Fallon is 137 West 83rd Street, Apt 5W, New York, NY 10024. Jim Fallon holds voting and dispositive power over the shares held by this stockholder. Mr. Fallon disclaims any beneficial ownership of these shares.

(16) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. ISJ Capital, LLC also holds convertible notes that could be converted into 24,104,548 shares of Common Stock and warrants that could be converted into 215,384 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of ISJ Capital, LLC is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of ISJ Capital, LLC is 1044 US Highway 22 West, 2nd Floor, Mountainside, NJ 07092. Anthony Basile holds voting and dispositive power over the shares held by this stockholder. Mr. Basile disclaims any beneficial ownership of these shares.

(17) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Tim Ayer also holds convertible notes that could be converted into 3,252,069 shares of Common Stock and warrants that could be converted into 483,038 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of Tim Ayer is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Tim Ayer is 101 Zdon Road, Middlesex, VT 05602. Tim Ayer holds voting and dispositive power over the shares held by this stockholder. Mr. Ayer disclaims any beneficial ownership of these shares.

(18) Consists of 184 shares of Series G-1 Convertible Preferred Shares, with voting rights equal to 3.0% of the then issued and outstanding common shares entitled to vote in shareholder actions. Donald E. Garlikov also holds convertible notes that could be converted into 69,163,493 shares of Common Stock and warrants that could be converted into 3,135,107 shares of Common Stock within 60 days of October 24, 2025. However, the voting power of Donald E. Garlikov is limited by the maximum beneficial ownership percentage of 9.99%. According to our books and records, the address of Donald E. Garlikov is 41 High Street, Suite 3400, Columbus, OH 43215. Mr. Garlikov holds voting and dispositive power over these shares and disclaims any beneficial ownership of these shares.

Related Person Transactions

Our Audit Committee is responsible for reviewing and approving all transactions in which we are a participant and in which any parties related to us, including our executive officers, directors, beneficial owners of more than 5% of our securities, immediate family members of the foregoing persons, and any other persons whom our Board determines may be considered related parties, and has or will have a direct or indirect material interest. If advanced approval is not feasible, the Audit Committee has the authority to ratify a related party transaction at the next Audit Committee meeting. For purposes of our Audit Committee charter, a material interest is deemed to

be any consideration received by such a party in excess of the lesser of $0.1 million per year or 1% of the average of our total assets for the last two completed fiscal years.

In reviewing and approving such transactions, the Audit Committee shall obtain, or shall direct our management to obtain on its behalf, all information that our committee believes to be relevant and important to a review of the transaction prior to its approval. Following receipt of the necessary information, a discussion shall be held of the relevant factors if deemed to be necessary by our committee prior to approval. If a discussion is not deemed to be necessary, approval may be given by written consent of our committee. This approval authority may also be delegated to the Chairperson of the Audit Committee in respect of any transaction in which the expected amount is less than $0.5 million.

The Audit Committee or its chairperson, as the case may be, shall approve only those related party transactions that are determined to be in, or not inconsistent with, the best interests of us and our stockholders, taking into account all available facts and circumstances as our committee or the Chairperson determines in good faith to be necessary. These facts and circumstances will typically include, but not be limited to, the material terms of the transaction, the nature of the related party's interest in the transaction, the significance of the transaction to the related party and the nature of our relationship with the related party, the significance of the transaction to us, and whether the transaction would be likely to impair (or create an appearance of impairing) the judgment of a director or executive officer to act in our best interest. No member of the Audit Committee may participate in any review, consideration, or approval of any related party transaction with respect to which the member or any of his or her immediate family members is the related party, except that such member of the Audit Committee will be required to provide all material information concerning the related party transaction to the Audit Committee.

Except as otherwise set forth below related to the F-1 Shares and Senior Subordinated Notes issued to Aditxt, during the years ended December 31, 2024 and 2023 and to-date in 2025 there were no transactions to which we will be a party, nor are there any currently proposed transactions to which we will be a party, in which:

- the amounts involved exceeded or will exceed the lesser of $0.1 million per year or 1% of the average of our total assets for the last two completed fiscal years; and
- any of our directors, nominees for director, executive officers, or holders of more than 5% of our outstanding capital stock, or any immediate family member of, or person sharing the household with, any of these individuals or entities, had or will have a direct or indirect material interest.

Senior Subordinated Notes – Aditxt

On April 8, 2025, the Company entered into a securities purchase agreement (the "Aditxt April SPA") with Aditxt providing for the sale and issuance of senior subordinated convertible notes due in the aggregate original principal amount of $2.3 million (the "Aditxt April Note") and warrants to purchase an aggregate of 149,850,150 shares (the "Aditxt April Warrants") of Common Stock of the Company, par value $0.0001 (collectively, the "Aditxt April Offering"). The Company waived Aditxt's default under the terms of the A&R Merger Agreement due to the full Fifth Parent Investment , as defined in the Fifth Amendment to the A&R Merger Agreement, entered into on March 22, 2025 (the "Fifth Amendment") not being made by the deadline set forth in the Fifth Amendment.

On June 26, 2025, the Company entered into a securities purchase agreement (the "Aditxt June SPA") with Aditxt providing for the sale and issuance of senior subordinated convertible notes due in the aggregate original principal amount of $1.4 million (the "Aditxt June Note", or together with the Aditxt April Note, the "Aditxt Notes") and warrants to purchase an aggregate of 92,407,592 shares (the "Aditxt June Warrants") of Common Stock of the Company, par value $0.0001 (collectively, the "Aditxt June Offering").

In both the Aditxt April Offering and the Aditxt June Offering, Aditxt paid approximately $650 for each $1,000 of the principal amount of the Notes and Warrants and the Company issued a total of 242,257,742 warrants to purchase shares of Common Stock with an exercise price of $0.0154. In each of the Aditxt April Notes and the Aditxt

June Notes, the notes are unsecured senior subordinated notes, have an interest rate of 8%, and mature three years from the respective issuance dates. Net proceeds to the Company after offering costs from the Aditxt April Offering and Aditxt June Offering were approximately $2.4 million.

The interest rates of the Aditxt April Notes and the Aditxt June Notes would increase to 12% upon an event of default and they have no Company right to prepayment prior to maturity; however, the Company has the option to redeem the notes at a redemption premium of 32.5%. Aditxt can also require the Company to redeem the notes a) at the respective premium rate tied to the occurrence of certain subsequent transactions, and b) in the event of subsequent placements (as defined). Also, pursuant to the terms of the respective SPAs, 1) Aditxt has certain rights to participate in subsequent issuances of the Company's securities, subject to certain exceptions, and 2) the shares of Company Common Stock underlying the Aditxt April Offering and the Aditxt June Offering are unregistered. Additionally, the conversion rate and warrant strike price are subject to adjustment upon the issuance of other securities (as defined) below the stated conversion rate and strike price at issuance.

Interest of Certain Persons in Matters to be Acted Upon

Other than with respect to the election of directors, none of our directors, nominees for director, executive officers, any person who has served as a director or executive officer since the beginning of the last fiscal year, or their associates have any interest, direct or indirect, by security holdings or otherwise, in any of the matters to be acted upon at the Annual Meeting as described in this Proxy Statement.

Saundra Pelletier, our President, Chief Executive Officer, and a member of our Board of Directors, served as a director of Aditxt, Inc., until her term expired on September 23, 2025. Ms. Pelletier did not receive any compensation for her board membership with Aditxt, Inc., the counterparty to the Company's merger agreement dated July 12, 2024, as amended. She did not participate in the Board's deliberations or vote on the approval of the merger agreement and the merger agreement was terminated on October 20, 2025.

Preferred Stock

Effective December 15, 2021, the Company amended and restated its certificate of incorporation, under which the Company is currently authorized to issue up to 5,000,000 shares of preferred stock, $0.0001 par value per share.

Series D Non-Convertible Preferred Stock

On December 16, 2022, the Company filed a Certificate of Designation of Series D Non-Convertible Preferred Stock, par value $0.0001 per share (the "Series D Preferred Shares"). An aggregate of 70 shares was authorized. They were not convertible into shares of Common Stock, had limited voting rights equal to 1% of the total voting power of the then-outstanding shares of Common Stock entitled to vote per share, were not entitled to dividends, and were subsequently redeemed by us, once our shareholders approved a reverse split, as described in the Certificate of Designation. All 70 shares of the Series D Preferred were issued in connection with the December 2022 Securities Purchase Agreement. Since the Series D Preferred Shares could only be settled in cash, they were recorded as a liability within accrued expenses in the consolidated balance sheets. The amount related to the liability is *de minimus*. All 70 shares of the Series D Preferred were redeemed in July 2023.

Series E-1 Convertible Preferred Stock

On August 7, 2023, the Company filed a Certificate of Designation of Series E-1 Convertible Preferred Stock ("E-1 Certificate of Designation"), par value $0.0001 per share (the "Series E-1 Shares"). An aggregate of 2,300 shares was authorized. The Series E-1 Shares were initially convertible into shares of Common Stock at a conversion price of $0.40 per share and are both counted toward quorum on the basis of and have voting rights equal to the number of shares of Common Stock into which the Series E-1 Shares are then convertible. The Series E-1 Shares are senior to all Common Stock with respect to preferences as to dividends, distributions, and payments upon a dissolution

event. Dividends are payable in shares of Common Stock and may, at the Company's election, be capitalized and added to the principal monthly.

Also on August 7, 2023, certain investors party to the December 2022 Notes and the February 2023 Notes exchanged $1.8 million total in principal and accrued interest under the outstanding convertible promissory notes for 1,800 shares of Series E-1 Shares. Per the Series E-1 Certificate of Designation, the conversion rate can also be adjusted in several future circumstances, such as on certain dates after the exchange date and upon the issuance of additional convertible securities with a lower conversion rate or in the instance of a Triggering Event. As such, the conversion price as of October 24, 2025 was $0.0154 per share.

Series F-1 Convertible Preferred Stock

On December 11, 2023, the Company filed a Certificate of Designation of Series F-1 Convertible Preferred Stock ("F-1 Certificate of Designation"), par value $0.0001 per share (the "Series F-1 Shares"). An aggregate of 95,000 shares was authorized. The Series F-1 Shares were initially convertible into shares of Common Stock at a conversion price of $0.0635 per share, as updated per the F-1 Certificate of Designation, and do not have the right to vote on any matters presented to the holders of the Company's Common Stock. The Series F-1 Shares are senior to all Common Stock and subordinate to the Series E-1 Shares with respect to preferences as to distributions and payments upon a dissolution event. In the event of a liquidation event, the Series F-1 Shares are entitled to receive an amount per share equal to the Black Scholes Value as of the liquidation event plus the greater of 125% of the conversion amount (as defined in the F-1 Certificate of Designation) and the amount the holder of the Series F-1 Shares would receive if the shares were converted into Common Stock immediately prior to the liquidation event. If the funds available for liquidation are insufficient to pay the full amount due to the holders of the Series F-1 Shares, each holder will receive a percentage payout. The Series F-1 Shares are not entitled to dividends. The Series F-1 Shares also have a provision that allows them to be converted to Common Stock at a conversion rate equal to the Alternate Conversion Price (as defined in the F-1 Certificate of Designation) times the number of shares subject to conversion times the 25% redemption premium in the event of a Triggering Event (as defined in the F-1 Certificate of Designation) such as in a liquidation event. The Series F-1 Shares are mandatorily redeemable in the event of bankruptcy. In June 2024, the Required Holders, as defined in the F-1 Certificate of Designation, approved an amended and restated certificate of designation (the Amended F-1 Certificate of Designation) to the Company's certificate of designation designating the rights, preferences, and limitations of the Company's Series F-1 Shares. The Amended F-1 Certificate of Designation provides for the removal of the conversion price adjustment provisions previously included and changed the conversion price to $0.0154.

On December 21, 2023, the Company issued a total of 22,280 Series F-1 Shares to certain investors, including 613 shares exchanged for warrants to purchase up to 9,972,074 shares of the Company's Common Stock and 21,667 shares to exchange a partial value of the outstanding purchase rights. The holders of the Series F-1 Shares immediately exchanged their Series F-1 Shares into Aditxt's Series A-1 preferred stock and, as a result, Aditxt currently holds all outstanding Series F-1 Shares.

During the year ended December 31, 2024, as part of the funding requirement by Aditxt pursuant to the now terminated Amended and Restated Merger Agreement between the Company and Aditxt, Inc. and as disclosed in the Company's filings with the SEC, the Company issued a total of 4,000 Series F-1 Shares to Aditxt for an aggregate purchase price of $4.0 million. These shares were recorded at fair value with the variance between the immaterial fair value and the $4.0 million cash received being recorded as additional paid-in-capital in the consolidated balance sheet as of December 31, 2024.

Series G-1 Convertible Preferred Stock

On August 22, 2025, the Company entered into Exchange Agreements with certain investors (the "Investors") providing for the exchange of senior secured convertible notes due in the aggregate original principal amount of approximately $1.6 million (the "Notes") into an aggregate 1,573 shares of Series G-1 Convertible Preferred Stock

(the "Preferred Shares") (collectively, the "Offering"). As a result, the Company issued an aggregate of 1,573 Preferred Shares in exchange for approximately $1.6, in aggregate, of outstanding debt held by certain investors.

Pursuant to the Exchange Agreement, in August 2025 the Company filed a Certificate of Designation for the Series G-1 Convertible Preferred Stock (the "G-1 Certificate of Designation") with the Secretary of State of Delaware designating the rights, preferences, and limitations of the shares of Series G-1 Convertible Preferred Stock ("Series G-1 Preferred Stock").

The G-1 Certificate of Designation authorizes a total of 5,000 shares of Series G-1 Preferred Stock. The Series G-1 Preferred Stock entitles the holder thereof to vote together with the common shareholders as a single class and to cast that number of votes per share as is equal to the number of shares of Common Stock into which it their Series G-1 Stock is then convertible. The Series G-1 Preferred Stock has a stated value of $1,000 per share and is convertible into shares of Common Stock at a rate determined by dividing (i) the stated value of such Series G-1 Preferred Stock shares plus any declared and unpaid dividends on such shares by (ii) the conversion price of $0.0154 per share, subject to adjustment as provided in the Certificate of Designations (the "Conversion Rate"). The G-1 Certificate of Designations also provides that in the event of certain "Triggering Events," any holder may, at any time, convert any or all of such holder's Series G-1 Preferred Stock at a conversion rate equal to the product of (i) the Alternate Conversion Price (as defined below) and (ii) the quotient of (x) the 25% redemption premium multiplied by (y) the amount of Series G-1 Preferred Stock subject to such conversion. "Triggering Events" include, among others, (i) a failure to timely deliver shares of Common Stock upon a conversion, (ii) a suspension of trading or the failure to be traded or listed on an eligible market for five consecutive days or more, (iii) the failure to pay any dividend to the holders of Series G-1 Preferred Stock when required, (iv) the failure to remove restrictive legends when required, (v) proceedings for a bankruptcy, insolvency, reorganization or liquidation which are not dismissed with 30 days, (vi) commencement of a voluntary bankruptcy proceeding, and (vii) final judgments against the Company for the payment of money in excess of $100,000. "Alternate Conversion Price" means the *lowest* of:

i. the applicable conversion price the in effect,
ii. 80% of the volume weighted average price ("VWAP") of the Common Stock on the trading day immediately preceding the delivery of the applicable conversion notice,
iii. 80% of the VWAP of the Common Stock on the trading day of the delivery of the applicable conversion notice and
iv. 80% of the price, computed as the quotient of (I) the sum of the VWAP of the Common Stock for each of the three (3) trading days with the lowest VWAP of the Common Stock during the fifteen (15) consecutive trading day period ending and including the trading day immediately preceding the delivery of the applicable conversion notice, divided by three (3).

Each holder of Series G-1 Preferred Stock is entitled to receive dividends paid in the form of Common Stock or paid-in-kind as additional shares of Series G-1 Preferred Stock, at the Company's discretion (the "Dividends") payable to the holders of the Series G-1 Preferred Stock on a monthly basis.

Indemnification Arrangements

We entered into indemnification agreements with each of our officers and directors and purchased directors' and officers' liability insurance. Our indemnification agreements and amended and restated bylaws require us to indemnify our directors and officers to the fullest extent permitted under Delaware law.

Employment Arrangements

We have entered into written employment agreements with our named executive officers, which set forth their compensation, benefits, and severance arrangements. The material terms of these agreements are summarized

under ‘Employment, Severance, and Separation Agreements’ on page 38 and “Current Employment Agreements” on page 38.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors and executive officers, and persons who own more than 10% of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of our Common Stock and other equity securities.

Delinquent Section 16(a) Reports

To our knowledge, based solely upon a review of Forms 3, 4, and 5 filed with the SEC during the fiscal year ended December 31, 2024, we believe that our directors, executive officers, and greater than 10% beneficial owners have complied with all applicable filing requirements during the fiscal year ended December 31, 2024.

PROPOSAL 3

2025 Equity Incentive Plan

To consider and vote upon a proposal to approve the 2025 Equity Incentive Plan.

Recommendation

The Board unanimously recommends that the stockholders vote "FOR" the 2025 Equity Incentive Plan.

2025 Equity Incentive Plan

General

Our Board of Directors is requesting that our stockholders approve the Company's 2025 Employee Equity Incentive Plan as attached as Appendix A to this proxy statement (the "2025 Equity Incentive Plan"). The 2025 Equity Incentive Plan is intended to succeed the Amended and Restated 2014 Equity Incentive Plan, which was originally approved by our Board of Directors and stockholders in September 2014, amended and restated on each of May 8, 2018, February 26, 2019, and February 25, 2021, and which expired on September 15, 2024. Approval of the 2025 Equity Incentive Plan is required by the listing rules of The Nasdaq Stock Market and by the Internal Revenue Code of 1986, as amended, or the "Code" and related regulations in order for options to employees to be issued as incentive stock options.

Summary of Material Features of the 2025 Equity Incentive Plan

Eligibility. The 2025 Equity Incentive Plan will allow us, under the direction of our Compensation Committee, to make grants of stock options, stock appreciation rights, restricted and unrestricted stock awards, restricted stock awards and other cash and stock-based awards to employees, consultants, and directors who, in the opinion of the Compensation Committee, are in a position to make a significant contribution to our long-term success. All employees, directors, and consultants of the Company and its affiliates are eligible to participate in the 2025 Equity Incentive Plan. As of the Record Date, there were approximately 33 individuals eligible to participate in the 2025 Equity Incentive Plan.

Shares Available for Issuance. If Proposal 3 is approved, a total of 50,000,000 shares of our Common Stock will be reserved and available for issuance under the 2025 Equity Incentive Plan. Per the terms of the 2025 Equity Incentive Plan, this reserve will automatically increase on each January 1 through year-end 2035 by an amount equal to the lesser of:

- 4% of the number of shares of Common Stock issued and outstanding on the immediately preceding December 31; and
- an amount determined by our Board of Directors.

The maximum aggregate number of shares of Common Stock that may be issued under the 2025 Equity Incentive Plan upon the exercise of incentive stock options is 50,000,000 shares of Common Stock.

The maximum number of shares subject to awards issued to any non-employee director during a calendar year shall not exceed 75,000 shares of Common Stock; provided further, with respect to the first calendar year in which an individual is elected or appointed to the Board, this limit shall also be 75,000 shares of Common Stock. This limitation shall not apply to awards made pursuant to an election by a non-employee director to receive the

award in lieu of cash for all or a portion of cash fees to be received for service on the Board or any Committee thereof and shall not apply awards issued in respect of *bona fide* consulting services provided to the Company.

Appropriate adjustments will be made in the number of authorized shares and other numerical limits in the 2025 Equity Incentive Plan and in outstanding awards to prevent dilution or enlargement of participants' rights in the event of a stock split or other change in our capital structure. Shares subject to awards which expire or are cancelled or forfeited will again become available for issuance under the 2025 Equity Incentive Plan.

The shares available under the 2025 Equity Incentive Plan will not be reduced by awards settled in cash but will be reduced by shares withheld to satisfy tax withholding obligations with respect to stock options and stock appreciation rights (but not other types of awards). The gross number of shares issued upon the exercise of stock appreciation rights or options exercised by means of a net exercise or by tender of previously owned shares will be deducted from the shares available under the 2025 Equity Incentive Plan.

The 2025 Equity Incentive Plan generally will be administered by the Compensation Committee. Subject to the provisions of the 2025 Equity Incentive Plan, the Compensation Committee will determine in its discretion the persons to whom and the times at which awards are granted, the sizes of such awards and all of their terms and conditions. The Compensation Committee will have the authority to construe and interpret the terms of the 2025 Equity Incentive Plan and awards granted under it. The 2025 Equity Incentive Plan provides, subject to certain limitations, for indemnification by us of any director, officer, or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the 2025 Equity Incentive Plan.

Awards may be granted under the 2025 Equity Incentive Plan to our employees, including officers, directors, or consultants or those of any present or future parent or subsidiary corporation or other affiliated entity. All awards will be evidenced by a written agreement between us and the holder of the award and may include any of the following:

- *Stock options*. We may grant non-statutory stock options or incentive stock options (as described in Section 422 of the Code), each of which gives its holder the right, during a specified term (not exceeding ten years) and subject to any specified vesting or other conditions, to purchase a number of shares of our Common Stock at an exercise price per share determined by the administrator, which may not be less than the fair market value of a share of our Common Stock on the date of grant. The exercise price of a stock option may not be less than 100% of the fair market value of our Common Stock on the date of grant and the term of the option may not be longer than ten years. If an incentive stock option is granted to an individual who owns more than 10% of the combined voting power of all classes of our capital stock, the exercise price may not be less than 110% of the fair market value of our Common Stock on the date of grant and the term of the option may not be longer than five years.

- *Stock appreciation rights*. A stock appreciation right, or SAR, gives its holder the right, during a specified term (not exceeding ten years) and subject to any specified vesting or other conditions, to receive the appreciation in the fair market value of our Common Stock between the date of grant of the award and the date of its exercise. We may pay the appreciation in shares of our Common Stock or in cash.

- *Restricted stock*. The administrator may grant restricted stock awards either as a bonus or as a purchase right at a price determined by the administrator. Shares of restricted stock remain subject to forfeiture until vested, based on such terms and conditions as the administrator specifies. Holders of restricted stock will have the right to vote the shares and to receive any dividends paid, except that the dividends shall be subject to the same vesting conditions as the related shares.

- *Restricted stock units*. Restricted stock units, or RSUs, represent rights to receive shares of our Common Stock (or their value in cash) at a future date without payment of a purchase price, subject to vesting or other conditions specified by the administrator. Holders of RSUs have no voting rights or rights to receive

cash dividends unless and until shares of Common Stock are issued in settlement of such awards. However, the administrator may grant RSUs that entitle their holders to dividend equivalent rights provided that such rights will have the same vesting conditions as the RSUs to which they relate.

- *Cash-based awards and other share-based awards*. The administrator may grant cash-based awards that specify a monetary payment or range of payments or other share-based awards that specify a number or range of shares or units that, in either case, are subject to vesting or other conditions specified by the administrator. Settlement of these awards may be in cash or shares of our Common Stock, as determined by the administrator. Their holders will have no voting rights or right to receive cash dividends unless and until shares of our Common Stock are issued pursuant to the awards. The administrator may grant dividend equivalent rights with respect to other share-based awards.

In the event of an "ownership change event" as described in the 2025 Equity Incentive Plan, the Company may provide that an acquiring or successor entity may assume or continue all or any awards outstanding under the 2025 Equity Incentive Plan or substitute substantially equivalent awards. The Compensation Committee may provide for the acceleration of vesting of any or all outstanding awards upon such terms and to such extent as it determines, except that the vesting of all awards held by members of the board of directors who are not employees will automatically be accelerated in full upon a change in control. Any awards that are not assumed, continued, or substituted for in connection with an ownership change event or are not exercised or settled prior to an ownership change event will terminate effective as of the time of the ownership change event. Notwithstanding the foregoing, except as otherwise provided in an award agreement governing any award, any award held by a participant whose service has not terminated prior to an ownership change event that is not assumed, continued, or substituted for or cashed out in connection with an ownership change event shall, subject to the provisions of applicable law, become fully vested and exercisable and/or settleable as of a date prior to, but conditioned upon, the consummation of the ownership change event as determined by the Compensation Committee. Subject to the requirements of 409A, as applicable, outstanding awards held by non-employee directors shall become immediately exercisable and vested in full prior to a change in control. The 2025 Equity Incentive Plan will also authorize the Compensation Committee, in its discretion and without the consent of any participant, to cancel each or any outstanding award denominated in shares upon an ownership change event in exchange for a payment to the participant with respect to each share subject to the cancelled award of an amount equal to the excess of the fair market value of the consideration to be paid per share of Common Stock in the ownership change event transaction over the exercise price per share, if any, under the award.

If the 2025 Equity Incentive Plan is approved, the Company will register the plan's shares by filing a Form S-8 Registration Statement under the Securities Act of 1933.

Summary of U.S. Federal Income Tax Implications of Awards

The material federal income tax consequences of the issuance and exercise of stock options and other awards under the Amended and Restated 2014 Plan, based on the current provisions of the Code and regulations, are as follows. Changes to these laws could alter the tax consequences described below. This summary assumes that all awards granted under the Amended and Restated 2014 Plan are exempt from or comply with, the rules under Section 409A of the Code related to nonqualified deferred compensation.

Incentive Stock Options: Incentive stock options are intended to qualify for treatment under Section 422 of the Code. An incentive stock option does not result in taxable income to the optionee or deduction to us at the time it is granted or exercised, provided that no disposition is made by the optionee of the shares acquired pursuant to the option within two years after the date of grant of the option nor within one year after the date of issuance of shares to the optionee (referred to as the "ISO holding period"). However, the difference between the fair market value of the shares on the date of exercise and the option price will be an item of tax preference includible in "alternative minimum taxable income" of the optionee. Upon disposition of the shares after the expiration of the ISO holding period, the optionee will generally recognize long term capital gain or loss based on the difference between the disposition proceeds and the option price paid for the shares. If the shares are disposed of prior to the expiration of the ISO holding period, the optionee generally will recognize taxable compensation, and we will have a corresponding deduction, in the year of the disposition, equal to the excess of the fair market value of the shares on the date of exercise of the option over the option price. Any additional gain realized on the disposition will normally constitute capital gain. If the amount realized upon such a disqualifying disposition is less than fair market value of the shares on the date of exercise, the amount of compensation income will be limited to the excess of the amount realized over the optionee's adjusted basis in the shares.

Non-Statutory Options: Options otherwise qualifying as incentive stock options, to the extent the aggregate fair market value of shares with respect to which such options are first exercisable by an individual in any calendar year exceeds $0.1 million, and options designated as non-statutory options will be treated as options that are not incentive stock options.

A non-statutory option ordinarily will not result in income to the optionee or deduction to us at the time of grant. The optionee will recognize compensation income at the time of exercise of such non-statutory option in an amount equal to the excess of the then value of the shares over the option price per share. Such compensation income of optionees may be subject to withholding taxes, and a deduction may then be allowable to us in an amount equal to the optionee's compensation income.

An optionee's initial basis in shares so acquired will be the amount paid on exercise of the non-statutory option plus the amount of any corresponding compensation income. Any gain or loss as a result of a subsequent disposition of the shares so acquired will be capital gain or loss.

Stock Appreciation Rights: Generally, if a stock appreciation right is granted with an exercise price equal to the fair market value of the underlying stock on the grant date, the recipient will recognize ordinary income equal to the fair market value of the stock or cash received upon such exercise. Such compensation income of optionees may be subject to withholding taxes, and a deduction may then be allowable to us in an amount equal to the optionee's compensation income.

Stock Grants: With respect to stock grants under the Amended and Restated 2014 Plan that result in the issuance of shares that are either not restricted as to transferability or not subject to a substantial risk of forfeiture, the grantee must generally recognize ordinary income equal to the fair market value of shares received. Thus, deferral of the time of issuance will generally result in the deferral of the time the grantee will be liable for income taxes with respect to such issuance. We generally will be entitled to a deduction in an amount equal to the ordinary income recognized by the grantee.

With respect to stock grants involving the issuance of shares that are restricted as to transferability and subject to a substantial risk of forfeiture, the grantee must generally recognize ordinary income equal to the fair market value of the shares received at the first time the shares become transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier. A grantee may elect to be taxed at the time of receipt of shares rather than upon lapse of restrictions on transferability or substantial risk of forfeiture, but if the grantee subsequently forfeits such shares, the grantee would not be entitled to any tax deduction, including as a capital loss, for the value of the shares on which he previously paid tax. The grantee must file such election with the Internal Revenue Service within 30 days of the receipt of the shares. We generally will be entitled to a deduction in an amount equal to the ordinary income recognized by the grantee.

Stock Units: The grantee recognizes no income until the issuance of the shares. At that time, the grantee must generally recognize ordinary income equal to the fair market value of the shares received. We generally will be entitled to a deduction in an amount equal to the ordinary income recognized by the grantee.

Accounting Treatment

Stock-based compensation expense for stock options issued to employees, non-employee directors, and consultants is measured based on estimating the fair value of each stock option on the date of grant using the BSM option-pricing model. The following table summarizes the Company's stock-based awards expensing policies for employees and non-employees:

	Employees and Nonemployee Consultants
Service only condition	Straight-line based on the grant date fair value
Performance criterion is probable of being met and:	
Service criterion is complete	Recognize the grant date fair value of the award(s) once the performance criterion is considered probable of occurrence
Service criterion is not complete	Expense using an accelerated multiple-option approach[(1)] over the remaining requisite service period
Performance criterion is not probable of being met	No expense is recognized until the performance criterion is considered probable at which point expense is recognized using an accelerated multiple-option approach

(1) The accelerated multiple-option approach results in compensation expense being recognized for each separately vesting tranche of the award as though the award was in substance multiple awards and, therefore, results in accelerated expense recognition during the earlier vesting periods.

Fair Value of Stock Options

The fair value of stock options is determined using the BSM option-pricing model based on the applicable assumptions, which includes the exercise price of warrants, time to expiration, expected volatility of our peer group, risk-free interest rate, and expected dividend. The Company records forfeitures when they occur.

Performance-based Awards

For performance-based RSAs (i) the fair value of the award is determined on the grant date, (ii) the Company assesses 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. If the performance-based RSAs are modified, the Company applies the share-based payment modification accounting in accordance with ASC 718, *Compensation-Stock Compensation* ("ASC 718").

Vote Required

The affirmative "FOR" vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the subject matter is required to approve this Proposal. Proxies solicited by the Board will be voted in favor of the 2025 Employee Equity Incentive Plan unless a stockholder has indicated otherwise on the proxy. Abstentions, if any, will have no effect on the outcome of this Proposal, and will therefore be treated as a vote "AGAINST" this Proposal. This Proposal is a non-routine proposal on which a broker or other nominee does not have discretionary authority to vote. In the event that there are any broker non-votes, they will not affect the outcome of the vote on this Proposal.

Board's Recommendation

THE BOARD RECOMMENDS A VOTE "FOR" THE 2025 EMPLOYEE INCENTIVE STOCK PLAN UNDER THIS PROPOSAL. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.

PROPOSAL
4

Reverse Stock Split

To amend the Certificate of Incorporation of Evofem Biosciences, Inc. to effect a reverse stock split of Common Stock at a ratio between 1-for-500 and 1-for-1,500, with the exact ratio to be set at a whole number within this range by the Board of Directors in its sole discretion.

Recommendation

The Board unanimously recommends that the stockholders vote "FOR" the Reverse Stock Split. Proxies solicited by the Board will be voted in favor of the Reverse Stock Split unless a stockholder has indicated otherwise on the proxy.

General

Our Board of Directors is requesting that our stockholders approve the proposal to amend our Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), to effect a reverse stock split of the issued and outstanding Common Stock (such split to combine a number of outstanding shares of our Common Stock at a ratio of between 500 and 1,500, such number consisting of only whole shares, into one (1) share of Common Stock) (the "Reverse Stock Split"). No fractional shares shall be issued as a result of the Reverse Stock Split. Instead, any stockholder who would otherwise be entitled to a fractional share of our Common Stock as a result of the reclassification shall be entitled to receive a cash payment equal to the product of such resulting fractional interest in one share of our Common Stock multiplied by the closing trading price of our Common Stock on the trading day immediately preceding the effective date of the Reverse Stock Split. Approval of the Reverse Stock Split requires:

- The affirmative vote of a majority of the combined voting power of the outstanding shares of Common Stock, Series E-1 Preferred Stock, and Series G-1 Preferred Stock, voting together as a single class, and
- The affirmative vote of a majority of the outstanding shares of each of Series E-1 and Series G-1 as of the Record Date.

If approved by the stockholders, the Reverse Stock Split would become effective at a time, and at a ratio, to be designated by the Board. The Board may effect only one reverse stock split as a result of this authorization. The Board's decision as to whether and when to effect the Reverse Stock Split will be based on a number of factors, including market conditions, existing and expected trading prices for our Common Stock, and the need or ability to raise capital.

Even if the stockholders approve the Reverse Stock Split, we reserve the right not to effect the Reverse Stock Split if the Board does not deem it to be in the best interests of us and our stockholders to effect the Reverse Stock Split. The Reverse Stock Split, if authorized pursuant to this resolution and if deemed by the Board to be in the best interests of us and our stockholders, will be effected, if at all, by November 26, 2026. If effected, the Amendment, as more fully described below, will effect the Reverse Stock Split.

The Reverse Stock Split

The Board believes that effecting the Reverse Stock Split is necessary to avoid a breach, event of default, or otherwise non-compliance with the Company's contractual obligations. If we are unable to maintain compliance with our various contractual obligations relating to the Company's authorized common shares, this may result in

a default under our issued and outstanding debt arrangements, may cause trading in shares of our Common Stock to become difficult and could adversely affect our ability to raise capital when and as may be necessary to fund our planned operations.

Several of Our Existing Debt Covenants Require the Reservation of a Certain Number of Shares of Common Stock, on a Fully-Diluted Basis

We are currently authorized to issue 3,000,000,000 shares of Common Stock under our Amended and Restated Certificate of Incorporation. As of October 24, 2025, of the authorized Common Stock, 126,685,925 shares are issued and outstanding and approximately 1.3 billion shares are reserved for issuance under pending conversions of convertible notes, rights, warrants and all other derivatives. An additional 5.4 billion shares could be issued under the same instruments but are not currently reserved due to waivers signed by the instrument holders. As such, our fully diluted capital structure is presently well above the amount of Common Stock we are authorized to issue. Therefore, until we either increase our authorized Common Stock or effectuate a reverse split, we are exposed to the risk of liability arising from the excess fully diluted capitalization. The conversion prices of most of the convertible instruments, the Adjuvant Notes (as amended) (defined below), and Baker Notes (defined below) may also be subject to adjustment depending on the price of issuances in future financings as described in our Form 10-Q for the period ended June 30, 2025. These adjustments would further increase the number of shares of Common Stock to be reserved. Due to the limited number of authorized shares Common Stock available for future issuance, we need to seek stockholder approval of the Reverse Stock Split.

In April 2020, we entered into a Securities Purchase and Security Agreement (the Baker Bros. Purchase Agreement) with certain institutional investors and their designated agent pursuant to which we issued and sold secured convertible promissory notes (the Baker Notes) in an aggregate principal amount of $25.0 million and warrants to purchase shares of our Common Stock. The Baker Notes are secured by substantially all of our assets and are currently assigned to Future Pak, LLC. In October 2020, we entered into a Securities Purchase Agreement (the Adjuvant Purchase Agreement) pursuant to which we issued and sold to certain institutional investors unsecured convertible promissory notes (the Adjuvant Notes) in an aggregate principal amount of $25.0 million. In December 2022 through September 2023, and April and June 2025, we sold unsecured subordinate promissory notes (the "SSNs") in an aggregate amount of $14.7 million and warrants to purchase shares of our Common Stock. The Baker Notes, Adjuvant Notes, and SSNs are collectively the "Debt Obligations". As of October 24, 2025, the aggregate amount outstanding pursuant to the Debt Obligations was approximately $63.3 million in principal and accrued interest.

We are required to reserve the requisite number of shares of our Common Stock underlying the various convertible securities the Company has issued, except for shares related to instruments held by investors who waived such reserve requirements. The failure to approve and effectuate the Reverse Stock Split could trigger an event of default and other adverse everts under the terms of the Company's debt obligations. Given our current financial position, these circumstances and default obligations would adversely affect our results of operations, impair our ability to raise capital when and as may be necessary to fund our planned operations, and may require us to cease our operations entirely. In these circumstances, the holders of our Common Stock may not receive any value for their shares.

Certain Risks of the Reverse Stock Split

General Risks

There are risks associated with the Reverse Stock Split, including that the Reverse Stock Split may not result in a sustained increase in the per share price of our Common Stock. We cannot predict whether the Reverse Stock Split will increase the market price for our Common Stock on a sustained basis. The history of similar stock split combinations for companies in like circumstances is varied. There is no assurance that:

- the market price per share of our Common Stock after the Reverse Stock Split will rise in proportion to the reduction in the number of shares of our Common Stock outstanding before the Reverse Stock Split;
- if the market price per share of Common Stock after the Reverse Stock Split does increase, that it will stay elevated at such level for any period of time thereafter;
- the Reverse Stock Split will result in a per share price that will attract brokers and investors who do not trade in lower priced stocks; and
- our ability to conduct future financings or strategic transactions will be enhanced.

The market price of our Common Stock will also be based on our performance and other factors, some of which are unrelated to the number of shares outstanding. If the Reverse Stock Split is effected and the market price of our Common Stock declines, the percentage decline as an absolute number and as a percentage of our overall market capitalization may be greater than would occur in the absence of a Reverse Stock Split. Furthermore, the liquidity of our Common Stock could be adversely affected by the reduced number of shares that would be outstanding after the Reverse Stock Split.

The total number of authorized shares of Common Stock will not be reduced in accordance with the exchange ratio, which may result in a significant increase in the availability of authorized shares of Common Stock and will be dilutive to our stockholders.

The total number of authorized shares of Common Stock will not be reduced in accordance with the exchange ratio, which will result in a significant increase in the availability of authorized shares of Common Stock. Any additional Common Stock so authorized will be available for issuance by the Board of Directors for stock splits or stock dividends, acquisitions, raising additional capital, conversion of our debt into equity, or other corporate purposes, and any such issuances may be dilutive to current stockholders.

The proposed reverse stock split may decrease the liquidity of our stock.

The liquidity of our capital stock may be harmed by the proposed Reverse Stock Split given the reduced number of shares that would be outstanding after the Reverse Stock Split, particularly if the stock price does not increase as a result of the Reverse Stock Split.

The increased proportion of unissued authorized shares to issued shares may have anti-takeover effects under certain circumstances, although the Board of Directors is not implementing the Reverse Stock Split for such purpose.

The increased proportion of unissued authorized shares to issued shares may have an anti-takeover effect under certain circumstances, since the proportion allows for dilutive issuances which could prevent certain stockholders from changing the composition of the Board of Directors or render tender offers for a combination with another entity more difficult to successfully complete. The Board of Directors is not implementing the Reverse Stock Split to have any anti-takeover effects.

Principal Effects of the Reverse Stock Split

If the requisite holders approve the proposal to authorize the Board to implement the Reverse Stock Split and the Board implements the Reverse Stock Split, we will amend our Certificate of Incorporation by striking out the second paragraph of the section titled "Capital Stock" of Article IV in its entirety and by substituting the following paragraph in lieu thereof:

> "Upon effectiveness of this Certificate of Amendment (the Effective Time), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that between and including 500 and 1,500 shares of issued Common Stock immediately prior to the Effective Time are

reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued as a result of the reverse stock split. Instead, any stockholder who would otherwise be entitled to a fractional share of our Common Stock as a result of the reclassification shall be entitled to receive a cash payment equal to the product of such resulting fractional interest in one share of our Common Stock multiplied by the closing trading price of our Common Stock on the trading day immediately preceding the effective date of the reverse stock split. Notwithstanding the foregoing, the Corporation shall not be obliged to issue certificates evidencing the shares of Common Stock outstanding as a result of the reverse stock split or cash in lieu of fractional shares, if any, unless and until the certificates evidencing the shares held by a holder prior to the reverse stock split are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates."

The Reverse Stock Split will be effected simultaneously for all issued and outstanding shares of Common Stock, and the exchange ratio will be the same for all issued and outstanding shares of Common Stock. The Reverse Stock Split will affect all of our stockholders uniformly and will not affect any stockholder's percentage ownership interests in the Company, except to the extent that cash payments are made in lieu of fractional shares. Common stock issued pursuant to the Reverse Stock Split will remain fully paid and nonassessable. The Reverse Stock Split will not affect the Company continuing to be subject to the periodic reporting requirements of the Exchange Act. Following the Reverse Stock Split, our Common Stock will continue to be listed on the OTCID, under the symbol "EVFM," although it will receive a new CUSIP number. The Reverse Stock Split does not change the number of authorized shares of our Preferred Stock.

By approving this Amendment, stockholders will approve the combination of any whole number of shares of Common Stock between and including 500 and 1,500 into one (1) share. The Amendment to be filed with the Secretary of State of the State of Delaware will include only that number determined by the Board to be in the best interests of the Company and its stockholders. The Board will not implement any amendment providing for a different split ratio.

Procedure for Effecting the Reverse Stock Split and Exchange of Stock Certificates

If the Amendment is approved by our stockholders, and if at such time the Board still believes that a Reverse Stock Split is in the best interests of the Company and its stockholders, the Board will determine the ratio of the Reverse Stock Split to be implemented within the range of ratios approved by the stockholders. We will file the Amendment with the Secretary of State of the State of Delaware at such time as the Board has determined the appropriate effective time for the Reverse Stock Split. The Board may delay effecting the Reverse Stock Split, if at all, until a date that is not later than November 26, 2026, without re-soliciting stockholder approval. The Reverse Stock Split will become effective on the date of filing of the Amendment with the Secretary of State of the State of Delaware. Beginning on the effective date of the split, each certificate representing pre-split shares will be deemed for all corporate purposes to evidence ownership of post-split shares.

Book-Entry Shares

If the Reverse Stock Split is effected, stockholders who hold uncertificated shares (i.e., shares held in book-entry form and not represented by a physical stock certificate), either as direct or beneficial owners, will have their holdings electronically adjusted automatically by our transfer agent (and, for beneficial owners, by their brokers or banks that hold in "street name" for their benefit, as the case may be) to give effect to the Reverse Stock Split. Stockholders who hold uncertificated shares as direct owners will be sent a statement of holding from our transfer

agent that indicates the number of post-Reverse Stock Split shares of our Common Stock owned in book-entry form.

Certificated Shares

As soon as practicable after the effective date of the split, stockholders will be notified that the Reverse Stock Split has been effected. We expect that our transfer agent will act as exchange agent for purposes of implementing the exchange of stock certificates. Holders of pre-split shares will be asked to surrender to the exchange agent certificates representing pre-split shares in exchange for certificates representing post-split shares in accordance with the procedures to be set forth in a letter of transmittal to be sent by us or our exchange agent. No new certificates will be issued to a stockholder until such stockholder has surrendered such stockholder's outstanding certificate(s) together with the properly completed and executed letter of transmittal to the exchange agent. Any pre-split shares submitted for transfer, whether pursuant to a sale or other disposition, or otherwise, will automatically be exchanged for post-split shares. STOCKHOLDERS SHOULD NOT DESTROY ANY STOCK CERTIFICATE(S) AND SHOULD NOT SUBMIT ANY CERTIFICATE(S) UNTIL REQUESTED TO DO SO.

Fractional Shares

No fractional shares will be issued in connection with the Reverse Stock Split. Stockholders of record on the effective date of the split who otherwise would be entitled to receive fractional shares because they hold a number of pre-split shares not evenly divisible by the number of pre-split shares for which each post-split share is to be exchanged will, in lieu of a fractional share, be entitled upon surrender to the exchange agent of certificates representing such pre-split shares, if any, to receive payment in cash in lieu of any such resulting fractional shares of Common Stock, as the post-reverse split amounts of Common Stock will be rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock will be calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of our Common Stock on the trading day immediately preceding the effective date of the Reverse Stock Split and rounded to the nearest cent.

Accounting Matters

The Reverse Stock Split will not affect the Common Stock capital account on our balance sheet. However, because the par value of our Common Stock will remain unchanged on the effective date of the split, the components that make up the Common Stock capital account will change by offsetting amounts. The stated capital component will be reduced, and the additional paid-in capital component will be increased, with the amount by which the stated capital is reduced. The per share net loss and net book value of our Common Stock will be increased because there will be fewer weighted average shares of Common Stock outstanding. Prior periods' Common Stock and additional paid-in capital balances and net loss per share amounts will be restated to reflect the Reverse Stock Split.

Effect on Par Value

The Amendment will not affect the par value of our Common Stock, which will remain at $0.0001 per share.

No Going Private Transaction

Notwithstanding the anticipated decrease in the number of outstanding shares following the proposed Reverse Stock Split, if effected, our Board does not intend for this transaction to be the first step in a "going private transaction" within the meaning of Rule 13e-3 under the Exchange Act.

Potential Anti-Takeover Effect

Although the increased proportion of unissued authorized shares to issued shares could, under certain circumstances, have an anti-takeover effect (for example, by permitting issuances that would dilute the stock ownership of a person seeking to effect a change in the composition of the Board or contemplating a tender offer or other transaction for the combination of the Company with another company), the Reverse Stock Split proposal is not being proposed in response to any effort of which we are aware to accumulate shares of our Common Stock or obtain control of the Company, nor is it part of a plan by management to recommend a series of similar amendments to the Board and stockholders. Other than the Reverse Stock Split proposal, the Board does not currently contemplate recommending the adoption of any other actions that could be construed to affect the ability of third parties to take over or change control of the Company.

No Dissenters' Rights

Under the Delaware General Corporation Law, our stockholders are not entitled to dissenters' rights with respect to the Reverse Stock Split, and we will not independently provide stockholders with any such right.

Material United States Federal Income Tax Consequences of the Reverse Stock Split

The following is not intended as tax or legal advice. Each holder should seek advice based on his, her, their or its particular circumstances from an independent tax advisor.

The following discussion describes the anticipated material United States federal income tax consequences to "U.S. holders" (as defined below) of our capital stock relating to the Reverse Stock Split. This discussion is based upon the Internal Revenue Code of 1986, as amended (the Code), Treasury Regulations promulgated thereunder, judicial authorities, published positions of the Internal Revenue Service (IRS), and other applicable authorities, all as currently in effect and all of which are subject to change or differing interpretations (possibly with retroactive effect). We have not obtained a ruling from the IRS or an opinion of legal or tax counsel with respect to the tax consequences of the Reverse Stock Split and there can be no assurance the IRS will not challenge the statements set forth below or that a court would not sustain any such challenge. The following discussion is for information purposes only and is not intended as tax or legal advice.

For purposes of this discussion, the term "U.S. holder" means a beneficial owner of our capital stock that is for United States federal income tax purposes:

i. an individual citizen or resident of the United States;
ii. a corporation (or other entity treated as a corporation for United States federal income tax purposes) organized under the laws of the United States, any state, or the District of Columbia;
iii. an estate with income subject to United States federal income tax regardless of its source; or
iv. a trust that (a) is subject to primary supervision by a United States court and for which United States persons control all substantial decisions or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion assumes that a U.S. holder holds our capital stock as a capital asset within the meaning of Code Section 1221. This discussion does not address all of the tax consequences that may be relevant to a particular stockholder or to stockholders that are subject to special treatment under United States federal income tax laws including, but not limited to, financial institutions, tax-exempt organizations, insurance companies, regulated investment companies, persons that are broker-dealers, traders in securities who elect the mark-to-market method of accounting for their securities, or stockholders holding their shares of our capital stock as part of a "straddle," "hedge," "conversion transaction" or other integrated transaction. In addition, this discussion does

not address other United States federal taxes (such as gift or estate taxes or alternative minimum taxes), the tax consequences of the reverse stock split under state, local or foreign tax laws or certain tax reporting requirements that may be applicable with respect to the Reverse Stock Split.

If a partnership (or other entity treated as a partnership for United States federal income tax purposes) is a stockholder, the tax treatment of a partner in the partnership or any equity owner of such other entity will generally depend upon the status of the person and the activities of the partnership or other entity treated as a partnership for United States federal income tax purposes.

Tax Consequences of the Reverse Stock Split Generally

We believe that the Reverse Stock Split should qualify as a "recapitalization" under Section 368(a)(1)(E) of the Code. Accordingly:

- A U.S. holder will not recognize any gain or loss as a result of the Reverse Stock Split.
- A U.S. holder's aggregate tax basis in his, her, their, or its post-Reverse Stock Split shares will be equal to the aggregate tax basis in the pre-reverse stock split shares exchanged therefor.
- A U.S. holder's holding period for the post-Reverse Stock Split shares will include the period during which such stockholder held the pre-Reverse Stock Split shares surrendered in the Reverse Stock Split.

Treasury Regulations promulgated under the Code provide detailed rules for allocating the tax basis and holding period of the shares of our Common Stock surrendered to the shares of our Common Stock received pursuant to the reverse stock split. Holders of shares of our Common Stock who acquired their shares on different dates and at different prices should consult their tax advisors regarding the allocation of the tax basis and holding period of such shares among their post-reverse stock split shares.

A U.S. holder that receives cash in lieu of a fractional share of our Common Stock pursuant to the Reverse Stock Split should be treated as having received the fractional share pursuant to the Reverse Stock Split and then as having transferred to the Company that fractional share in exchange for cash. As a result, a U.S. holder should generally recognize capital gain or loss in an amount equal to the difference between the amount of cash received and the portion of the U.S. holder's tax basis in our Common Stock allocable to such fractional share, unless the receipt of cash is treated as having the effect of a distribution of a dividend, in which case the cash received will be treated as dividend income to the extent of the Company's current accumulated earnings and profits as calculated for U.S. federal income tax purposes. Stockholders are urged to consult their tax advisors to determine whether receipt of cash has the effect of a distribution of a dividend. Any capital gain or loss should be long term capital gain or loss if the U.S. holder's holding period for our Common Stock surrendered exceeded one year as of effective date of the Reverse Stock Split. The deductibility of capital losses is subject to limitation.

THE PRECEDING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE REVERSE STOCK SPLIT AND DOES NOT PURPORT TO BE A COMPLETE ANALYSIS OR DISCUSSION OF ALL POTENTIAL TAX EFFECTS RELEVANT THERETO. YOU SHOULD CONSULT YOUR OWN TAX ADVISORS AS TO THE PARTICULAR FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE REVERSE STOCK SPLIT IN LIGHT OF YOUR SPECIFIC CIRCUMSTANCES.

Interests of Directors and Executive Officers

Our directors and executive officers have no substantial interests, directly or indirectly, in the matters set forth in this proposal except to the extent of their ownership of shares of our Common Stock.

Reservation of Right to Abandon Reverse Stock Split

We reserve the right to not file the Amendment and to abandon any reverse stock split without further action by our stockholders at any time before the effectiveness of the filing with the Secretary of the State of Delaware of the Amendment, even if the authority to effect this amendment is approved by our stockholders at the Annual Meeting. By voting in favor of the Reverse Stock Split, you are expressly also authorizing the Board to delay, not proceed with, and to abandon, this proposed amendment if it should decide, in its sole discretion, that such action is in the best interests of our stockholders.

Vote Required

The affirmative "FOR" vote of a majority of the outstanding shares is required to approve this Proposal. Proxies solicited by the Board will be voted in favor of the Reverse Stock Split unless a stockholder has indicated otherwise on the proxy. Abstentions and broker non-votes, if any, will be treated as shares that are present and entitled to vote on this Proposal, and will therefore be treated as a vote "AGAINST" this Proposal.

Board's Recommendation

THE BOARD RECOMMENDS A VOTE TO APPROVE REVERSE STOCK SPLIT UNDER THIS PROPOSAL. PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.

PROPOSAL

5

Independent Registered Public Accounting Firm

On April 2, 2025, the Audit Committee approved the engagement of BPM LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2025.

The Audit Committee recommended that our Board of Directors direct that management submit the selection of BPM LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2025, to our stockholders for ratification.

We expect that one or more representatives of BPM LLP will be present at the annual meeting, will have an opportunity to make a statement if they so desire, and will be available to respond to appropriate questions.

Stockholder ratification of the selection of BPM LLP as our independent registered public accounting firm is not required by Delaware law, our amended and restated certificate of incorporation, or our amended and restated bylaws. However, the selection of BPM LLP to our stockholders for ratification is being submitted as a matter of good corporate practice. If our stockholders fail to ratify the selection, our audit committee will reconsider whether to retain the firm. Even if the selection is ratified, the Audit Committee in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if the audit committee determines that such a change would be in the best interests of our company and our stockholders.

Recommendation

The Board unanimously recommends that the stockholders vote "FOR" ratification of the selection of BPM LLP as our independent registered public accounting firm for the fiscal year ended December 31, 2025. Proxies solicited by the Board will be voted in favor of such ratification unless a stockholder indicates otherwise on their proxy card.

Independent Registered Public Accounting Firm's Fees

The following table shows the fees billed by BPM for the audit of our annual financial statements for the last two fiscal years and for other services rendered (if applicable) by BPM to the Company during our last two fiscal years.

	Years Ended December 31,	
	2024	2023
Audit Fees[1]	$ 688,980	$ 565,681
Audit Related Fees	–	–
Tax Fees[2]	–	–
All Other Fees	–	–
Total	$ 688,980	$ 565,681

(1) Audit Fees represent fees and out-of-pocket expenses, whether or not yet invoiced, for professional services provided in connection with the audit of the Company's consolidated financial statements, the review of the Company's quarterly consolidated financial statements, and audit services provided in connection with other regulatory filings.

(2) Tax fees represent fees and out-of-pocket expenses for professional services for tax compliance, tax advice, or tax return preparations.

Pre-Approval Policies and Procedures

The Audit Committee annually reviews and pre-approves certain audit and non-audit services that may be provided by our independent registered public accounting firm and establishes and pre-approves the aggregate fee level for these services. Any proposed services that would cause us to exceed the pre-approved aggregate fee amount must be pre-approved by the Audit Committee. All audit services for 2025 were pre-approved by the Audit Committee.

In the event the stockholders do not ratify the appointment of BPM LLP as our independent registered public accounting firm, the Audit Committee will reconsider its appointment.

The affirmative vote of a majority of the shares cast affirmatively or negatively at the Annual Meeting is required to ratify the appointment of the independent registered public accounting firm.

PROPOSAL 6

Adjournment

To consider and vote upon a proposal to authorize our Board, in its discretion, to adjourn the Annual Meeting to another place, or a later date or dates, if necessary or appropriate, to solicit additional proxies in favor of the proposal listed above at the time of the Annual Meeting.

Recommendation

The Board unanimously recommends that the stockholders vote "FOR" the adjournment of the Annual Meeting pursuant to this Proposal, to another place, date, or time, if deemed necessary or appropriate, in the discretion of the Board.

Adjournment of the Annual Meeting

General

Our stockholders may be asked to consider and act upon one or more adjournments of the Annual Meeting, if necessary or appropriate, to solicit additional proxies in favor of the proposals set forth in this Proxy Statement (the "Proposals").

If a quorum is not present at the Annual Meeting, our stockholders may be asked to vote on this Proposal to adjourn the Annual Meeting to solicit additional proxies. If a quorum is present at the Annual Meeting, but there are not sufficient votes at the time of the Annual Meeting to approve the Proposals, our stockholders may also be asked to vote on this Proposal to approve the adjournment of the Annual Meeting to permit further solicitation of proxies in favor of the Proposals.

If the adjournment proposal is submitted for a vote at the Annual Meeting, and if our stockholders vote to approve the adjournment proposal, the Annual Meeting may be adjourned to enable the Board to solicit additional proxies in favor of the Proposals. If the adjournment proposal is approved, and the Annual Meeting is adjourned, the Board will use the additional time to solicit additional proxies in favor of the Proposals to be presented at the Annual Meeting, including the solicitation of proxies from stockholders that have previously voted against the Proposals.

Our Board believes that, if the number of shares of our Common Stock, Series E-1, and Series G-1 voting in favor of the Proposals at the Annual Meeting is insufficient to approve the Proposals, it is in the best interests of our stockholders to enable the Board, if it so chooses and for a limited period of time, to continue to seek to obtain a sufficient number of additional votes in favor of the Proposals. Any signed proxies received by us in which no voting instructions are provided on such matter will be voted in favor of an adjournment in these circumstances. If the Annual Meeting is adjourned, the time and place of the adjourned Annual Meeting will be announced at the time the adjournment is taken. Any adjournment of the Annual Meeting for the purpose of soliciting additional proxies will allow our stockholders who have already sent in their proxies to revoke them at any time prior to their use at the Annual Meeting, as adjourned or postponed.

Vote Required

The affirmative "FOR" vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the subject matter is required to approve the adjournment of the Annual Meeting pursuant to this Proposal, to another place, date, or time, if deemed necessary or appropriate, in the discretion of the Board. Abstentions, if any, will be treated as shares that are present and entitled to vote on this Proposal, and will therefore be treated as a vote "AGAINST" this Proposal. In the event that there are any broker non-votes, they

will not affect the outcome of the vote on this Proposal. However, because we believe that the approval of this Proposal will be treated as a routine matter on which a broker or other nominee has discretionary authority to vote, we do not expect to receive any broker non-votes with respect to this Proposal.

Other Matters

The Board knows of no other business which will be presented to the Annual Meeting. If any other business is properly brought before the Annual Meeting, proxies will be voted in accordance with the judgment of the persons named therein. No director, executive officer, or nominee for director, nor any associate of any of the foregoing, has any substantial interest, direct or indirect, by security holdings or otherwise, in any matter to be acted upon at the Annual Meeting.

Additional Information

The Company files reports, proxy statements/prospectuses, and other information with the SEC as required by the Exchange Act. You can read the Company's SEC filings, including this proxy, through the SEC's website at http://www.sec.gov and via https://evofem.investorroom.com/SEC-filings.

If you would like additional printed copies of this proxy statement or if you have questions about the proposals to be presented at the Annual Meeting, you should contact us by telephone or in writing:

Evofem Biosciences, Inc.
7770 Regents Road
Suite 113-618
San Diego, CA 92122
Telephone: 858-550-1900

If you are a stockholder of Evofem and would like to request documents, please do so by November 17, 2025 to receive them before the Annual Meeting. If you request any documents from us, we will mail them to you by first class mail or another equally prompt means.

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Appendix A

Evofem Biosciences, Inc.

2025 Equity Incentive Plan

1. Establishment, Purpose, and Term of Plan.

1.1 Establishment. The Evofem Biosciences, Inc. 2025 Equity Incentive Plan (the "Plan") was established as of October 3, 2025 (the "Effective Date"), upon approval by the Board, subject to approval by Shareholders.

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 Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Performance Shares, Performance Units, Cash-Based Awards, and Other Stock-Based Awards.

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. Definition 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, Performance Share, Performance Unit, Cash-Based Award 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) "***Cash-Based Award***" means an Award denominated in cash and granted pursuant to Section 11.

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

(g) "***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.

(h) "***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(dd)(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(h) 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(h) are related and to be treated in the aggregate as a single Change in Control, and its determination shall be final, binding, and conclusive.

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

(j) "***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. If, at any time, there is no committee of the Board then authorized or properly constituted to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers.

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

(l) "***Consultant***" means a person engaged to provide consulting or advisory services (other than as an Employee or a Director) to a Participating Company, provided that the identity of such person, the nature of such services or the entity to which such services are provided would not preclude the Company from offering or selling securities to such person pursuant to the Plan in reliance on registration on Form S-8 under the Securities Act.

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

(n) "***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.

(o) "***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.

(p) "***Employee***" means any person treated as an employee (including an Officer or a Director who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; provided, however, that neither service as a Director nor payment of a Director's fee shall be sufficient to constitute employment for purposes of the Plan. 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.

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

(r) "***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.

(s) "***Incentive Stock Option***" means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(t) "***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).

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

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

(w) "***Nonemployee Director***" means a Director who is not an Employee.

(x) "***Nonemployee Director Award***" means any Award granted to a Nonemployee Director.

(y) "***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.

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

(aa) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(bb) "***Other Stock-Based Award***" means an Award denominated in shares of Stock and granted pursuant to Section 11.

(cc) "***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).

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

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

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

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

(hh) "***Performance Award***" means an Award of Performance Shares or Performance Units.

(ii) "***Performance Award Formula***" means, for any Performance Award, a formula or table established by the Committee pursuant to Section 10.3 which provides the basis for computing the value of a Performance Award at one or more levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.

(jj) "***Performance Goal***" means a performance goal established by the Committee pursuant to Section 10.3.

(kk) "***Performance Period***" means a period established by the Committee pursuant to Section 10.3 at the end of which one or more Performance Goals are to be measured.

(ll) "***Performance Share***" means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Share, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(mm) "***Performance Unit***" means a right granted to a Participant pursuant to Section 10 to receive a payment equal to the value of a Performance Unit, as determined by the Committee, based upon attainment of applicable Performance Goal(s).

(nn) "***Predecessor Plans***" means the Company's 2007 and 2014 Stock Plans, as amended.

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

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

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

(rr) "***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.

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

(tt) "***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.

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

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

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

(xx) "***Service***" means a Participant's employment or service with the Participating Company Group, whether as an Employee, a Director, or a Consultant. 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.

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

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

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

(bbb) "***Ten Percent Owner***" means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(ccc) "***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.

(ddd) "***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. <u>Administration.</u>

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. To the extent permitted by applicable law, the Board or the Committee may, in its discretion, delegate to a committee comprised of one or more Officers and/or Directors the authority to grant one or more Awards of Options or SARs, without further approval of the Board or the Committee, to any Employee, other than an Employee who, at the time of such grant, is an Insider, and to exercise such other powers under the Plan as the Board or the Committee may determine; provided, however, that (a) the Board and/or the Committee shall fix the maximum number of shares subject to Awards that may be granted by such Officers and/or Directors, (b) each such Award shall be subject to the terms and conditions of the appropriate standard form of Award Agreement approved by the Board or the Committee and shall conform to the provisions of the Plan, and (c) each such Award shall conform to such other limits and guidelines as may be established from time to time by the Board and/or the Committee.

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 Performance Measures, Performance Period, Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of expiration of any Award, (vii) the effect of any Participant's termination of Service on any of the foregoing, and (viii) 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, 4.3, 4.4 and 4.5, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be equal to 50,000,000 shares and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.

4.2 Annual Increase in Maximum Number of Shares Issuable. Subject to adjustment as provided in Section 4.5, the maximum aggregate number of shares of Stock that may be issued under the Plan as set forth in Section 4.1 shall be cumulatively increased on January 1, 2025 and on each subsequent January 1 through and including January 1, 2034, by a number of shares (the "***Annual Increase***") equal to the smaller of (a) four percent (4%) of the number of shares of Stock of the Company issued and outstanding on the immediately preceding December 31, or (b) an amount determined by the Board.

4.3 Reserved.

4.4 Share Counting. If an outstanding Award for any reason expires or is terminated or cancelled 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 16.2 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.

4.5 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, the Award limits set forth in Section 5.3, 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, including modification of Performance Goals, Performance Award Formulas and Performance Periods. The adjustments determined by the Committee pursuant to this Section shall be final, binding, and conclusive.

4.6 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, Consultants and Directors.

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.

5.3 Incentive Stock Option Limitations.

(a) ***Maximum Number of Shares Issuable Pursuant to Incentive Stock Options***. Subject to adjustment as provided in Section 4.5, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to the exercise of Incentive Stock Options shall not exceed 50,000,000 shares. The maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to all Awards other than Incentive Stock Options shall be the number of shares determined in accordance with Section 4.1, subject to adjustment as provided in Sections 4.2, 4.3, 4.4 and 4.5.

(b) ***Persons Eligible***. An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation, or a Subsidiary Corporation (each being an "***ISO-Qualifying Corporation***"). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option.

(c) ***Fair Market Value Limitation***. To the extent that options designated as Incentive Stock Options (granted under all equity plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars ($100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the Option with respect to such stock is granted. If the Code is amended to provide for a limitation different from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section, the Participant may designate which portion of

such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise of the Option, shares issued pursuant to each such portion of the Option shall be separately identified.

5.4 Nonemployee Director Limitations. Notwithstanding anything in this Plan to the contrary, effective as of the date following the date on which the Company's stockholders approve this Plan, the maximum number of shares subject to Awards issued to any Nonemployee Director as Nonemployee Director Awards during a calendar year shall not exceed seventy-five thousand (75,000) shares of Stock; provided further, that with respect to the first calendar year in which an individual is elected or appointed to the Board, this limit shall be seventy-five thousand (75,000) shares of Stock. The foregoing limitation shall not apply to Awards made pursuant to an election by a Nonemployee Director to receive an Award in lieu of cash for all or a portion of cash fees to be received for service on the Board or any Committee thereof and Awards issued in respect of bona fide consulting services provided to the Company notwithstanding that such Consultant may also be a Nonemployee Director. The limitations set forth in this paragraph shall be subject to adjustment as provided pursuant to Section 4.5.

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 (a) 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 and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock 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, (b) no Incentive Stock Option granted to a Ten Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option and (c) 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 14 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 or, in the case of an Incentive Stock Option, only as permitted by applicable regulations under Section 421 of the Code in a manner that does not disqualify such Option as an Incentive Stock Option.

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 cancelled. 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 cancelled 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 cancelled 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, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of or satisfaction of Vesting Conditions applicable to a Restricted Stock Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

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, including, without limitation, Performance Goals as described in Section 10.4, 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, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of a Restricted Stock Unit Award or the Vesting Conditions with respect to such Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

9.2 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.

9.3 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, including, without limitation, Performance Goals as described in Section 10.4, 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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. Performance Awards.

Performance 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 Types of Performance Awards Authorized. Performance Awards may be granted in the form of either Performance Shares or Performance Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Units subject thereto, the Performance Award Formula, the Performance Goal(s), and Performance Period applicable to the Award, and the other terms, conditions, and restrictions of the Award.

10.2 Initial Value of Performance Shares and Performance Units. Unless otherwise provided by the Committee in granting a Performance Award, each Performance Share shall have an initial monetary value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.5, on the effective date of grant of the Performance Share, and each Performance Unit shall have an initial monetary value established by the Committee at the time of grant. The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

10.3 Establishment of Performance Period, Performance Goals and Performance Award Formula. In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s), and Performance Award Formula.

10.4 Measurement of Performance Goals. Performance Goals shall be established by the Committee on the basis of targets to be attained ("***Performance Targets***") with respect to one or more measures of business or financial performance (each, a "Performance Measure"), subject to the following:

(a) ***Performance Measures***. Performance Measures shall be calculated in accordance with the Company's financial statements, or, if such measures are not reported in the Company's financial statements, they shall be calculated in accordance with generally accepted accounting principles, a method used generally in the Company's industry, or in accordance with a methodology established by the Committee prior to

the grant of the Performance Award. As specified by the Committee, Performance Measures shall be calculated with respect to the Company and each Subsidiary Corporation consolidated therewith for financial reporting purposes, one or more Subsidiary Corporations or such division or other business unit of any of them selected by the Committee. Unless otherwise determined by the Committee prior to the grant of the Performance Award, the Performance Measures applicable to the Performance Award shall be calculated prior to the accrual of expense for any Performance Award for the same Performance Period and excluding the effect (whether positive or negative) on the Performance Measures of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Committee, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be based upon one or more of the following, as determined by the Committee: (i) revenue; (ii) sales; (iii) expenses; (iv) operating income; (v) gross margin; (vi) operating margin; (vii) earnings before any one or more of: stock-based compensation expense, interest, taxes, depreciation and amortization; (viii) pre-tax profit; (ix) net operating income; (x) net income; (xi) economic value added; (xii) free cash flow; (xiii) operating cash flow; (xiv) balance of cash, cash equivalents and marketable securities; (xv) stock price; (xvi) earnings per share; (xvii) return on stockholder equity; (xviii) return on capital; (xix) return on assets; (xx) return on investment; (xxi) total stockholder return; (xxii) employee satisfaction; (xxiii) employee retention; (xxiv) market share; (xxv) customer satisfaction; (xxvi) product development; (xxvii) research and development expenses; (xxviii) completion of an identified special project; (xxix) completion of a joint venture or other corporate transaction and (xxx) pursuant to any other measure determined by the Committee in its sole discretion and set forth in the Performance Award.

(b) ***Performance Targets***. Performance Targets may include a minimum, maximum, target level and intermediate levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the Performance Target level attained during the applicable Performance Period. A Performance Target may be stated as an absolute value, an increase or decrease in a value, or as a value determined relative to an index, budget or other standard selected by the Committee.

10.5 Settlement of Performance Awards.

(a) ***Determination of Final Value***. As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall certify in writing the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) ***Discretionary Adjustment of Award Formula***. In its discretion, the Committee may, either at the time it grants a Performance Award or any time thereafter, provide for the positive or negative adjustment of the Performance Award Formula to reflect such Participant's individual performance in his or her position with the Company or such other factors as the Committee may determine.

(c) ***Effect of Leaves of Absence***. Unless otherwise required by law or a Participant's Award Agreement, payment of the final value, if any, of a Performance Award held by a Participant who has taken in excess of thirty (30) days in unpaid leaves of absence during a Performance Period shall be prorated on the basis of the number of days of the Participant's Service during the Performance Period during which the Participant was not on an unpaid leave of absence.

(d) ***Notice to Participants***. As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), the Company shall notify each Participant of the determination of the Committee.

(e) ***Payment in Settlement of Performance Awards***. As soon as practicable following the Committee's determination and certification in accordance with Sections 10.5(a) and (b), but in any event

within the Short-Term Deferral Period described in Section 15.1 (except as otherwise provided below or consistent with the requirements of Section 409A), payment shall be made to each eligible Participant (or such Participant's legal representative or other person who acquired the right to receive such payment by reason of the Participant's death) of the final value of the Participant's Performance Award. Payment of such amount shall be made in cash, shares of Stock, or a combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing a Performance Award, payment shall be made in a lump sum. 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 payment to be made to the Participant pursuant to this Section, and such deferred payment date(s) elected by the Participant shall be set forth in the Award Agreement. If any payment is to be made on a deferred basis, the Committee may, but shall not be obligated to, provide for the payment during the deferral period of Dividend Equivalent Rights or interest.

(f) ***Provisions Applicable to Payment in Shares***. If payment is to be made in shares of Stock, the number of such shares shall be determined by dividing the final value of the Performance Award by the Fair Market Value of a share of Stock determined by the method specified in the Award Agreement. Shares of Stock issued in payment of any Performance Award may be fully vested and freely transferable shares or may be shares of Stock subject to Vesting Conditions as provided in Section 8.5. Any shares subject to Vesting Conditions shall be evidenced by an appropriate Award Agreement and shall be subject to the provisions of Sections 8.5 through 8.8 above.

10.6 Voting Rights; Dividend Equivalent Rights and Distributions. Participants shall have no voting rights with respect to shares of Stock represented by Performance Share Awards until the date of the issuance of such shares, if any (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 Performance Share 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 the Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date on which the Performance Shares are settled or the date on which they are forfeited. Such Dividend Equivalent Rights, if any, shall be credited to the Participant either in cash or in the form of additional whole Performance Shares as of the date of payment of such cash dividends on Stock, as determined by the Committee. The number of additional Performance Shares (rounded to the nearest whole number), if any, to be so 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 Performance Shares previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Dividend Equivalent Rights may be paid currently or may be accumulated and paid to the extent that Performance Shares become nonforfeitable, as determined by the Committee. Settlement of Dividend Equivalent Rights may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 10.5. Dividend Equivalent Rights shall not be paid with respect to Performance Units. 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 Performance Share 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 the Performance Share Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Performance Goals as are applicable to the Award.

10.7 Effect of Termination of Service. Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Performance Award, the effect of a Participant's termination of Service on the Performance Award shall be as follows:

(a) ***Death or Disability***. If the Participant's Service terminates because of the death or Disability of the Participant before the completion of the Performance Period applicable to the Performance

Award, the final value of the Participant's Performance Award shall be determined by the extent to which the applicable Performance Goals have been attained with respect to the entire Performance Period and shall be prorated based on the number of months of the Participant's Service during the Performance Period. Payment shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

(b) ***Other Termination of Service***. If the Participant's Service terminates for any reason except death or Disability before the completion of the Performance Period applicable to the Performance Award, such Award shall be forfeited in its entirety; provided, however, that in the event of an involuntary termination of the Participant's Service, the Committee, in its discretion, may waive the automatic forfeiture of all or any portion of any such Award and determine the final value of the Performance Award in the manner provided by Section 10.7(a). Payment of any amount pursuant to this Section shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

10.8 Nontransferability of Performance Awards. Prior to settlement in accordance with the provisions of the Plan, no Performance Award shall 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 Performance 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.

11. Cash-Based Awards and Other Stock-Based Awards.

Cash-Based Awards and 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:

11.1 Grant of Cash-Based Awards. Subject to the provisions of the Plan, the Committee, at any time and from time to time, may grant Cash-Based Awards to Participants in such amounts and upon such terms and conditions, including the achievement of performance criteria, as the Committee may determine.

11.2 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.

11.3 Value of Cash-Based and Other Stock-Based Awards. Each Cash-Based Award shall specify a monetary payment amount or payment range as determined by the Committee. 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, including, without limitation, Performance Goals as described in Section 10.4, 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 Cash-Based Awards or Other Stock-Based Awards that will be paid to the Participant will depend on the extent to which the performance criteria are met.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

12. Standard Forms of Award Agreement.

12.1 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.

12.2 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.

13. Change in Control and Ownership Change Events.

13.1 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 15.4(f), in the event that the Acquiror (as defined below) elects not to assume, continue or substitute for, in accordance with Section 13.1(b) or to cash out in accordance with Section 13.1(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 cancelled 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 cancelled 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 cancelled

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 cancelled Awards as soon as practicable following the date of the Ownership Change Event and in respect of the unvested portions of their cancelled Awards in accordance with the vesting schedules applicable to such Awards.

13.2 Effect of a Change in Control on Nonemployee Director Awards. Subject to the requirements and limitations of Section 409A, if applicable, including as provided by Section 15.4(f), in the event of a Change in Control, each outstanding Nonemployee Director Award shall become immediately exercisable and vested in full and, except to the extent assumed, continued, or substituted for pursuant to Section 13.1(b), shall be settled effective immediately prior to the time of consummation of the Change in Control.

13.3 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 13.3(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 13.3(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.

14. <u>Compliance with Applicable Law</u>.

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.

15. Compliance with Section 409A.

15.1 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 15 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 2.5 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.

15.2 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 15.3.

15.3 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 15.4(a)(ii), 15.4(a)(iii) or 15.4(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 15.4(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 15.3.

15.4 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 15.2 or 15.3, 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 15.4(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 15.4(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 13.1(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 15.4(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.

16. <u>Tax Withholding</u>.

16.1 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.

16.2 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 maximum 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.

17. Amendment, Suspension or Termination of Plan.

The Committee may amend, suspend, or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Sections 4.2, 4.3, 4.4 and 4.5), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule, including the rules of any stock exchange or quotation system upon which the Stock may then be listed or quoted. 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 12 of the Plan, the Committee may not without shareholder 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 may not take any other action that is considered a direct or indirect "repricing" for purposes of the shareholder 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.

18. Miscellaneous Provisions.

18.1 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.

18.2 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.

18.3 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.

18.4 Rights as Employee, Consultant or Director. 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, Consultant or Director 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.

18.5 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.

18.6 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.

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

18.8 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.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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 (e.g., incentive stock options under Section 422 of the Code or French-qualified stock options) 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 15 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.

18.14 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.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2024

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 or organization)	**(I.R.S. Employer Identification No.)**
7770 Regents Rd, Suite 113-618 San Diego, CA	**92122**
(Address of principal executive offices)	**(Zip Code)**

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	EVFM	OTCQB

Securities registered pursuant to Section 12(g) of the Act: **None**

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

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

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

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

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the common stock held by non-affiliates of the registrant was approximately $0.9 million as of June 30, 2024, based upon the closing sale price on the OTCQB Venture Market reported for such date. Shares of common stock held by each executive officer and director and certain holders of more than 10% of the outstanding shares of the registrant's common stock have been excluded in that such persons may be deemed to be affiliates. Shares of common stock held by other persons, including certain other holders of more than 10% of the outstanding shares of common stock, have not been excluded in that such persons are not deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares of Registrant's Common Stock outstanding as of March 14, 2025 was 113,356,354.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K (Annual Report), contains forward-looking statements that involve substantial risks and uncertainties. The forward-looking statements are contained principally in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations." All statements, other than statements of historical facts, contained in this Annual 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," "possible," "potential," "predict," "project," "seek," "should," "suggest," "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.

These forward-looking statements include, among other things, statements about:

- our ability to regain compliance with listing standards of the OTCQB® Venture Market to maintain the listing of our shares thereon;
- the possibility and effects of our common stock being traded on OTC Pink Current in the event we fail to regain compliance with OTCQB® Venture Market;
- the consummation of the transactions contemplated by the Merger Agreement and documents related thereto;
- our ability to continue as a going concern;
- the Notice of Default and cancellation of Forbearance Agreement received by Future Pak, LLC and any potential legal action(s) against the Company, including that its assets that could be taken and potential negative outcome(s) thereof;
- our ability to successfully integrate and commercialize SOLOSEC® (secnidazole) 2g oral granules (SOLOSEC);
- our ability to remediate the material weaknesses in our internal controls and procedures identified by management;
- our ability to obtain necessary approvals of any corporate action(s) needing stockholder, FINRA, or other approvals;
- our ability to file Annual and Quarterly Reports on a timely basis;
- our ability to raise additional capital to fund our operations if and as needed;
- our ability to achieve and sustain profitability;
- our estimates regarding our future performance including, without limitation, any estimates of potential future revenues;
- estimates regarding market size;
- our estimates regarding expenses, revenues, financial performance, and capital requirements, including the length of time our capital resources will sustain our operations;
- our ability to comply with the provisions and requirements of our debt arrangements, to avoid future defaults pursuant to our debt arrangements, and to pay amounts owed, including any amounts that may be accelerated, pursuant to our debt arrangements;
- estimates regarding health care providers' (HCPs') recommendations of PHEXXI® (lactic acid, citric acid, and potassium bitartrate) vaginal gel (PHEXXI) to patients;
- estimates regarding HCPs recommendations of SOLOSEC to patients suffering from the sexual health infections for which it is indicated;
- the rate and degree of market acceptance of our products;
- our ability to successfully commercialize and distribute our products and continue to develop our sales and marketing capabilities, particularly after any product rebrand;
- The requirement to change the name of PHEXXI and our estimates regarding the timing and cost thereof;
- our estimates regarding the effectiveness of our marketing campaigns;
- our strategic plans for our business, including the commercialization of our products;
- the potential for changes to current regulatory mandates requiring health insurance plans to cover U.S. Food and Drug Administration (FDA)-cleared or -approved contraceptive products or testing for sexually transmitted infections (STIs) without cost sharing;

- our ability to obtain or maintain third-party payer coverage and adequate reimbursement, and our reliance on the willingness of patients to pay out-of-pocket for our products absent full or partial third-party payer reimbursement;
- our ability to protect and defend our intellectual property position and our reliance on third party licensors;
- our ability to obtain additional patent protection for our products;
- our dependence on third parties for the manufacture of our products;
- our ability to expand our organization to accommodate potential growth; and
- our ability to retain and attract key personnel.

Although we believe that we have a reasonable basis for each forward-looking statement contained in this Annual Report, we caution you that these statements are based on our projections of the future which are subject to known and unknown risks and uncertainties and other factors that may cause our actual results, level of activity, performance, or achievements to differ from those expressed or implied by these forward-looking statements. 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. Forward-looking statements should be regarded solely as our current plans, estimates and beliefs. You should read this Annual Report and the documents that we have filed as exhibits to this Annual Report and incorporated by reference herein completely and with the understanding that our actual results may be materially different from the plans, intentions and expectations disclosed in the forward-looking statements we make. Moreover, we operate in a very competitive and rapidly changing environment and 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 Annual Report are made as of the date of this Annual 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.

This Annual Report contains estimates and other statistical data made by independent parties and by the Company relating to market size and growth and other data about its industry. This data involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates.

Our first commercial product, PHEXXI, was approved by the FDA on May 22, 2020, for the prevention of pregnancy and launched in the U.S. in September 2020. PHEXXI is the first and only non-hormonal prescription contraceptive vaginal gel. Women use it when they have sex, applying PHEXXI 0-60 minutes prior to intercourse. Because PHEXXI is hormone-free and non-systemic, it is not associated with side effects of hormonal contraceptive methods, such as depression, weight gain, headaches, loss of libido, mood swings and irritability. Taking hormones may not be right for some women, especially those with certain medical conditions including clotting disorders, hormone-sensitive cancers, diabetes or a BMI over 30, as well as women who are breast feeding, and / or smoke. Per the NCHS-published data from the chart below, more than 23.3 million women in the U.S. do not want to get pregnant and will not use a hormonal contraceptive.

In July 2024 we acquired global rights to SOLOSEC. This FDA-approved single-dose oral antimicrobial agent provides a complete course of therapy for the treatment of two common sexual health infections – bacterial vaginosis (BV) and trichomoniasis (Trich). The SOLOSEC acquisition aligns with and advances our mission to improve access to innovative and differentiated options that impact women's daily lives. We re-launched SOLOSEC in the U.S. in November 2024 and expect commercialization of SOLOSEC will benefit from our commercial infrastructure and strong physician relationships.

Outside the U.S., our strategy is to commercialize our products in global markets through commercial partnerships and/or license agreements. PHEXXI was approved in Nigeria on October 6, 2022, as Femidence™ by the National Agency for Food and Drug Administration and Control. PHEXXI has been submitted for approval in Mexico, Ethiopia and Ghana. In July 2024, we licensed commercial rights to PHEXXI in the Middle East to Pharma 1 Drug Store, LLC, an emerging Emirati health care company (Pharma 1). Pharma 1 is expected to file for regulatory approval of PHEXXI in the United Arab Emirates (UAE) in the first half of 2025.

Unless the context requires otherwise, references in this Annual Report to "Evofem," "Company," "we," "us" and "our" refer to Evofem Biosciences, Inc. and its subsidiaries.

This Annual Report includes our trademarks, trade names and service marks, including "EVOFEM®" "PHEXXI®", "FEMIDENCE™", and "SOLOSEC®", which are protected under applicable intellectual property laws and are the property of Evofem Biosciences, Inc. or its subsidiaries. Solely for convenience, trademarks, trade names and service marks referred to in this Annual Report may appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply a relationship with, or endorsement or sponsorship of us by, these other parties.

PART I

Item 1. Business.

Overview

We are a San Diego-based commercial-stage biopharmaceutical company with a strong focus on innovation in sexual and reproductive health.

Our first commercial product, PHEXXI, was approved by the FDA on May 22, 2020. PHEXXI is the first and only FDA-approved, hormone-free prescription contraceptive vaginal gel. It comes in a pre-filled applicator and is applied within one hour before intercourse, empowering women with a convenient, discreet, and flexible contraception method that puts control in their hands. We commercially launched PHEXXI in September 2020 in the U.S. and have reported increased net product sales for each successive year.

In November 2024, we re-launched SOLOSEC in the U.S., following the acquisition of global rights to the product in July 2024. This oral antimicrobial agent provides a complete course of therapy for two common sexual health infections with just one dose. SOLOSEC is FDA-approved for the treatment of two sexual health diseases: bacterial vaginosis (BV), a common vaginal infection, in females 12 years of age and older, and *Trichomonas vaginalis*, a common sexually transmitted infection (STI), in people 12 years of age and older. SOLOSEC has the same call point as PHEXXI, enabling us to leverage our commercial infrastructure and strong physician relationships.

We intend to commercialize our products in all other global markets through partnerships or licensing agreements, such as the July 2024 licensing of commercial rights to PHEXXI in the Middle East to Pharma 1 Drug Store, LLC, an emerging Emirati health care company (Pharma 1).

While our pipeline includes multiple candidates that are designed to address critical unmet needs in women's health, we halted all clinical development in October 2022 to focus resources on growing sales of PHEXXI for the prevention of pregnancy.

Aditxt Merger

On December 11, 2023, the Company entered into an Agreement and Plan of Merger, as amended, (the Merger Agreement) with Aditxt, Inc., a Delaware corporation (Aditxt or Parent), Adifem, Inc., a Delaware corporation and wholly-owned Subsidiary of Aditxt (Merger Sub), pursuant to which, and on the terms and subject to the conditions thereof, Merger Sub will merge with and into the Company, with the Company surviving as a wholly owned subsidiary of Aditxt (the Merger).

On January 10, 2024, the Company, Parent and Merger Sub entered into the first amendment to the Merger Agreement (the First Amendment) to change the filing date for the Joint Proxy Statement (as defined in the Merger Agreement) to February 14, 2024.

On January 30, 2024, the Company, Parent and Merger Sub entered into the second amendment to the Merger Agreement (the Second Amendment) to:

(i) Change the date of the Parent Loan (as defined in the Merger Agreement) to the Company to be February 29, 2024;

(ii) Change the date by which the Company may terminate the Merger Agreement for failure to receive the Loan from Parent to be February 29, 2024; and,

(iii) Change the filing date for the Joint Proxy Statement (as defined in the Merger Agreement) to April 1, 2024.

On February 26, 2024, Aditxt and the Holders entered into an Assignment Agreement (the February Assignment Agreement), pursuant to which the Company consented to the assignment of all remaining amounts due under the Notes from Aditxt back to the Holders.

On February 29, 2024, the Company, Parent and Merger Sub entered into the third amendment to the Merger Agreement (the Third Amendment) to:

(i) Amend and restate Section 6.10 in its entirety as follows: "Parent Equity Investment. On or prior to (a) April 1, 2024, Parent shall purchase 2,000 shares of the Company's Series F-1 Preferred Shares, par value $0.0001 per share for an aggregate purchase price of $2.0 million (the Initial Parent Equity Investment) and (b) April 30, 2024, Parent shall purchase 1,500 shares of F-1 Preferred Shares for an aggregate purchase price of $1.5 million (the Subsequent Parent Equity Investment).";

(ii) Delete in its entirety the provision in Section 6.16;

(iii) Extend the date to file a Joint Proxy Statement to April 30, 2024;

(iv) Add new Section 7.2(i) as follows: "(i) *Repurchase Price*. No defaults shall have occurred and be continuing under the Loan Documents and the Outstanding Balance (as defined in the Securities Purchase Agreement) plus all accrued and unpaid interest thereon, in an amount not to exceed the Repurchase Price (as defined in the Securities Purchase Agreement) shall have been paid in full."; and,

(v) Amend and restate Section 8.1(f) to allow for termination of the Merger Agreement by the Company if either (a) the Initial Parent Equity Investment has not been made by April 1, 2024, or (b) the Subsequent Parent Equity Investment has not been made by April 30, 2024.

The aforementioned numbers of shares of F-1 Preferred Shares shall be equitably adjusted for any stock split, reverse stock split, stock dividend (including any dividend or other distribution of securities convertible into F-1 Preferred Shares), subdivision, reorganization, reclassification, recapitalization, combination, exchange of shares or other like change with respect to the number of shares of F-1 Preferred Shares outstanding after the date hereof and prior to the Effective Time or any change to the Stated Value thereof as set forth in that certain Certificate of Designations of Series F-1 Convertible Preferred Stock of the Company.

On February 29, 2024, as part of the Third Amendment, Aditxt agreed to have, as a condition of closing, that the outstanding balance, plus all accrued and unpaid interest thereon, in an amount not to exceed the Repurchase Price, shall have been paid in full. The A&R Merger Agreement, as amended, entered into on July 12, 2024, maintains the same condition to closing. As discussed above, the A&R Merger Agreement was amended on August 16, 2024, September 6, 2024, October 2, 2024, November 19, 2024, and March 22, 2025; none of the amendments modified this closing condition.

On April 26, 2024, the Company delivered a termination notice to Aditxt notifying it that the Company was exercising its right to terminate the Merger Agreement effective April 26, 2024 (the Termination Notice), in accordance with Section 8.1(f) of the Merger Agreement, as revised in the third amendment to the Merger Agreement, made on February 29, 2024.

On May 2, 2024, the Company, the Merger Sub and Aditxt entered into the Reinstatement and Fourth Amendment to the Merger Agreement (the Fourth Amendment) in order to waive and amend, among other things, the several provisions listed below. In consideration of the Fourth Amendment, Aditxt agreed to pay the Company $1.0 million, which the Company received during the three months ended June 30, 2024.

Amendments to Article VI: Covenants and Agreement

Article VI of the Merger Agreement was amended to:

i. reinstate the Merger Agreement, as amended by the Fourth Amendment, as if never terminated;
ii. reflect Aditxt's payment to the Company, in the amount of $1.0 million (the Initial Payment), via wire initiated by May 2, 2024;
iii. delete Section 6.3, which effectively eliminates the "no shop" provision, and the several defined terms used therein;
iv. add a new defined term, "Company Change of Recommendation"; and

v. revise section 6.10 of the Merger Agreement such that, after the Initial Payment, and upon the closing of each subsequent capital raise by Aditxt (each a Parent Subsequent Capital Raise), Aditxt shall purchase that number of shares of the Company's Series F-1 Preferred Stock, par value $0.0001 per share (the Series F-1 Preferred Stock), equal to forty percent (40%) of the gross proceeds of such Parent Subsequent Capital Raise divided by 1,000, up to a maximum aggregate amount of $2.5 million or 2,500 shares of Series F-1 Preferred Stock. A maximum of $1.5 million shall be raised prior to June 17, 2024 and $1.0 million prior to July 1, 2024 (the Parent Capital Raise).

Amendments to Article VIII: Termination

Article VIII of the Merger Agreement is amended to:

i. extend the date after which either party may terminate from May 8, 2024 to July 15, 2024;
ii. revise Section 8.1(d) in its entirety to allow Company to terminate at any time after there has been a Company Change of Recommendation, provided that Aditxt must receive ten day written notice and have the opportunity to negotiate a competing offer in good faith; and
iii. amend and restate Section 8.1(f) in its entirety, granting the Company the right to terminate the agreement if:
    (a) the full $1.0 million Initial Payment required by the Fourth Amendment has not been paid in full by May 3, 2024
    (b) $1.5 million of the Parent Capital Raise Amount has not been paid to the Company by June 17, 2024,
    (c) $1.0 million of the Parent Capital Raise Amount has not been paid to the Company by July 1, 2024, or,
    (d) Aditxt does not pay any portion of the Parent Equity Investment within five calendar days after each closing of a Parent Subsequent Capital Raise.

On July 12, 2024, the Company, the Merger Sub and Aditxt entered into the Amended and Restated Merger Agreement (the A&R Merger Agreement) which amends and restates in its entirety the Agreement and Plan of Merger (as amended January 10, 2024, January 30, 2024, February 29, 2024, and May 2, 2024 (collectively, the Original Merger Agreement)). Except as described below, the terms and provisions of the A&R Merger Agreement are consistent with the terms and provisions of the Original Merger Agreement.

- As consideration for the Merger, Parent will (i) pay $1.8 million less an amount equal to the product of (x) the number of Dissenting Shares represented by Company Common Stock and (y) the Common Exchange Ratio (as defined in the A&R Merger Agreement) (the Common Consideration)
- Each share of the Company's Series E-1 Preferred Stock, par value $0.0001 (the Series E-1), issued and outstanding as of the Effective Time (as defined in the A&R Merger Agreement) shall automatically be converted into the right to receive from Aditxt one share Parent Preferred Stock (the Preferred Merger Consideration)

At the Effective Time of the Merger:

(i) The Company Convertible Note Holders will enter into an Exchange Agreement, pursuant to which these Note Holders exchange the value of their then-outstanding Company Convertible Notes and purchase rights for an aggregate of not more than 88,161 shares of Parent Preferred Stock.
(ii) Each stock option of the Company (the Options), that was outstanding and unexercised immediately prior to the Effective Time will be cancelled without the right to receive any consideration.
(iii) all shares of Company Common Stock or Company Preferred Stock held by Parent or Merger Sub or by any wholly-owned Subsidiary thereof, shall be automatically cancelled and retired and shall cease to exist and no consideration shall be delivered or deliverable in exchange therefore;

Further, Aditxt agreed to, on or prior to: (a) July 12, 2024, purchase 500 shares of the Company's Series F-1 Preferred Shares for an aggregate purchase price of $0.5 million (the July Purchase) (b) August 9, 2024, purchase an additional 500 shares of F-1 Preferred Shares for an aggregate purchase price of $0.5 million (the August Purchase), (c) the earlier of August 30, 2024 or within five business days of the closing of a public offering by Aditxt resulting

in aggregate net proceeds to Aditxt of no less than $20.0 million, purchase an additional 2,000 shares of F-1 Preferred Shares for an aggregate purchase price of $2.0 million (the Third Parent Equity Investment); and (d) September 30, 2024, purchase an additional 1,000 shares of F-1 Preferred Stock at an aggregate purchase price of $1.0 million (the Fourth Parent Equity Investment). The July Purchase and subsequent August Purchase of 500 shares of the Company's Series F-1 Preferred Shares in each respective purchase were completed as scheduled.

On August 16, 2024, the Company, Parent and Merger Sub entered into the first amendment to the A&R Merger Agreement (the First Amendment), to change the funding date for the Third Parent Equity Investment Date (as defined in the A&R Merger Agreement) from August 30, 2024 to the earlier of (i) September 6, 2024 or (ii) within five (5) business days of the closing of a public offering by Parent resulting in aggregate net proceeds to Parent of no less than $20.0 million.

On September 6, 2024, the Company, Parent and Merger Sub entered into the second amendment to the A&R Merger Agreement (the Second Amendment), to (i) change the date of the Third Parent Equity Investment Date and Fourth Parent Equity Investment Date (as defined in the A&R Merger Agreement) from September 6, 2024 and September 30, 2024 to September 30, 2024 and October 31, 2024, respectively and (ii) to change the required consummation date to November 29, 2024.

On October 2, 2024, the Company, Parent and Merger Sub entered into the third amendment to the A&R Merger Agreement (the Third Amendment), to (i) change the date of the Third Parent Equity Investment Date (as defined in the A&R Merger Agreement) from September 30, 2024 to October 2, 2024, (ii) change the Third Parent Equity Investment from 1,500 shares of Series F-1 Preferred Shares to 720 shares of Series F-1 Preferred Shares, and (iii) amend the Fourth Parent Equity Investment (as defined in the A&R Merger Agreement) from 1,500 shares of Series F-1 Preferred Shares to 2,280. The Third and Fourth Parent Equity Investments were timely completed on October 2 and October 28, 2024, respectively.

On November 19, 2024, the Company, Parent and Merger Sub entered into the fourth amendment to the A&R Merger Agreement (the Fourth Amendment) to change the required consummation date to January 31, 2025.

On March 22, 2025, the Company, Parent and Merger Sub entered into the fifth amendment to the A&R Merger Agreement (the Fifth Amendment), to (i) change the required consummation date to September 30, 2025; (ii) add a Parent investment of $1.5 million to be completed by April 7, 2025 (the Fifth Parent Investment); and (iii) add a special meeting consummation date being on or prior to September 26, 2025.

The accompanying consolidated financial statements in this Annual Report do not reflect the potential impact of the A&R Merger Agreement.

The A&R Merger Agreement, as amended, is subject to certain closing conditioned and contains customary representations, warranties and covenants and indemnifications provisions.

The consummation of the Merger is conditioned upon, among other things: (i) the Company Shareholder approval shall having been obtained in accordance with applicable Law; (ii) no governmental entity having jurisdiction over any party shall have issue any order, decree, ruling injunction or other action that is in effect restraining the Merger; (iii) a voting agreement shall have been executed and delivered by the parties thereto; (iv) all Company preferred stock shall have been converted to Company common stock except for the Unconverted Company Preferred Stock (as defined by the A&R Merger Agreement); (v) the Company shall have received agreements from all of the holders of the Company's warrants, duly executed, containing waivers with respect to any fundamental transaction, change in control or other similar rights that such warrant holders may have under any such Company warrants and exchange such Company warrants as they hold for an aggregate of not more than 930,336 shares of Parent Preferred Stock (as defined in the A&R Merger Agreement); (vi) the Company shall have cashed out any other warrant holder who has not provided a warrant holder agreement, provided, however, that the aggregate amount of such cash out for any and all other warrant holders who have not provided a warrant holder agreement shall not exceed $0.15 million; (vii) the Company shall have obtained waivers from holders of Company convertible notes of the original principal amount thereof with respect to any fundamental transaction rights such Company convertible note holders may have under any such Company convertible notes, including any right to vote, consent or otherwise approve or veto any of the transaction contemplated by this A&R Merger Agreement; (viii) Aditxt shall have received sufficient financing to satisfy its payment obligations under the A&R Merger Agreement; (ix) the requisite stockholder approval shall have

been obtained by Aditxt at a special meeting of its stockholders to approve the Parent Stock Issuance (as defined in the A&R Merger Agreement); (x) Aditxt shall have received a compliance certificate from the Company certifying Company complied with all reps and warranties in the A&R Merger Agreement; (xi) Aditxt shall have received waivers from the parties to the agreements listed in Section 7.2(f) of the A&R Merger Agreement Parent Disclosure Letter of the issuance of securities in a "Variable Rate Transaction" (as such term in defined in such agreements); (xii) Parent shall have received a certificate certifying that no interest in the Company is a U.S. real property interest, as required under U.S. treasury regulation section 1.897-2(h) and 1.1445-3(c); (xiii) Aditxt shall have paid, in full, the Repurchase Price, as defined in the Fourth Amendment to the Securities Purchase and Security Agreement dated as of September 8, 2023, by and among the Company, Baker Brothers Life Sciences, L.P., 667, L.P. and Bakers Bros. Advisors LP, which was assigned to Future Pak, LLC in 2024; (xv) there shall be no more than 4,141,434 dissenting shares that are Company common stock or 98 dissenting shares that are Company preferred stock; (xiv) Company shall have received from Aditxt a compliance certificate certifying that Parent has complied with all representations and warranties; and (xv) that Aditxt shall be incompliance with stockholders' equity requirements in Nasdaq listing rule 5550(b)(1).

In connection with the Merger Agreement, Aditxt, the Company and the holders (the Holders) of certain senior indebtedness of Evofem (the Notes) entered into an Assignment Agreement dated December 11, 2023 (the December Assignment Agreement), pursuant to which the Holders assigned the Notes to Aditxt in consideration for the issuance by Aditxt of (i) an aggregate principal amount of $5.0 million in secured notes of Aditxt due on January 2, 2024 (the January 2024 Secured Notes), (ii) an aggregate principal amount of $8.0 million in secured notes of Aditxt due on September 30, 2024 (the September 2024 Secured Notes), (iii) an aggregate principal amount of $5.0 million in ten-year unsecured notes (the Unsecured Notes), and (iv) payment of $0.2 million in respect of net sales of PHEXXI in respect of the calendar quarter ended September 30, 2023.

Our Leadership Team

We have assembled a world-class team with industry-recognized expertise in women's sexual and reproductive health.

The team is led by Saundra Pelletier, an expert in women's health from puberty to menopause. She has served as Chief Executive Officer, President and Executive Director of Evofem Biosciences since February 2015, and as interim Chair of the Board since November 2021. She has been responsible for the Company's growth and evolution, led Evofem's transition to the public market in January 2018, and led multiple equity financing rounds which have raised over $500 million.

During her more than 25 years of experience in the pharmaceutical industry, Ms. Pelletier has launched pharmaceutical brands worldwide and expanded indications of female healthcare brands in multiple countries. Her experience includes a comprehensive range of women's healthcare products, cardiovascular drugs, pain management agents, sleep therapeutics and medical devices. She has had oversight and accountability for Sales, Marketing, Operations, Medical Affairs, Regulatory Affairs, Manufacturing, Customer Service, Business Development and Strategic Partnerships.

Our Chief Financial Officer, Ivy Zhang, is a trusted leader and a seasoned finance executive who is dedicated to advancing our mission of addressing the unmet sexual and reproductive health needs of women. She joined Evofem as Chief Financial Officer on April 13, 2023 and leads our finance organization and financial activities including financial planning and analysis, accounting, external audit, tax, controllership, and treasury functions. Ms. Zhang has more than 16 years of financial and accounting experience spanning diverse industries, including pharmaceuticals and medical devices. Most recently she was Vice President Corporate Controller of HUYABIO International. From March 2018 to November 2022, she held increasingly senior leadership roles in Evofem's finance team, ultimately serving as Controller. Earlier in her career, Ms. Zhang served in finance positions for more than two and a half years at SeaSpine Holdings Corporation (a public medical and therapeutic technology and device company) and approximately seven years at Ernst & Young LLP. On April 13, 2023, the Board of Directors appointed her Secretary.

Our Strategy

Key elements of our strategy include:

● ***Successfully commercialize PHEXXI.*** Currently, our primary focus is the successful commercialization of PHEXXI in the U.S. Outside the U.S., we intend to commercialize PHEXXI through strategic partnerships or license agreements, such as the licensing agreement with Pharma 1. We believe this approach will allow us to effectively deploy our capital to maximize the inherent value of PHEXXI for the benefit of all stakeholders.

● ***Successfully commercialize SOLOSEC.*** In July 2024, we expanded our commercial portfolio by acquiring global rights to SOLOSEC, an oral antimicrobial agent that provides a complete course of therapy for the treatment of two common sexual health infections with just one dose. SOLOSEC is FDA-approved for the treatment of bacterial vaginosis (BV), a common vaginal infection, in females 12 years of age and older, and *Trichomonas vaginalis*, a common sexually transmitted infection (STI), in people 12 years of age and older. SOLOSEC has the same call point as PHEXXI, enabling us to leverage our commercial infrastructure and strong physician relationships. We relaunched SOLOSEC in November 2024 and our continued focus will be on ensuring the success of the commercialization efforts.

● ***Leverage our U.S. sales force through business development***. We intend to opportunistically acquire, in-license additional commercial or launch-ready products to enhance our offerings and complement our core competencies in women's health. In addition to increasing revenues, the addition of other commercial assets would diversify our revenue stream. We may also defray sales force costs by promoting synergistic products for other companies on a fee-for-service basis.

Contraceptive Market Overview

U.S. Contraceptive Market

The U.S. is the largest commercial market worldwide and presents the greatest opportunity for PHEXXI and other women's health products. The total U.S. contraceptive market was valued at $8.7 billion in 2024 and is expected to reach approximately $12 billion by 2030 with a compound annual growth rate of 4.7% (*source: Grand View Research, U.S. Contraceptive Market Size, Share & Trends Analysis Report By Product and Segment Forecasts, 2023 – 2030.*)

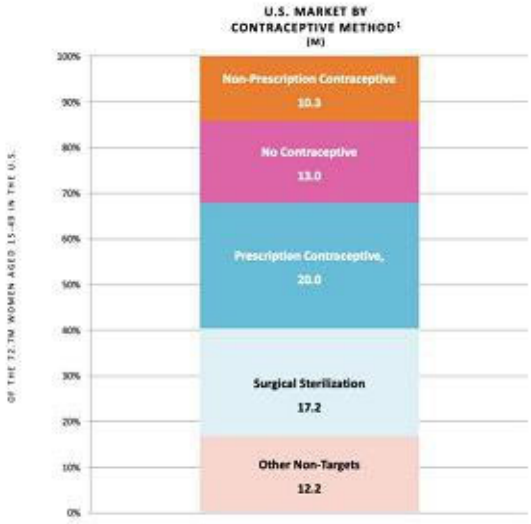
In the U.S., current contraceptive options include:

- devices designed to prevent pregnancy through physical means, such as condoms and diaphragms;
- hormone-based pharmaceutical products, including oral contraceptives (OCs), vaginal rings, transdermal patches, intramuscular injections, subcutaneous implants and intrauterine devices (IUDs). These can be associated with undesirable side effects such as weight gain, loss of libido and mood changes that may lead women to discontinue their use and seek alternative contraceptive methods. Hormonal birth control is also associated with a slight increase in the risk of breast cancer, as published in the peer-reviewed journal *PLOS Medicine* in March 2023;
- a hormone-free copper IUD; and
- PHEXXI, a prescription vaginal pH modulator that was introduced to the market in September 2020.

The vast majority of contraceptive products require a prescription in the U.S. Besides condoms and a progestin-only OC that was converted to over-the-counter (OTC) status in 2024, the only currently available OTC contraceptive products in the U.S. are spermicides that contain nonoxynol-9 (N-9), a surfactant (detergent).

As shown in the chart below, which is based on data from the 2017–2019 National Survey of Family Growth, of the 72.7 million women of reproductive age (15-49) in the U.S., 13.0 million women use no method of birth control, putting them at risk of unintended pregnancy. An additional 10.3 million women in the U.S, rely on condoms or some other form of non-hormonal OTC birth control (e.g. rhythm, withdrawal). Another 20.0 million women in the U.S.

use prescription birth control methods; these are predominantly hormone-based with the sole exception of the copper IUD. This study predated the FDA-approval and U.S. launch of PHEXXI in 2020 as well as the 2024 switch of Opill from prescription to OTC status.



Source: Daniels-K-and-Abma-J.-Current-Contraceptive-Status-Among-Women-Aged-15-49_NCHS-Data-Brief-Number-388-October-2020.pdf (evofem.com)

Per the NCHS-published data, an aggregate 23.3 million women who are currently at risk for pregnancy are not using hormone-based contraceptives as their primary form of contraception. Evofem hopes that PHEXXI will grow the prescription birth control market through adoption by women in these groups.

Through the growing utilization of GLP-1 prescription medications like Ozempic, Mounjaro and Zepbound, a new opportunity for PHEXXI has emerged. GLP-1s may make oral birth control pills less effective at certain points in the dosing schedule. Per the USPI, prescribers are instructed to "advise patients using oral contraceptives to switch to a non-oral contraceptive method or add a barrier method" to prevent unintended pregnancy during these times. PHEXXI can be prescribed to prevent unintended pregnancy in these patients. We aim to increase awareness among GLP-1 users and prescribers to build adoption of PHEXXI among women concurrently taking GLP-1s and oral birth control pills.

Market Opportunity: Contraception

Hundreds of millions of women worldwide seek sexual and reproductive health products that provide them with their self-defined control of their individual needs during their (on average) 30+ years of fertility. However, an estimated 218 million women who want to avoid pregnancy are not using safe, modern methods of contraception and nearly half of all pregnancies – 112 million each year - are unintended according to the United Nations 2024 State of World Population report.

According to the CDC, reducing the percentage of all unintended pregnancies has been one of the National Health Promotion Objectives since its establishment in 1980. Approximately two million unintended pregnancies occur in the U.S. annually; 36%, or 1.97 million of the 5.51 million total pregnancies in the U.S., were unintended in 2019. (CDC National Center for Health Statistics (NCHS). *National Pregnancy Rate Estimates* released April 12, 2023).

Our Commercial Products: PHEXXI and SOLOSEC

PHEXXI

PHEXXI® (lactic acid, citric acid and potassium bitartrate) vaginal gel is the only FDA-approved, hormone-free, on-demand, woman-controlled prescription contraceptive drug product available in the U.S. We believe PHEXXI's attributes address significant gaps and underserved and unmet needs in the contraceptive market and make it an attractive contraceptive choice for women.

PHEXXI key benefits:

- **Hormone-free:** PHEXXI is an innovative gel that works to prevent pregnancy without the use of hormones. Because PHEXXI is completely hormone-free, women are less likely to worry about the hormone-related side effects, like weight gain, mood swings, or blood clots which are associated with hormonal birth control methods.

- **Only when you need it:** With PHEXXI, women no longer need to have birth control in their bodies 24/7. PHEXXI is used in the moment, 0-60 minutes before each and every act of sex, so no daily commitment is required. This also makes PHEXXI easily reversible, providing women with a flexible option for family planning.

- **First in class:** PHEXXI is the first and only hormone-free prescription birth control gel that women control. PHEXXI works to prevent pregnancy by maintaining the vaginal pH, which reduces sperm motility, and lowers the chance of sperm reaching the egg. This revolutionary mechanism of action is unique to PHEXXI, meaning we know of no other products like it in the market.

- **Woman-controlled:** PHEXXI puts women in control of their bodies and their pregnancy prevention. With PHEXXI, there is no need to rely on a partner to bring a condom, to take a pill at the same time every day, and no need for an in-office injection or procedure to prevent pregnancy. The quick and easy pre-sex application is designed with spontaneity and convenience in mind.

PHEXXI is designed to address underserved and unmet needs in the birth control market, as seen in the table below.

Prescription Contraceptive Products and Associated Benefits

Product Class	Non-Hormonal	No Systemic Side Effects	Non-invasive	Convenient
Vaginal pH Modulator (*i.e.*, PHEXXI)	✓	✓	✓	✓
28 Day OCs			✓	
Extended Regimen OCs			✓	
Hormone Releasing IUDs				✓
Copper IUD	✓	✓		✓
Implant				✓
Vaginal Ring			✓	✓
Transdermal Patch			✓	

Vaginal pH Modulator Mechanism of Action

A normal vaginal pH of 3.5 to 4.5 is important for maintaining good vaginal health. At this optimal pH level, the vagina contains a balance of necessary healthy bacteria. Additionally, a vaginal pH in this range is inhospitable to sperm as well as certain viral and bacterial pathogens.

PHEXXI was developed to have acid-buffering (pH 3.5), lubricating and viscosity-retaining properties to provide effective acidification of the male ejaculate in the vagina. Typically, the introduction of semen (pH = 7.2-8.0) into the vagina causes a rise in pH above 6.0 due to the alkalinity of the ejaculate, which neutralizes the normally

acidic vaginal environment and allows for the survival of sperm. The active ingredients in PHEXXI produce a normal vaginal pH (3.5-4.5) even in the presence of semen, creating an inhospitable environment for sperm. The maintenance of the acidic vaginal pH reduces the availability of calcium ions which are needed to drive sperm tail movement. *In vitro* studies show immediate sperm motility reduction. PHEXXI prevents pregnancy by reducing sperm motility, inhibiting sperm from reaching the ovum to form a zygote. Other properties contributing to PHEXXI's mechanism of action are its capacity to maintain sufficient viscosity even upon dilution with the introduction of semen into the vagina, impede cervical mucus penetration by sperm, and form a protective layer over the vaginal and cervical epithelium.

SOLOSEC

In July 2024, we expanded our commercial portfolio by acquiring global rights to SOLOSEC® (secnidazole) 2g oral granules, a single-dose oral antimicrobial agent that provides a complete course of therapy with just one dose for the treatment of two common sexual health infections. SOLOSEC is FDA-approved for the treatment of two sexual health diseases: bacterial vaginosis (BV), a common vaginal infection, in females 12 years of age and older, and *Trichomonas vaginalis*, a common sexually transmitted infection (STI), in people 12 years of age and older. SOLOSEC has the same call point as PHEXXI, enabling us to leverage our commercial infrastructure and strong physician relationships.

Bacterial Vaginosis

Bacterial vaginosis (BV) affects an estimated 21 million women in the U.S., approximately 29% of the U.S. population, making it the most common vaginal condition in women ages 15-44. It results from an overgrowth of bacteria, which upsets the balance of the natural vaginal microbiome and can lead to symptoms including odor and discharge. Of interest, BV raises the pH of the vagina, making it a more friendly environment for trichomoniasis and other STIs; approximately 20% of BV patients also have trichomoniasis.

If left untreated, BV can have serious health consequences. Untreated or improperly treated BV is associated with increased risk of infection with STIs like HPV, herpes, trichomoniasis, chlamydia, gonorrhea and HIV, as well as transmission of STIs to a partner. Additional risks include developing pelvic inflammatory disease (PID), which can threaten a women's fertility, and complications with gynecological surgery.

There are several currently available treatments for BV. SOLOSEC is uniquely designed for convenient, safe, single-dose oral administration in the BV treatment market, as seen in the table below.

	SOLOSEC® (secnidazole) oral granules 2g	**Flagyl ER®** (metronidazole extended release tablets) 750 mg	**Tindamax®** (tinidazole tablets) 500 mg	**Clindesse®** (clindamycin phosphate) vaginal cream, 2%	**Xaciato®** (clindamycin phosphate) vaginal gel, 2%	**Metrogel®** (metronidazole) vaginal gel, 0.75%	**Nuvessa®** (metronidazole) vaginal gel, 1.3%
BV INDICATION	✓	✓	✓	✓	✓	✓	✓
NO BOXED WARNING	✓			✓	✓	✓	✓
TESTED NEGATIVE FOR SIGNIFICANT INTERACTIONS WITH A COMMON ORAL CONTRACEPTIVE [1]	✓						
SINGLE DOSE	✓			✓	✓		✓
DOSING	1x / 1 day by mouth	1x / 7 days by mouth	2g 1x / 2 days **or** 1g 1x/ 5 days by mouth, with food	1x / 1 day intravaginally	1x / 1 day intravaginally	1x or 2x day / 5 days intravaginally	1x / 1 day intravaginally

The comparative efficacy of SOLOSEC vs. these treatments has not been adequately studied. This is not a complete list of attributes for each product that may be important to a clinical decision. For the most updated information, consult the PI for each product.

While oral metronidazole is the current standard of care to treat BV, research has shown that as many as 50% of patients with BV do not adhere to a full course of metronidazole treatment (500mg 2x per day x 7 days). 58% of women who do not complete therapy will have a recurrence within one year. Noncompliance to a multiple-day metronidazole regimen is a contributing factor to persistent BV.

In clinical trials, SOLOSEC demonstrated clinically and statistically significant efficacy in the treatment of BV with just one dose; 68% of patients treated with SOLOSEC did not require any additional treatment for BV. Guidelines for the American College of Obstetricians and Gynecologists (ACOG) in 2020 and the U.S. Centers for Disease Control (CDC) in 2021 each include single dose SOLOSEC for the treatment of BV.

Trichomoniasis

Trichomoniasis (Trich) is the most common non-viral STI in the world. It is caused by a parasite called *Trichomonas vaginalis* and affects both women and men. All sexual partners of an infected person must be treated to prevent reinfection with the parasite. In 2018, there were an estimated 6.9 million new *T. vaginalis* infections in the U.S. According to the CDC, the U.S. prevalence of *T. vaginalis* is 2.1% among females and 0.5% among males, with the highest rates among Black females (9.6%) and Black males (3.6%). A study of STD clinic attendees in Birmingham, Alabama, identified a prevalence of 27% among women and 9.8% among men. Approximately 70% of women with trichomoniasis are also infected with the bacteria that cause BV.

In clinical trials, a single dose of SOLOSEC demonstrated a cure rate of 92.2% for Trich in women, while reported cure rates in males range from 91.7%-100%.

SOLOSEC's one-and-done dosing and the resulting high level of compliance is believed to be a significant differentiator. Non-compliance to a multi-day metronidazole regimen is a contributing factor to persistent Trich or BV; and ACOG and the CDC no longer recommend single dose metronidazole to treat Trich in women.

Commercialization Strategy

Evofem's commercial operations are focused on the U.S., which is the largest commercial market worldwide and we believe presents the greatest opportunity for PHEXXI, SOLOSEC, and other women's health products. Our strategy is to commercialize PHEXXI, SOLOSEC, and potentially other innovative women's health products in the U.S. through our dedicated sales team, supported by a telehealth platform.

Outside the U.S., the Company's strategy is to commercialize our products in global markets through commercial partnerships and/or license agreements. PHEXXI was approved in Nigeria on October 6, 2022, as Femidence™ by the National Agency for Food and Drug Administration and Control. PHEXXI has been submitted for approval in Mexico, Ethiopia and Ghana. In July 2024, we licensed commercial rights to PHEXXI in the Middle East to Pharma 1 Drug Store, LLC, an emerging Emirati health care company (Pharma 1). The licensed territory includes the United Arab Emirates (UAE), Kuwait, Saudi Arabia, Qatar and certain other countries in the region. Pharma 1 is responsible for obtaining and maintaining any regulatory approvals required to market and sell PHEXXI, and will handle all aspects of distribution, sales and marketing, pharmacovigilance and all other commercial functions in these countries. Evofem will supply PHEXXI to Pharma 1 at cost-plus. Pharma 1 is expected to file for regulatory approval of PHEXXI in the UAE in the first half of 2025 and is contractually obligated to launch within 60 days of approval.

Commercialization of PHEXXI and SOLOSEC in the U.S.

The U.S. is the largest commercial market worldwide and presents the greatest opportunity for PHEXXI, SOLOSEC, and other women's health products. Our sales force promotes PHEXXI and SOLOSEC directly to obstetrician/gynecologists and their affiliated health professionals, who collectively write the majority of prescriptions for contraceptive products and treatments for bacterial vaginosis (BV) and trichomoniasis. As of March 14, 2025, our sales force consisted of 16 regional sales representatives, who have on average 14 years in the Pharma industry and 12 years in women's health. They are supported by two business directors and an SVP of Commercial Operations. The sales team is geographically focused on territories with most favorable PHEXXI coverage, targeting HCPs with an abundance of the PHEXXI patient type and/or who are likely prescribers of SOLOSEC.

We also offer women direct access to PHEXXI via a telehealth platform. Using this platform, women can directly meet with a healthcare provider (HCP) to determine if they are eligible for a prescription and, if so, have the prescription written by the HCP, then filled and mailed directly to them by a third-party pharmacy.

Our commercial strategy for PHEXXI includes targeting women of reproductive potential in the U.S., We focus our efforts on 1) the approximately 23 million women who are not currently using hormonal contraception and 2) the approximately 20 million women who are using a prescription contraceptive, some of whom, particularly pill users, may be ready to move to an FDA-approved, non-invasive, hormone-free contraceptive. An important subset of this population is contraceptive pill users also take GLP-1s and who may benefit from concurrent use of PHEXXI to prevent unintended pregnancy during GLP-1 dose evaluation periods. Additionally, we target certain identified target HCP segments.

Our commercial strategy for SOLOSEC is directed towards approximately 3,000 HCPs within the OB/GYN space, with a particular focus on current SOLOSEC. We aim to build advocates through national initiatives and Key Opinion Leader (KOL) development while leveraging the established relationships of our experienced sales team.

BV is the most common vaginal condition in women of reproductive age in the United States, affecting an estimated 21 million women. The condition results from an overgrowth of certain bacteria, which upsets the balance of the natural vaginal microbiome and can lead to symptoms of odor or discharge. The CDC, in its 2021 STI Treatment Guidelines, recommends treatment for bacterial vaginosis in women with symptoms. Our commercial strategy for SOLOSEC reflects the coverage reality that SOLOSEC is best for women who have had BV previously.

Of interest, BV raises the pH of the vagina, increasing the likelihood of concomitant infection with trichomoniasis and other STIs; approximately 20% of BV patients also have trichomoniasis.

There are an estimated 6.9 million new trichomoniasis infections in the U.S. each year. Up to 70% of people infected with this STI are unaware that they are infected and may unwittingly pass the parasite to sexual partners. Untreated infections might last from months to years. Undiagnosed infections and lack of compliance with multi-day treatment regimens are critical contributing factors to the prevalence of this parasitic STI. All sexual partners of people infected with trichomoniasis should be treated with the same dose and at the same time to prevent reinfection.

SOLOSEC is designed to be easy to take; one oral dose contains a complete course of treatment for BV and trichomoniasis, which appeals to patients and HCPs alike.

Payer and Reimbursement Strategy in the U.S.

Pricing Strategy

Our pricing strategy for PHEXXI was informed by extensive pre-approval payer research including discussions with decision makers at major health plans and PBMs across the U.S. who at the time controlled nearly 83 million commercial lives. Based on this gathered intelligence, we initially priced PHEXXI at $267.50 per box of 12 applicators and each year we update the pricing to account for changes to the consumer price index. Our pricing, when annualized, is comparable to all other commercially available branded prescription contraceptives.

PHEXXI is classified in the databases and pricing compendia of Medi-Span and First Databank, two major drug information databases that payers can consult for pricing and product information, as the first and only “vaginal pH modulator.”

Our pricing strategy for SOLOSEC is a continuance of legacy pricing established by Lupin, from which we acquired the asset in July 2024. While SOLOSEC is positioned at a different price point compared to some other products available for similar indications, its convenient one-time oral dosing supports better patient compliance, which could contribute to cost benefits from a health economics perspective. As legacy payor contracts expire, we are re-evaluating the strategy and making adjustments.

Third-party Payers

Market acceptance and sales of PHEXXI and SOLOSEC depend, in part, on the extent to which reimbursement is available from third-party payers, which include government health administration authorities, managed care organizations, private health insurers and PBMs. Third-party payers decide which therapies they will pay for and establish reimbursement levels for those therapies. Decisions regarding the extent of coverage and amount of reimbursement to be provided for any product are made on a payer-by-payer basis. One payer’s determination to

provide coverage for a drug does not assure that other payers will also provide coverage and adequate reimbursement for that drug.

Managed care organizations and other private insurers frequently adopt their own payment or reimbursement reductions. The continued integration between commercial health plans and PBMs has increased the negotiating power of these entities. Third-party payers increasingly employ formularies to control costs; they negotiate discounted prices in exchange for formulary inclusion. These formularies often do not include all products approved for any particular indication. We continue to work with health plans and PBMs to improve and secure additional formulary positioning for PHEXXI and SOLOSEC.

In the second quarter of 2022, we successfully negotiated a contract with one of the largest PBMs in the nation, which added PHEXXI to its formulary with no restrictions for most women covered by the plan. The agreement was retroactive and took effect January 1, 2022 and is representative of approximately 46 million lives. An additional 13.7 million lives are covered under our December 2020 PHEXXI contract award from the U.S. Department of Veterans Affairs.

SOLOSEC Third-Party coverage involves more barriers to patient access, such as prior authorizations, because there are less expensive generics available in the class. However, the one-and-done dosing and improved compliance makes getting SOLOSEC approved with a prior authorization easier. As a result, our sales team focuses on the patient type with repeated or persistent BV.

We also participate in government programs including the 340B and the Medicaid Drug Rebate Program, which took effect January 1, 2021, and affords access to PHEXXI and SOLOSEC for the U.S. Medicaid population.

Affordable Care Act

The Affordable Care Act (ACA) guarantees coverage of women's preventive services, including free birth control and contraceptive counseling, for all individuals and covered dependents with reproductive capacity. This includes all contraceptives approved, granted, or cleared by the FDA. The ACA requires most health plans to cover STI screenings and counseling, for certain populations, at no cost.

History

Under section 2713 of the Public Health Service (PHS) Act, group health plans and health insurers are required to cover preventive care and screenings under guidelines issued by the Health Resources and Services Administration (HRSA). PHS Act section 2713 took effect when added by the Affordable Care Act (ACA) in 2010.

HRSA guidelines issued in 2019 required broad coverage of contraceptive care and services for women. HRSA issued updated guidelines in late 2021, under which:

a. The full range of FDA- approved, -granted, or -cleared contraceptives, effective family planning practices, and sterilization procedures should be available as part of contraceptive care.

b. The full range of contraceptives includes those currently listed in the FDA's Birth Control Guide and any additional contraceptives approved, granted, or cleared by the FDA.

On January 1, 2023, the current HRSA Women's Preventive Services Guidelines took effect for calendar year plans.

Separately, on January 10, 2022, the U.S. Department of Health and Human Services (HHS), alongside the Departments of Labor and of the Treasury (the Departments) issued updated guidance related to contraceptive access. Specific directives to healthcare plans under the Departments' FAQ Update include that:

a. Plans are required to cover an FDA- approved, cleared, or granted contraceptive, if a provider deems it medically necessary, at $0 cost share, whether or not it is specifically identified in the current FDA Birth Control Guide.

b. Plans may not require patients to try and fail multiple options within a method, or force trying and failing other methods, if a provider deems a product medically necessary.

The Departments also established clear communications channels for consumers with concerns about their plan's compliance with HSRA requirements.

Collectively, this new guidance specifies that most insurers and pharmacy benefit managers (PBMs) must provide coverage, with no out-of-pocket costs to women, for FDA-approved contraceptive products, like PHEXXI® (lactic acid, citric acid and potassium bitartrate), prescribed by healthcare providers.

In July 2022 after the fall of Roe v. Wade and in the wake of action in many states to restrict access to emergency contraception, the Departments released further guidance regarding birth control coverage. Key points of this guidance include:

- Most private health plans and health insurance issuers must cover contraceptives at no additional cost to individuals under the Affordable Care Act no matter where they live or work.
- Violators of the preventive care coverage requirements may be subject to the $100 per person per day excise tax under section 4980D of the Internal Revenue Code or a civil monetary penalty under PHS Act section 2723.
- The Departments "will take enforcement action as warranted."

As of and since January 1, 2023, most insurers and pharmacy benefit managers (PBMs) must provide coverage, with no out-of-pocket costs (*e.g.* $0 copay) to the subscriber or dependent, for FDA-approved contraceptive products, like PHEXXI, prescribed by healthcare providers.

As a result, to comply with these Guidelines, payers are increasingly covering PHEXXI by:

- Adding PHEXXI to formulary (commercial insurers) or preferred drug list (Medicaid)
- Removing the requirement for a Prior Authorization letter from the HCP (commercial insurers)
- Moving PHEXXI to $0 copay (commercial insurers)

Birth Control Guide

The FDA Birth Control Guide (the Guide) was developed and is used as an educational tool by many obstetrician/gynecologists to assist in counseling patients on their contraceptive options and to help them find the method that best suits their needs. It was developed more than a decade ago has not been undated since and therefore, does not reflect subsequent changes to the contraceptive landscape including methods that were subsequently approved by the FDA, notably the vaginal pH modulator (PHEXXI).

Methods not on the current, outdated Guide may be underrepresented in contraceptive counseling dialogues. Evofem therefore believes the Guide should include all FDA-approved methods of birth control. However, while the updated HSRA Guidelines discussed above are highly favorable to PHEXXI, they remove the impetus for the FDA to update the Guide.

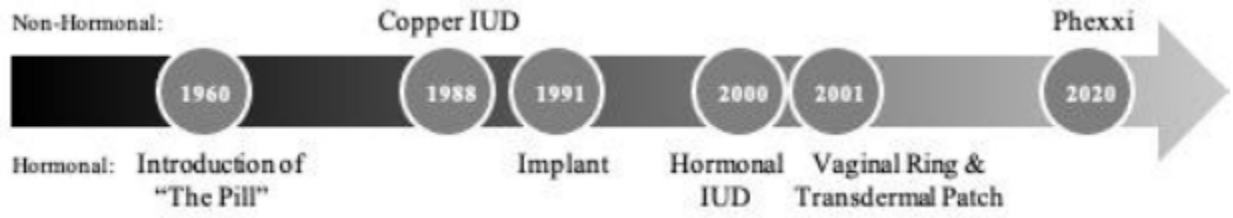
Further, even though the FDA Guide was intended as an educational tool, certain insurers have used it to block coverage of methods not included in the Guide. While this is explicitly prohibited by the current HSRA Guidelines, and there has been considerable progress since January 1, 2023, two notable plans continue to flout the law.

To proactively address this conundrum, in 2022 Evofem developed and introduced a new educational chart that provides high-level information about birth control methods that are currently available to women in the U.S., adding new categories including vaginal pH modulator.

This educational tool is intended to facilitate patient-centric contraceptive counseling by focusing first and foremost on whether or not a woman is willing and/or able to take exogenous hormones; for those who are not, hormone-free options including PHEXXI are prominently displayed and discussed. The Evofem-developed chart has been extremely well received and has had a positive impact with HCPs and patients alike.

Contraceptive Market Landscape

The modern contraception market was established in 1960 with the introduction of "the pill," the first oral contraceptive widely available to women in the U.S. Innovation and new product introductions in the women's reproductive and sexual health care arena have been limited when compared to other therapeutic categories. As shown in the timeline below, there was no notable innovation providing additional options in women's reproductive health until almost 30 years after the introduction of "the pill," when pharmaceutical companies introduced the non-hormonal copper IUD and synthetic hormonal products with different hormonal delivery systems, including the hormonal IUD, implants, the patch, and vaginal ring.



While several new contraceptive category entrants have been introduced in recent years, Evofem believes PHEXXI is the first innovative contraceptive method introduced in the U.S. since NuvaRing was approved by the FDA in 2001.

U.S. Market

In the U.S. today, contraceptive options include:

- devices designed to prevent pregnancy through physical means, such as condoms and diaphragms.
- hormone-based pharmaceutical products, including oral contraceptives (OCs), vaginal rings, transdermal patches, intramuscular injections, subcutaneous implants and intrauterine devices (IUDs). These can be associated with undesirable side effects such as weight gain, loss of libido and mood changes that may lead women to discontinue their use and seek alternative contraceptive methods. Further, a peer-reviewed analysis published in the journal PLOS Medicine in March 2023 found that the use of all kinds of hormonal birth control is associated with a slight increase in the risk of breast cancer.
- a hormone-free copper IUD; and
- PHEXXI, a prescription vaginal pH modulator that was introduced to the market in September 2020.

As shown in the "U.S. Market by Contraceptive Method" chart above, of the 72.7 million women of reproductive age (15-49) in the U.S., 13.0 million women use no method of birth control, putting them at risk of unintended pregnancy. An additional 10.3 million women in the U.S. rely on condoms or some other form of non-hormonal OTC birth control (e.g. rhythm, withdrawal). Another 20.0 million women in the U.S. use prescription birth control methods, which are predominantly hormone-based with the sole exception of the copper IUD. Note: this study and its data predate the commercial availability in 2020 of PHEXXI as well as the 2024 switch of Opill from prescription to OTC status.

An aggregate 23.3 million women who are currently at risk for pregnancy and are not using hormone-based contraceptives as their primary form of contraception. Evofem expects that PHEXXI will grow the prescription birth control market through adoption by women in these groups.

As women's expectations change throughout their contraceptive journey, we expect PHEXXI to compete for market share in at least three categories:

1. Hormonal short-acting reversible contraceptives consisting of oral contraceptive pills, patches, and rings;

2. Long-Acting Reversible Contraception, comprising IUDs, implants, and injectables; and

3. OTC methods, dominated primarily by the male condom.

1. Short-Acting, Reversible Hormonal Contraceptives (Predominantly Prescription)

Oral contraceptives

Oral contraceptives (OCs), also known as the pill, are the most commonly used form of birth control in the U.S. today. There are two main kinds of hormonal OCs: combination birth control pills, which contain both estrogen and progestin, and the progestin only pill (POP). In 2024 the POP brand Opill (Perrigo) became commercially available OTC. Combination OCs remain prescription products. Use of either kind is associated with a slight increase in the risk of breast cancer. OCs typically must be taken at the same time every day to be the most effective. If the POP is taken more than three hours late (or missed entirely), the user is advised to use supplemental non-hormonal contraception, like Phexxi, for the next two days to prevent unintended pregnancy.

Contraceptive Patch

The weekly contraceptive patch was introduced in 2000 by Johnson & Johnson's Janssen division; however, deaths resulting from venous thromboembolism due to hormonal exposure had a significant negative impact on the patch and led to label changes restricting utilization. Following the loss of exclusivity, Johnson & Johnson's Janssen division exited women's health care and contraception as a promotional category. A new branded patch was launched in late 2020 under the brand name Twirla (Agile Therapeutics) and is competing against a generic entrant Xulane (Mylan).

Vaginal Ring

The hormonal vaginal ring was introduced to the market in 2001 by Merck & Co.; generic versions are now available. The ring is used for three weeks and then removed for a week during menses and a new hormonal vaginal ring is inserted. The efficacy of the vaginal ring is similar to hormonal oral contraception. A meta-analysis of 18 studies found that users of the vaginal ring reported more vaginal irritation and discharge than combination pill users, but less nausea, acne, irritability, depression, and emotional changes *(source: Lopez et al. Skin patch and vaginal ring versus combined oral contraceptives for contraception. Cochrane Database Syst Rev. 2013 Apr 30;2013(4):CD003552. doi: 10.1002/14651858.CD003552.pub4)*.

An annual hormonal vaginal ring was launched in the U.S. in 2020 under the brand name Annovera (Mayne Pharma).

2. Long-Acting Reversible Contraception (Prescription)

Long-acting reversible contraception (LARC) is not dependent on user adherence, which appeals to those who benefit from a passive form of birth control with no daily requirement to take a pill. LARC methods include the Intrauterine Device (IUD) and the Contraceptive Implant.

IUDs

The copper IUD was introduced to the market in 1988 and provides protection by disrupting sperm motility and damaging sperm so that they are prevented from joining with an ovum. Today, the copper IUD is principally marketed by Cooper Surgical, Inc. as Paragard.

The hormonal IUD is principally offered under the brand names Kyleena, Skyla and Mirena, a family of products from Bayer Pharmaceuticals. All IUDs must be inserted and removed by a physician.

Many women have opted against the IUD for 1) fear of a bad insertion experience; a peer-reviewed study published in 2015 found that "all women had a high expectation of pain prior to IUD insertion." *(source: Brima et al. A comparison of the expected and actual pain experienced by women during insertion of an intrauterine contraceptive device. Open Access J Contracept. 2015 Feb 16;6:21-26. doi: 10.2147/OAJC.S74624.)* and 2) concern over having something in them (i.e. a "foreign body effect"), which has been frequently demonstrated in medical literature.

(source: Ferguson et al. Patient Opinions About Foreign Body Contraceptives. Women's Health Rep (New Rochelle). 2020 Oct 8;1(1):451-458. doi: 10.1089/whr.2020.0048.). Among women who opt-in to the insertion procedure, many decide to remove their IUD due to the hormonal and other side effects that they experience.

Implants

The contraception implant must be implanted under the skin and removed by a qualified HCP, requiring a medical procedure. It provides contraception by releasing hormones over a three-year period. The implant is marketed in the U.S. as Nexplanon (Organon).

Injectables

The primary injectable hormonal contraceptive on the market is Depo-Provera offered by Pfizer Inc. Each injection provides protection for up to 12 to 14 weeks, but patients must receive injections once every 12 weeks to get optimal contraceptive protection. Depo-Provera was introduced to the market in 1992.

3. OTC Methods (Non-prescription)

As noted in the "US Market by Contraceptive Method" chart above, in the U.S., an estimated 10.3 million women rely on OTC products for their contraceptive needs.

Condoms are the dominant product offering in OTC sales, with estimated domestic sales of approximately $480 million in 2023 (Fortune Business Insights). Approximately 14.2 million women use condoms, either alone, in conjunction with, or interchangeably with other forms of birth control. The predominant brands are Trojan (Church & Dwight) and Durex (Reckitt Benckiser).

Besides condoms and the POP discussed above, the only currently available OTC contraceptive products in the U.S. are nonoxynol-9 containing (N-9) spermicides, which are available in sponges, jelly/creams and foams, and have very limited utilization. These surfactant-based products can potentially cause genital irritation and inflammation that may increase the risk of contracting human immunodeficiency virus (HIV) or other STIs from an infected partner.

4. Vaginal pH Modulator (Prescription)

The first and only Vaginal pH Modulator - PHEXXI - was launched by Evofem in 2020. PHEXXI is a hormone-free, prescription contraceptive vaginal gel that women apply 0-60 minutes before intercourse. It is used on-demand, only when needed, and comes in a box of 12 pre-filled applicators.

Data on PHEXXI is not reflected in the "U.S. Market by Contraceptive Method" chart above, since the underlying study predates its commercial availability. New adopters of PHEXXI are expected to come equally from each category discussed, as interest in PHEXXI falls into three distinct segments: (1) those women who are not currently using hormone-based contraceptives; (2) those women seeking an alternative to hormonal contraception; and (3) those women who are expected to utilize PHEXXI as added protection to their current form of birth control. This last group includes women who have been placed on drugs like GLP-1s and Paxlovid, which can reduce efficacy of hormonal birth control and women who need supplemental protection after taking an OC late or missing a day entirely. Evofem's market research has indicated that the hormone-free, on-demand, woman-controlled aspect of PHEXXI makes it an attractive option across the entire competitive set.

Ex-U.S. Markets

The conditions addressed by our products are not unique to the United States; they affect women around the world.

Contraception. According to the United Nations Department of Economic and Social Affairs, nearly 1.1 billion women worldwide desire contraception. This demand is reflected by the significant market growth projections for non-hormonal birth control; Growth Plus Reports forecasts global sales of non-hormonal contraceptives will increase from $27.7 billion in 2022 to $52.2 billion by 2031.

Trichomoniasis. *Trichomonas vaginalis* is the most common non-viral STI, globally. The World Health Organization (WHO) cites an estimated 156 million new cases of *T. vaginalis* infection among people aged 15–49 years old in 2020 (73.7 million in females, 82.6 million in males). Approximately one third of new infections in this age group occur in the WHO African Region, followed by the Region of the Americas.

Bacterial vaginosis. A recent systematic review and meta-analysis reported that the prevalence of BV among women of reproductive age ranges from 23% to 29%, with the following regional prevalence estimates: 23% in Europe and Central Asia; 24% in East Asia and Pacific, Latin America and the Caribbean; 25% in the Middle East and North Africa (MENA) and sub-Saharan Africa; 27% in North America; and 29% in South Asia (Peebles K *et al*. High global burden and costs of bacterial vaginosis: a systematic review and meta-analysis. Sex Transm Dis. 2019;46(5):304-11 (https://doi.org/10.1097/ OLQ.0000000000000972)).

In markets outside of the U.S., our strategy is to establish regional and/or global partnerships by either sublicensing the commercialization rights or entering into distribution agreements with one or more third parties for the commercialization of PHEXXI and/or SOLOSEC in that market. We believe this approach will afford access to women whose lives we aim to positively impact while allowing us to maximize the inherent value of our products for the benefit of all stakeholders.

PHEXXI was approved in Nigeria on October 6, 2022, as Femidence™ by the National Agency for Food and Drug Administration and Control. PHEXXI has been submitted for approval in Mexico, Ethiopia and Ghana. In July 2024, we licensed commercial rights to PHEXXI in the Middle East to Pharma 1 Drug Store, LLC, an emerging Emirati health care company (Pharma 1). Pharma 1 is expected to file for regulatory approval of PHEXXI in the United Arab Emirates (UAE) in the first half of 2025.

Manufacturing

We outsource the manufacturing of PHEXXI to a third party. We are currently contracted with a leading US-based gel manufacturer to manufacture PHEXXI in accordance with all applicable current good manufacturing practices (cGMP) regulations, as well as in compliance with all applicable laws and other relevant regulatory agency requirements for manufacture of pharmaceutical drug products and combination drug-device products. As of December 31, 2024, we estimated that we had manufactured inventory on hand to support approximately three months of anticipated demand for PHEXXI and additional manufacturing of PHEXXI is ongoing to support further sales.

We are committed to purchasing finished goods inventory from the SOLOSEC seller through a transition period ending in November 2026 at a pre-defined unit price. After the transition period, we expect to outsource the manufacturing of SOLOSEC to a third party, similar to our handling of PHEXXI.

Our Pipeline

While Evofem's pipeline includes multiple candidates that are designed to address critical unmet needs in women's health, the Company halted all clinical development in October 2022 due to financial constraints.

EVO100 for STI Prevention

EVO100 vaginal gel was in development for the prevention of urogenital chlamydia and gonorrhea in women. Chlamydia and gonorrhea are among the many bacterial and viral pathogens that require a higher pH environment to thrive. The CDC reported that infections with these two sexually transmitted pathogens cost the U.S. healthcare system $1.0 billion, in aggregate direct and indirect costs. There are no FDA-approved drugs to prevent these sexually transmitted diseases (STIs). The FDA granted EVO100 Fast Track Designation for the prevention of chlamydia and gonorrhea, and designated EVO100 a Qualified Infectious Disease Product (QIDP) for the prevention of infection these pathogens.

The Phase 2B/3 trial (AMPREVENCE) achieved its primary and secondary endpoints, demonstrating statistically significant and clinically meaningful reductions in chlamydia and gonorrhea infections of 50% and 78%, respectively, in women receiving EVO100 vs. placebo. Based on these highly positive clinical outcomes we initiated a Phase 3 clinical trial (EVOGUARD) to evaluate EVO100 for these potential indications in 2020. On October 11, 2022, we reported that EVOGUARD did not meet its primary efficacy endpoint. We and our advisors believe the

public health response to the COVID pandemic caused changes in clinical site operations and subject behavior and actions, including deviations from following the clinical study protocol requirements related to STI acquisition, detection, and prevention, which contributed to this outcome.

EVO200 Vaginal Gel for Recurrent Bacterial Vaginosis

Our investigational candidate for the reduction of recurrent bacterial vaginosis (BV), EVO200 vaginal gel, uses the same proprietary vaginal pH modulator platform as PHEXXI. In a Phase 1 dose-finding trial for this indication, the highest dose formulation of the study drug demonstrated reduced vaginal pH for up to seven days following a single administration. The FDA has designed EVO200 as a Qualified Infectious Disease Product (QIDP) for this indication, which provides several important potential advantages including, but not limited to, longer market exclusivity.

MPT Vaginal Gel for HIV Prevention

In December 2021, we launched a collaboration with Orion Biotechnology Canada Ltd. (Orion) to evaluate the compatibility and stability of Orion's novel CCR5 antagonist, OB-002, in PHEXXI with the goal of developing a Multipurpose Prevention Technology (MPT) product candidate for indications including the prevention of HIV in women. Assuming positive preclinical results, Evofem and Orion may seek government and philanthropic funding for subsequent clinical trials of any resulting MPT vaginal gel product candidate.

Thin Film Project

In February 2020, we contracted with the University of South Australia to develop a vaginally applied thin film as a second-generation vaginal pH modulator product. The lead thin film candidates have been selected, and stability data has been generated with positive results. Next steps are to optimize the lead candidates and identify funding to proceed.

Rush License Agreement

In 2014, we entered into an amended and restated license agreement (the Rush License Agreement) with Rush University Medical Center (Rush University) pursuant to which Rush University granted us an exclusive, worldwide license of certain patents and know-how related to its vaginal pH modulator technology. Rush University submitted a patent term extension (PTE) application requesting a five-year PTE for the U.S. patent and received multiple Orders Granting Interim Extension (OGIE) which extended the expiration of the licensed patent to March 6, 2025. No further OGIE has been received and thus the patent is believed to be expired. PHEXXI remains protected in the U.S. by four additional *Orange Book* patents solely-owned by Evofem.

Pursuant to the Rush License Agreement, the Company was obligated to pay Rush University an earned royalty based upon a percentage of net sales in the range of mid-single digits until the expiration of this patent. In September 2020, the Company entered into the first amendment to the Rush License Agreement, pursuant to which the Company was also obligated to pay a minimum annual royalty amount of $0.1 million to the extent the earned royalties did not equal or exceed $0.1 million commencing January 1, 2021. Such royalty costs, included in cost of goods sold, were $0.8 million and $0.7 million for the years ended December 31, 2024 and 2023, respectively. No further royalties will be due to Rush University after the patent expiration.

We also have the right to sub-license our rights to affiliates (without the prior approval of Rush University) and to third parties (with the prior written approval of Rush University). To the extent Rush University approves of a third-party sub-license, in lieu of any royalty payment obligation under the Rush License Agreement, we would then be under an obligation to pay Rush University a sub-license fee equal to a percentage of any sublicensing revenue received from any third-party sub-licensee. Rush University retained a royalty free, non-exclusive license from us for the Rush License IP for non-commercial research purposes.

The Rush License Agreement contains additional customary representations and warranties, covenants, indemnification and insurance and confidentiality provisions for agreements of its type. The Rush License Agreement may be terminated upon mutual written consent of both parties or by a non-breaching party if the other party commits

a breach or default of any covenant in the agreement and fails to cure this breach within 30 days after receiving written notice of the breach or default.

Unless terminated in accordance with its terms, the Rush License Agreement continues until the expiration, revocation or invalidation of the last of the patents or the abandonment of the last patent application included within the licensed patents and technology, including any patent claiming an improvement made during the term of the Rush License Agreement in the course of research supported or developed by Rush University utilizing the technology.

Intellectual Property

We strive to protect the proprietary vaginal pH modulator gel technology both internationally and domestically. We seek and maintain patents intended to cover PHEXXI and its methods of use, as well as any other inventions that are commercially important to the development of our business. We endeavor to properly file patent applications for new inventions we believe may have commercial value. We also may rely on trade secrets to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

Our success will depend on our ability, in part: to obtain and maintain patent and other proprietary protection for commercially important technology, inventions and know-how related to our business; to defend and enforce our patents and other intellectual property rights; and to preserve the confidentiality of our trade secrets and operate without infringing the valid and enforceable patents and other proprietary rights of third parties. We will also rely on continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position.

Related to PHEXXI, as of March 14, 2025, we owned or had exclusive license to approximately 36 issued patents and allowed applications in the U.S. and other countries and jurisdictions, and had approximately seven patent applications pending in the U.S. and other countries and jurisdictions. This includes four U.S. patents which cover PHEXXI and its labeled indication that are listed in the U.S. FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations* (the *Orange Book*):

- U.S. Patent No. 11,992,472: Method of use patent covering contraception using PHEXXI
- U.S. Patent No. 11,337,989: Method of use patent covering contraception using PHEXXI
- U.S. Patent No. 11,439,610: Composition of matter patent covering PHEXXI
- U.S. Patent No. 10,568,855: Method of use patent covering contraception using PHEXXI

We solely own several patent families relating to the composition and therapeutic use of our vaginal pH modulator gel, which, upon issue, would expire at the earliest in 2033. We believe that our licensed and solely owned non-hormonal contraceptive gel patents and pending patent applications, combined with our substantial know-how in this field, will continue to provide opportunities for us to establish a significant barrier to competitor entry into the market.

Related to SOLOSEC, as of March 14, 2025, we owned or had exclusive license to approximately 19 issued patents and allowed applications in the U.S. and other countries and jurisdictions, and had approximately three patent applications pending in the U.S. and other countries and jurisdictions. This includes ten U.S. patents which cover SOLOSEC and its labeled indication that are listed in the *Orange Book*:

- U.S. Patent No. 11,684,607: Composition of matter and method of use patent covering SOLOSEC and use thereof for the treatment of BV
- U.S. Patent No. 11,602,522: Composition of matter and method of use patent covering SOLOSEC and use thereof for the treatment of trichomoniasis
- U.S. Patent No. 11,324,721: Method of use patent covering SOLOSEC for the treatment of trichomoniasis
- U.S. Patent No. 11,020,377: Composition of matter patent covering SOLOSEC for the treatment of BV
- U.S. Patent No. 11,000,508: Method of use patent covering SOLOSEC for the treatment of trichomoniasis
- U.S. Patent No. 11,000,507: Method of use patent covering SOLOSEC for the treatment of BV
- U.S. Patent No. 10,857,133: Composition of matter and method of use patent covering SOLOSEC and use thereof for the treatment of BV

- U.S. Patent No. 10,849,884: Composition of matter and method of use patent covering SOLOSEC and use thereof for the treatment of BV and trichomoniasis
- U.S. Patent No. 10,682,338: Method of use patent covering SOLOSEC for the treatment of BV
- U.S. Patent No. 10,335,390: Method of use patent covering SOLOSEC for the treatment of BV

In February 2025, the USPTO issued to the Company a Notice of Allowance for patent application 17/028,838, entitled "Method and Pharmaceutical Composition for Treating or Preventing Trichomoniasis and Uses Thereof." This Notice of Allowance is expected to result in the issuance of a U.S. patent that will extend SOLOSEC's IP protection by a full five years, from 2035 to 2040, which Evofem expects will be *Orange Book*-listable.

In addition to patents, we rely, and expect to rely, on trade secrets and know-how to develop and maintain our competitive positions. For example, certain aspects of the composition, manufacturing, and use of PHEXXI and SOLOSEC are protected by unpatented trade secrets and know-how. Although trade secrets and know-how can be difficult to protect, we seek to protect our proprietary technology and processes, in part, through confidentiality agreements with our employees, consultants, scientific advisors, collaborators, and contractors. We also seek to preserve the integrity and confidentiality of our data and trade secrets by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these individuals, organizations and systems, agreements or security measures may be breached and we may not have adequate remedies for these incidents. In addition, our trade secrets and know-how may otherwise become known or may be independently discovered by competitors. To the extent our consultants, contractors or collaborators use intellectual property owned by third parties in their work for us, disputes may arise as to the rights in related or resulting intellectual property, including trade secret, know-how and inventions.

Trademark Basics and Strategy

We own or have rights to various trademarks, copyrights and trade names used in our business, including EVOFEM, PHEXXI, SOLOSEC and FEMIDENCE. All of our logos and trademarks appearing in this Annual Report are the property of Evofem Biosciences, Inc. All other third-party trademarks appearing in this Annual Report are the property of their respective holders. Our use or display of other parties' trademarks, trade dress, or products in this Annual Report is not intended to, and does not, imply a relationship with, or endorsement or sponsorship of us, by the trademark, trade dress, or product owner.

Government Regulation and Product Approval

The research, development, testing, manufacture, labeling, promotion, advertising, distribution, and marketing, among other things, of our products are subject to extensive regulation by governmental authorities in the U.S. and other countries. The processes for obtaining regulatory approvals in the U.S. and in foreign countries and jurisdictions, along with subsequent compliance with applicable statutes and regulations and other regulatory requirements, require the expenditure of substantial time and financial resources.

In the U.S., the FDA regulates drugs and other medical products under the Federal Food, Drug, and Cosmetic Act (FDCA) and its implementing regulations. Failure to comply with the applicable U.S. requirements may subject us to administrative or judicial sanctions, such as FDA refusal to approve pending New Drug Applications (NDAs), warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions and/or criminal prosecution.

Post-Approval Requirements in the U.S.

Following approval of a new product or indication, the manufacturer and the approved product are subject to continuing regulation by the FDA, including, among other things: monitoring and record-keeping activities, reporting of adverse experiences, and complying with promotion and advertising requirements, which include restrictions on promoting approved drugs for unapproved uses or patient populations (known as "off-label use"). Although physicians may prescribe legally available drugs for off-label uses, manufacturers may not market or promote such uses. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability, including adverse publicity, enforcement action by the FDA, corrective advertising, consent decrees and the full range of civil and criminal penalties available to the FDA. Prescription drug promotional materials also must be submitted to the

FDA in conjunction with their first use. Further, if there are any modifications to the approved drug, including changes in indications, labeling, or manufacturing processes or facilities, the applicant may be required to submit and obtain FDA approval of a new NDA or NDA supplement, which may require the applicant to develop additional data or conduct additional preclinical studies or clinical trials.

Any limitations on approval or marketing could restrict the commercial promotion, distribution, prescription or dispensing of products. Product approvals may be withdrawn for non-compliance with regulatory standards or if problems occur while the product is on the market.

FDA regulations require that products be manufactured in specific approved facilities and in accordance with cGMPs. The cGMP regulations include requirements relating to organization of personnel, buildings and facilities, equipment, control of components and drug product containers and closures, production and process controls, packaging and labeling controls, holding and distribution, laboratory controls, records and reports and returned or salvaged products. The manufacturing facilities for any of our products must meet cGMP requirements and satisfy the FDA or comparable foreign regulatory authorities' satisfaction before it is approved and can be manufactured. Evofem relies, and expects to continue to rely, on third parties for the production of commercial quantities of PHEXXI and SOLOSEC in accordance with cGMPs. These manufacturers must also comply with cGMPs that require, among other things, quality control and quality assurance, the maintenance of records and documentation, and the obligation to investigate and correct any deviations from cGMP. Manufacturers and other entities involved in the manufacture and distribution of approved drugs or combination products are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP requirements and other laws. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. The discovery of violative conditions, including failure to conform to cGMPs, could result in enforcement actions, and the discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including recall.

After approval of a drug is granted, the FDA may withdraw the approval if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in mandatory revisions to the approved labeling to add new safety information, or imposition of additional post-market surveillance or clinical trials to assess new safety risks. Other potential consequences include, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or other enforcement-related letters or clinical holds on investigational or post-approval clinical trials;
- refusal of the FDA to approve pending NDAs or supplements to approved NDAs, or suspension or revocation of product approvals;
- product seizure or detention, or refusal to permit the import or export of products;
- injunctions or the imposition of civil or criminal penalties; and
- consent decrees, corporate integrity agreements, debarment, or exclusion from federal health care programs; or mandated modification of promotional materials and labeling and the issuance of corrective information.

In addition, the distribution of prescription pharmaceutical products is subject to the Prescription Drug Marketing Act (PDMA), which regulates the distribution of drugs and drug samples at the federal level and sets minimum standards for the registration and regulation of drug distributors by the states. Both the PDMA and state laws limit the distribution of prescription pharmaceutical product samples and impose requirements to ensure accountability in distribution. In 2013, the Drug Supply Chain Security Act (DSCSA) was enacted with the aim of building an electronic system to identify and trace certain prescription drugs distributed in the U.S., including most

biological products. The DSCSA mandated obligations for pharmaceutical manufacturers, wholesale distributors, and dispensers were phased in over a 10-year period and effective November 27, 2024, all authorized trading partners, including dispensers and manufacturers, are required to incorporate serial numbers into their DSCSA processes, providing enhanced unit-level tracking.

From time to time, new legislation and regulations may be implemented that could significantly change the statutory provisions governing the approval, manufacturing and marketing of products regulated by the FDA. It is impossible to predict whether further legislative or regulatory changes will be enacted, or FDA regulations, guidance or interpretations will be changed or what the impact of such changes, if any, may be.

Hatch-Waxman Act and Marketing Exclusivity

Under the Drug Price Competition and Patent Term Restoration Act of 1984 (the Hatch-Waxman Amendments) to the Federal Food, Drug, and Cosmetic Act (FDCA), Congress authorized the FDA to approve generic drugs that are the same as drugs previously approved by the FDA under the NDA provisions of the statute and also enacted Section 505(b)(2) of the FDCA. To obtain approval of a generic drug, an applicant must submit an abbreviated new drug application (ANDA), to the agency. In support of such applications, a generic manufacturer may rely on the preclinical and clinical testing conducted for a drug product previously approved under an NDA, known as the reference listed drug (RLD). Specifically, in order for an ANDA to be approved, the FDA must find that the generic version is identical to the RLD with respect to the active ingredients, the route of administration, the dosage form, and the strength of the drug. In contrast, Section 505(b)(2) permits the filing of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. A Section 505(b)(2) applicant may eliminate the need to conduct certain preclinical or clinical studies, if it can establish that reliance on studies conducted for a previously-approved product is scientifically appropriate. Unlike the ANDA pathway used by developers of bioequivalent versions of innovator drugs, which does not allow applicants to submit new clinical data other than bioavailability or bioequivalence data, the 505(b)(2) regulatory pathway does not preclude the possibility that a follow-on applicant would need to conduct additional clinical trials or nonclinical studies; for example, they may be seeking approval to market a previously approved drug for new indications or for a new patient population that would require new clinical data to demonstrate safety or effectiveness. The FDA may then approve the new product for all or some of the label indications for which the RLD has been approved, or for any new indication sought by the Section 505(b)(2) applicant, as applicable.

Upon approval of an NDA or a supplement thereto, NDA sponsors are required to list with the FDA each patent with claims that cover the applicant's product or an approved method of using the product. Each of the patents listed by the NDA sponsor is published in the *Orange Book*. The *Orange Book* listing for the PHEXXI vaginal gel NDA includes five patents covering the product's composition of matter and its method of use in prevention of pregnancy. The *Orange Book* listing for the SOLOSEC NDA includes ten patents covering the product's composition of matter and its methods of use in treatment of BV, trichomoniasis and sexually transmitted infection. Except for patents covering methods of use for which the follow-on applicant is not seeking approval, the applicant is required to certify to the FDA concerning any patents listed in the *Orange Book* for the RLD, when an ANDA applicant submits its application to the FDA. To the extent the Section 505(b)(2) applicant is relying on studies conducted for an already approved product, such an applicant is also required to certify to the FDA concerning any patents listed for the approved product in the *Orange Book* to the same extent that an ANDA applicant would.

Specifically, an ANDA or 505(b)(2) applicant for a follow-on drug product with respect to each patent must certify that: (i) the required patent information has not been filed by the original applicant; (ii) the listed patent already has expired; (iii) the listed patent has not expired, but will expire on a specified date and approval is sought after patent expiration; or (iv) the listed patent is invalid, unenforceable or will not be infringed by the manufacture, use or sale of the new product.

If a Paragraph I or II certification is filed, the FDA may make approval of the application effective immediately upon completion of its review. If a Paragraph III certification is filed, the approval may be made effective on the patent expiration date specified in the application, although a tentative approval may be issued before that time. If an application contains a Paragraph IV certification, a series of events will be triggered, the outcome of which will determine the effective date of approval of the ANDA or 505(b)(2) application.

A certification that the new product will not infringe the RLD's listed patents or that such patents are invalid is called a Paragraph IV certification. If the follow-on applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the NDA and patent holders for the RLD once the applicant's NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the Paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of their receipt of a Paragraph IV certification automatically prevents the FDA from approving the ANDA or 505(b)(2) NDA until the earlier of 30 months after the receipt of the Paragraph IV notice, expiration of the patent or a decision in the infringement case that is favorable to the ANDA or 505(b)(2) applicant. Alternatively, if the listed patent holder does not file a patent infringement lawsuit within the required 45-day period, the follow-on applicant's ANDA or 505(b)(2) NDA will not be subject to the 30-month stay.

In addition, under the Hatch-Waxman Amendments, the FDA may not approve an ANDA or 505(b)(2) NDA until any applicable period of non-patent exclusivity for the referenced RLD has expired. These market exclusivity provisions under the FDCA also can delay the submission or the approval of certain applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the U.S. to the first applicant to gain approval of an NDA for a drug containing a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an ANDA or a 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement.

The FDCA also provides three years of marketing exclusivity for a NDA, 505(b)(2) NDA, or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example, new indications, dosages or strengths of an existing drug. This three-year exclusivity covers only the conditions of use associated with the new clinical investigations and does not prohibit the FDA from approving follow-on applications for drugs containing the original active agent. Five-year and three-year exclusivity also will not delay the submission or approval of a traditional NDA filed under Section 505(b)(1) of the FDCA. However, an applicant submitting a traditional NDA would be required to either conduct or obtain a right of reference to all of the preclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness.

The three-year new product exclusivity for the PHEXXI NDA expired on May 22, 2023. The product's intellectual property currently includes five U.S. patents which cover PHEXXI and its labeled indication that are listed in the *Orange Book*; these patents are expected to protect PHEXXI into 2033.

SOLOSEC's intellectual property includes ten U.S. patents which cover the product and its labeled indication that are listed in the *Orange Book*, and one allowed patent; these patents and allowed patent are expected to protect SOLOSEC into 2040. SOLOSEC is also protected by NCE-GAIN Exclusivity until September 15, 2027.

Designation of and Exclusivity for Qualified Infectious Disease Products

In 2012 as part of the Food Drug Administration Safety and Innovation Act, Congress passed legislation known as the Generating Antibiotic Incentives Now Act (GAIN Act), which amended the FDCA to encourage the development of antibacterial and antifungal drug products that treat pathogens that cause serious and life-threatening infections. The law grants an additional five years of marketing exclusivity upon the approval of an NDA for a drug product previously designated by FDA as a Qualified Infectious Disease Product (QIDP). As a result, if applicable to a designated QIDP, upon approval the periods of five-year new chemical entity exclusivity (NCE) and three-year new clinical investigation exclusivity would become ten years and eight years, respectively.

A QIDP is defined in the GAIN Act to mean "an antibacterial or antifungal drug for human use intended to treat serious or life-threatening infections, including those caused by: (1) an antibacterial or antifungal resistant pathogen, including novel or emerging infectious pathogens;" or (2) certain "qualifying pathogens." A "qualifying pathogen" is a pathogen that has the potential to pose a serious threat to public health (e.g., resistant gram positive pathogens, multi-drug resistant gram negative bacteria, multi-drug resistant tuberculosis and *Clostridium difficile*) and that is included in a list established and maintained by FDA. A drug sponsor may request FDA to designate its product as a QIDP any time before the submission of an NDA for that indication. FDA must make a QIDP determination

within 60 days of the designation request. A product designated as a QIDP may be granted priority review by FDA upon submission and can also qualify for "Fast Track" status, described further below.

We have received two QIDP designations from the FDA for EVO100 for the prevention of urogenital infection in women with both chlamydia and gonorrhea and one for EVO200 for BV. SOLOSEC was designated a QIDP for the treatment of BV and was granted fast-track designation. SOLOSEC is protected by NCE-GAIN Exclusivity until September 15, 2027.

Fast Track and Priority Review Designations

The FDA is authorized to designate certain products for expedited development or review if they are intended to address an unmet medical need in the treatment of a serious or life-threatening disease or condition. These programs include Fast Track designation and priority review designation.

To be eligible for a Fast Track designation, the FDA must determine, based on the request of a sponsor, that a product is intended to treat a serious or life-threatening disease or condition and demonstrates the potential to address an unmet medical need by providing a therapy where none exists or a therapy that may be potentially superior to existing therapy based on efficacy or safety factors. Fast Track designation provides opportunities for more frequent interactions with the FDA review team to expedite development and review of the product. The FDA may also review sections of the NDA for a Fast Track product on a rolling basis before the complete application is submitted, if the sponsor and the FDA agree on a schedule for the submission of the application sections, and the sponsor pays any required user fees upon submission of the first section of the NDA. Fast Track designation may be withdrawn by the sponsor or rescinded by the FDA if the designation is no longer supported by data emerging in the clinical trial process. A product candidate designated as a QIDP is eligible for Fast Track designation under the provisions of the GAIN Act, but the NDA sponsor must specifically request Fast Track designation from the agency as with non-infectious disease product candidates. Fast Track designation may be requested concurrent with or at any time after the QIDP designation. In addition, although QIDP designation may be requested prior to submission of an Investigational New Drug Application (IND), a request for Fast Track designation may only be made concurrently with, or any time after, submission of an IND.

The FDA also may designate a product for priority review if it is a drug or biologic that treats a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. The FDA determines at the time that the marketing application is submitted, on a case- by-case basis, whether the proposed drug represents a significant improvement in treatment, prevention or diagnosis of disease when compared with other available therapies. Significant improvement may be illustrated by evidence of increased effectiveness in the treatment of a condition, elimination or substantial reduction of a treatment-limiting drug reaction, documented enhancement of patient compliance that may lead to improvement in serious outcomes, or evidence of safety and effectiveness in a new subpopulation. A priority review designation is intended to direct overall attention and resources to the evaluation of such applications, and to shorten the FDA's goal for acting on a marketing application from ten months to six months for an original new molecular entity NDA from the date of filing. Although the FDA automatically gives priority review designation to the first application submitted for a specific drug product and indication for which a QIDP designation was granted, a subsequent application from the same sponsor for the same product and indication will receive priority review designation only if it otherwise meets the criteria for priority review.

Finally, even if a product qualifies for one or more of these programs, the FDA may later decide that the product no longer meets the conditions for qualification or decide that the time period for FDA review or approval will not be shortened. Furthermore, Fast Track designation and priority review do not change the standards for approval and may not ultimately expedite the development or approval process.

We have received two Fast Track designations from the FDA for EVO100 for the prevention of urogenital chlamydia and gonorrhea infection in women.

Patent Term Restoration in the U.S.

Depending upon the timing, duration and specifics of FDA approval of our drug candidates, some of our U.S. patents may be eligible for limited PTE under other provisions of the Hatch-Waxman Amendments. These PTEs permit a patent restoration term of up to five years as compensation for any patent term lost during product

development and the FDA regulatory review process. However, patent term restoration cannot extend the remaining term of a patent beyond a total of 14 years from the product's approval date. The patent term restoration period is generally one-half the time between the effective date of an IND, and the submission date of an NDA, plus the time between the submission date of an NDA and the approval of that application. Only one patent applicable to an approved drug is eligible for the extension, and the extension must be applied for prior to expiration of the patent. The U.S. Patent and Trademark Office (USPTO) in consultation with the FDA, reviews and approves the application for any PTE or restoration.

Other U.S. Governmental Regulations and Environmental Matters

As we have now established international contracts, we are subject to compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended (the FCPA), which prohibits corporations and individuals from paying, offering to pay, or authorizing the payment of anything of value to any foreign government official, government staff member, political party, or political candidate to obtain or retain business or to otherwise influence a person working in an official capacity. We also may be implicated under the FCPA for activities by our partners, collaborators, contract research organizations, vendors, or other agents.

While enforcement of the FCPA was paused on February 10, 2025, following an executive order signed by President Trump, we continue to comply with the FCPA, and the position held by the Department of Justice and other U.S. authorities that previously enforced the FCPA, which collectively deem most health care professionals and other employees of foreign hospitals, clinics, research facilities and medical schools in countries with public health care or public education systems to be "foreign officials" under the FCPA. If and when we interact with foreign health care professionals and researchers in testing and marketing our products abroad, we have policies and procedures in place sufficient to prevent us and agents acting on our behalf from providing any bribe, gift or gratuity, including excessive or lavish meals, travel or entertainment in connection with marketing our products and services or securing required permits and approvals such as those needed to initiate clinical trials in foreign jurisdictions. The FCPA also obligates companies whose securities are listed in the U.S. to comply with accounting provisions requiring the maintenance of books and records that accurately and fairly reflect all transactions of the corporation, including international subsidiaries, and the development and maintenance of an adequate system of internal accounting controls for international operations.

Our present and future business has been and will continue to be subject to various other laws and regulations. Various laws, regulations and recommendations relating to safe working conditions, laboratory practices, the experimental use of animals, and the purchase, storage, movement, import and export and use and disposal of hazardous or potentially hazardous substances used in connection with our research work are or may be applicable to our activities. Certain agreements involving exclusive license rights, if any, or acquisitions, if any, may be subject to national or supranational antitrust regulatory control, the effect of which cannot be predicted. The extent of government regulation, which might result from future legislation or administrative action, cannot accurately be predicted.

Review and Approval of Drug Products in the European Union

In addition to regulations in the U.S., we are and will be subject, either directly or through our distribution partners, to a variety of regulations in other jurisdictions governing, among other things, clinical trials and future commercial sales and distribution of our products, if approved in those markets.

We must obtain the requisite approvals from regulatory authorities in non-U.S. countries prior to the commencement of clinical trials or marketing of a product in those countries. Moreover, the time required to obtain approval in other countries and jurisdictions might differ from and be longer than that required to obtain FDA approval. Regulatory approval in one country or jurisdiction does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country or jurisdiction may negatively impact the regulatory process in others.

As of January 31, 2020, the United Kingdom (UK) is no longer a member state of the European Union (EU), and therefore a separate marketing authorization application (MAA) and approval will be required to market a medicinal product in the UK.

We are assessing the optimal regulatory legal basis for the PHEXXI and SOLOSEC MAAs in the EU and the UK. As in the U.S., medicinal products can be marketed in the EU only if a marketing authorization from the competent regulatory agencies has been obtained. Similar to the U.S., the various phases of preclinical and clinical research in the EU are subject to significant regulatory controls.

Pursuant to the European Clinical Trials Directive, a system for the approval of clinical trials in the EU has been implemented through national legislation of the member states. Under this system, an applicant must obtain approval from the competent national authority of an EU member state in which the clinical trial is to be conducted. Furthermore, the applicant may only start a clinical trial after a competent ethics committee has issued a favorable opinion. Clinical trial applications must be accompanied by an investigational medicinal product dossier with supporting information prescribed by the European Clinical Trials Directive and corresponding national laws of the member states and further detailed in applicable guidance documents. In April 2014, the new Clinical Trials Regulation, Regulation EU No 536/2014 (Clinical Trials Regulation) was adopted and it came into application on January 31, 2022. The Clinical Trials Regulation will be directly applicable in all the EU member states, repealing the current Clinical Trials Directive 2001/20/EC. Conduct of all clinical trials performed in the EU will continue to be bound by currently applicable provisions until the new Clinical Trials Regulation becomes applicable. The extent to which ongoing clinical trials will be governed by the Clinical Trials Regulation will depend on when the Clinical Trials Regulation becomes applicable and on the duration of the individual clinical trial. If a clinical trial continues for more than three years from the day on which the Clinical Trials Regulation becomes applicable, the Clinical Trials Regulation will at that time begin to apply to the clinical trial.

The new Clinical Trials Regulation aims to simplify and streamline the approval of clinical trials in the EU. The main characteristics of the regulation include: a streamlined application procedure via a single entry point; a single set of documents to be prepared and submitted for the application as well as simplified reporting procedures for clinical trial sponsors; and a harmonized procedure for the assessment of applications for clinical trials, which is divided in two parts. Part I is assessed by the competent authorities of all EU member states in which an application for authorization of a clinical trial has been submitted. Part II is assessed separately by each EU member state concerned. Strict deadlines have been established for the assessment of clinical trial applications. The role of the relevant ethics committees in the assessment procedure will continue to be governed by the national law of the concerned EU member state. However, overall related timelines will be defined by the Clinical Trials Regulation.

To obtain marketing approval of a drug in the EU, an applicant must submit an MAA either under a centralized or decentralized procedure. The centralized procedure provides for the grant of a single marketing authorization by the European Commission that is valid for all EU member states, Iceland, Lichtenstein and Norway. The centralized procedure is compulsory for specific products, including for medicines produced by certain biotechnological processes, products designated as orphan medicinal products, advanced therapy products (such as gene-therapy, somatic cell-therapy or tissue-engineered medicines) and products with a new active substance indicated for the treatment of certain diseases. For products with a new active substance indicated for the treatment of certain diseases and products that are highly innovative or for which a centralized process is in the interest of patients, the centralized procedure may be optional. Under the centralized procedure the maximum timeframe for the evaluation of an MAA by the EMA is 210 days, excluding clock stops, when additional written or oral information is to be provided by the applicant in response to questions asked by the Committee for Medicinal Products for Human Use (CHMP). Accelerated assessment might be granted by the CHMP in exceptional cases, when a medicinal product is expected to be of a major public health interest, particularly from the point of view of therapeutic innovation. The timeframe for the evaluation of an MAA under the accelerated assessment procedure is 150 days, excluding stop-clocks.

The decentralized procedure is available to applicants who wish to market a product in specific EU member states where such product has not received marketing approval in any EU member states before. The decentralized procedure provides for an applicant to apply to one-member state to assess the application (the reference member state) and specifically list other member states in which it wishes to obtain approval (concerned member states). Under this procedure, an applicant submits an application based on identical dossiers and related materials, including a draft summary of product characteristics, and draft labeling and package leaflet, to the reference member state and each concerned member state. The reference member state prepares a draft assessment report and drafts of the related materials within 210 days after receipt of a valid application which is then reviewed and approved commented on by

the concerned member states. Within 90 days of receiving the reference member state's assessment report and related materials, each concerned member state must decide whether to approve the assessment report and related materials.

In the EU, only products for which marketing authorizations have been granted may be promoted. A marketing authorization is valid for five years in principle and the marketing authorization may be renewed after five years on the basis of a re-evaluation of the risk-benefit balance by the EMA or by the competent authority of the authorizing member state. To this end, the marketing authorization holder must provide the EMA or the competent authority with a consolidated version of the file in respect of quality, safety and efficacy, including all variations introduced since the marketing authorization was granted, at least six months before the marketing authorization ceases to be valid. Once renewed, the marketing authorization is valid for an unlimited period, unless the European Commission or the competent authority decides, on justified grounds relating to pharmacovigilance, to proceed with one additional five-year renewal. Any authorization which is not followed by the actual placing of the drug on the EU market (in case of centralized procedure) or on the market of the authorizing member state within three years after authorization ceases to be valid (the so-called sunset clause). Even if authorized to be marketed in the EU, prescription-only medicines may only be promoted to health care professionals, not the general public. All promotion should be in accordance with the particulars listed in the summary of product characteristics. Promotional materials must also comply with various laws, and codes of conduct developed by pharmaceutical industry bodies in the EU which govern (among other things) the training of sales staff, promotional claims and their justification, comparative advertising, misleading advertising, endorsements, and (where permitted) advertising to the general public. Failure to comply with these requirements could lead to the imposition of penalties by the competent authorities of the EU member states. The penalties could include warnings, orders to discontinue the promotion of the drug product, seizure of promotional materials, fines and possible imprisonment.

EU Regulatory Exclusivity

In the EU, new products authorized for marketing (i.e., reference products) qualify for eight years of data exclusivity and an additional two years of market exclusivity upon marketing authorization. The data exclusivity period prevents generic applicants from relying on the pre-clinical and clinical trial data contained in the dossier of the reference product when applying for a generic marketing authorization in the EU during a period of eight years from the date on which the reference product was first authorized in the EU. The market exclusivity period prevents a successful generic applicant from commercializing its product in the EU until ten years have elapsed from the initial authorization of the reference product in the EU. The ten-year market exclusivity period can be extended to a maximum of eleven years if, during the first eight years of those ten years, the marketing authorization holder obtains an authorization for one or more new therapeutic indications which, during the scientific evaluation prior to their authorization, are held to bring a significant clinical benefit in comparison with existing therapies.

Rest of the World Regulation

For other countries outside of the EU and the U.S., such as countries in the CGG, Eastern Europe, Latin America, Asia, or Africa, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from jurisdiction to jurisdiction. Additionally, the clinical trials must be conducted in accordance with cGCP requirements and the applicable regulatory requirements and the ethical principles that have their origin in the Declaration of Helsinki.

Other U.S. Health Care Laws and Regulations

We must comply with various U.S. federal and state laws, rules and regulations pertaining to health care fraud and abuse, including anti-kickback laws. HCPs and third-party payers play a primary role in the recommendation and prescription of drug products and medical devices. Our current and future arrangements with health care professionals, principal investigators, consultants, third-party payers and customers may expose us to broadly applicable fraud and abuse and other health care laws and regulations. Such restrictions under applicable federal and state health care laws and regulations, include but are not limited to the following:

Anti-Kickback Statute – the Federal Anti-Kickback Statute, among other things, prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federally funded health care programs such as Medicare and

Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate the statute in order to have committed a violation. In addition, the government may assert that a claim that includes items or services resulting from a violation of the Federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act.

Civil and Criminal False Claims Laws – the federal civil and criminal false claims laws, including the federal False Claims Act, which can be enforced by private citizens through civil whistleblower or *qui tam* actions, prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, to the federal government, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government.

Health Insurance Portability and Accountability Act of 1996 – the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) prohibits, among other things, individuals or entities from executing a scheme to defraud any health care benefit program or making any false statements relating to health care matters; as in the case of the Federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate the statute in order to have committed a violation. Additionally, HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), and its implementing regulations impose certain obligations, including mandatory contractual terms, with respect to safeguarding the privacy, security and transmission of individually identifiable health information without appropriate authorization, on entities subject to the law, such as certain HCPs, health plans, and health care clearinghouses and their respective business associates that perform services for them that involve the creation, use, maintenance or disclosure of, individually identifiable health information.

False Statements Statute – the federal False Statements Statutes prohibits knowingly and willfully falsifying, concealing, or covering up a material fact or making any materially false statement to the federal government, including executive or administrative agencies.

Sunshine Act – the federal transparency or "sunshine" requirements of the ACA requires certain manufacturers of drugs, devices, biologics, and medical supplies to annually report to the Department of Health and Human Services (the DHHS) information related to payments and other transfers of value made to physicians, teaching hospitals and certain advanced non-physician health care practitioners, as well as ownership and investment interests held by physicians and their immediate family members.

State Transparency Laws – some U.S. state laws require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government in addition to requiring drug manufacturers to report information related to payments to HCPs and other HCPs or marketing expenditures; some state laws require pharmaceutical companies to implement compliance programs and to track and report gifts, compensation and other remuneration provided to physicians, in addition to requiring drug manufacturers to report information related to payments to physicians and other HCPs or marketing expenditures and pricing information; and some state and local laws require the registration of pharmaceutical sales representatives.

State and Foreign Regulatory Concerns – there are analogous State and foreign laws and regulations, such as State Anti-Kickback and False Claims laws, which may apply to sales or marketing arrangements and claims involving health care items or services reimbursed by non-governmental third-party payers, including private insurers. State and foreign laws also govern the privacy and security of health and personal information. These laws differ from each other in significant ways and may conflict, while applying simultaneously with HIPAA, thus complicating compliance efforts.

The scope and enforcement of these laws is uncertain and subject to rapid change. Notably, in November 2020, DHHS finalized significant changes to the regulations implementing the Anti-Kickback Statute, as well as the civil monetary penalty rules regarding beneficiary inducements, with the goal of offering the health care industry more flexibility and reducing the regulatory burden associated with those fraud and abuse laws, particularly with respect to value-based arrangements among industry participants. Regulatory authorities might challenge our current or future activities under these laws, regulations, and safe harbors. Any such challenge could have a material adverse effect on our reputation, business, results of operations and financial condition. In addition, efforts to ensure that our business arrangements with third parties will comply with these laws will involve substantial costs. Any investigation of us or

the third parties with whom we contract, regardless of the outcome, would be costly and time consuming. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, monetary fines, imprisonment, disgorgement of profits, possible exclusion from participation in Medicare, Medicaid and other federal health care programs, debarment under the FDCA, additional reporting or oversight obligations if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with the law, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations.

Health Care Reform and Potential Changes to Laws and Regulations

In the U.S. and some foreign jurisdictions, there have been, and continue to be, legislative and regulatory changes both enacted and proposed related to the health care system, which could prevent or delay marketing approval of our products, restrict or regulate post-approval activities, and affect our ability to profitably sell our current products or any other approved product we may seek to commercialize. In particular, the FDA's and other regulatory authorities' policies may change and additional government regulations may be enacted. For example, in December 2016, the 21st Century Cures Act (Cures Act), was passed by Congress and signed into law. The Cures Act, among other things, is intended to modernize the regulation of drugs and devices and to spur innovation, but its ultimate implementation is uncertain. In addition, in August 2017, the FDA Reauthorization Act was signed into law, which reauthorized the FDA's user fee programs and included additional drug and device provisions that build on the Cures Act. A subsequent FDA reauthorization package was finalized by Congress on September 30, 2022; several other FDA-related changes have been proposed in Congress, including several within the "Cures 2.0" bill. While the bill as a whole has not passed, some components have been signed into law through various other legislative vehicles or otherwise addressed by executive action.

If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we otherwise may have obtained and we may not achieve or sustain profitability, which would adversely affect our business, prospects, financial condition, and results of operations.

Among policy makers and payers in the U.S. and elsewhere, there is significant interest in promoting changes in health care systems with the stated goals of containing health care costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. For example, in March 2010, the ACA was enacted, which, among other things, increased the minimum Medicaid rebates owed by most manufacturers under the Medicaid Drug Rebate Program; introduced a new methodology by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected; extended the Medicaid Drug Rebate Program to utilization of prescriptions of individuals enrolled in Medicaid managed care plans; imposed mandatory discounts for certain Medicare Part D beneficiaries as a condition for manufacturers' outpatient drugs coverage under Medicare Part D; and established a Center for Medicare Innovation at the U.S. Centers for Medicare and Medicaid Services (CMS) to test innovative payment and service delivery models to lower Medicare and Medicaid spending. As another example, the 2021 Consolidated Appropriations Act, signed into law on December 27, 2020, incorporated extensive health care provisions and amendments to existing laws, including a requirement that all manufacturers of drug products covered under Medicare Part B report the product's average sales price (ASP) to DHHS beginning on January 1, 2022, subject to enforcement via civil money penalties.

Since its enactment, there have been judicial and congressional challenges to certain aspects of the ACA, and as a result certain sections of the ACA have not been fully implemented or effectively repealed. However, following several years of litigation in the federal courts, in June 2021, the U.S. Supreme Court upheld the ACA when it dismissed a legal challenge to the ACA's constitutionality. Further legislative and regulatory changes under the ACA remain possible. It is unknown what form any such changes or any law would take, and how or whether it may affect the pharmaceutical industry as a whole or our business in the future. We expect that changes or additions to the ACA, the Medicare and Medicaid programs, such as changes allowing the federal government to directly negotiate drug prices, and changes stemming from other health care reform measures, especially with regard to health care access, financing or other legislation in individual states, could have a material adverse effect on the health care industry in the U.S.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year pursuant to the Budget Control Act of 2011, which began in 2013 and will remain in effect through 2030 unless additional congressional action is taken. The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which was signed into law on March 27, 2020, and was designed to provide financial support and resources to individuals and businesses affected by the COVID-19 pandemic, suspended the 2% Medicare sequester from May 1, 2020 through December 31, 2020, and extended the sequester by one year, through 2030, in order to offset the added expense of the 2020 cancellation. The suspension was subsequently extended through March 31, 2022, with a reduction of the suspension to 1% sequester through June 30, 2022. The suspension was lifted in steps during 2022 and for 2023, the 2% sequester rate established on July 1, 2022 was in effect for the entire year.

As another example, on December 20, 2019, the Further Consolidated Appropriations Act for 2020 was signed into law (P.L. 116-94), which includes a piece of bipartisan legislation called the Creating and Restoring Equal Access to Equivalent Samples Act of 2019 (the CREATES Act). The CREATES Act aims to address the concern articulated by both the FDA and others in the industry that some brand manufacturers have improperly restricted the distribution of their products to deny generic product developers access to samples of brand products. Because generic product developers need samples to conduct certain comparative testing required by the FDA, some have attributed the inability to timely obtain samples as a cause of delay in the entry of generic products. To remedy this concern, the CREATES Act establishes a private cause of action that permits a generic product developer to sue the brand manufacturer to compel it to furnish the necessary samples on "commercially reasonable, market-based terms." Whether and how generic product developers will use this new pathway, as well as the likely outcome of any legal challenges to provisions of the CREATES Act, remain highly uncertain and its potential effects on our future commercial products are unknown. Other new laws may result in additional reductions in Medicare and other health care funding, which could have an adverse effect on customers for our approved product and, accordingly, our financial operations.

Additionally, there has been heightened governmental scrutiny in the U.S. of manufacturers' pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. DHHS has solicited feedback on various measures intended to lower drug prices and reduce the out-of-pocket costs of drugs and has implemented others under its existing authority. For example, in 2020, the FDA finalized a rulemaking to establish a system whereby state governmental entities could lawfully import and distribute prescription drugs sourced from Canada. More recently, in July 2021, then- President Biden issued a sweeping executive order on promoting competition in the American economy that includes several mandates pertaining to the pharmaceutical and health care insurance industries. Among other things, the executive order directs the FDA to work towards implementing a system for importing drugs from Canada (following on the first Trump Administration notice-and-comment rulemaking on Canadian drug importation which was finalized in October 2020). The Biden order also called on DHHS to release a comprehensive plan to combat high prescription drug prices, and it includes several directives regarding the Federal Trade Commission's oversight of potentially anticompetitive practices within the pharmaceutical industry. The drug pricing plan released by DHHS in September 2021 in response to the executive order makes clear that the former Biden Administration supported aggressive action to address rising drug prices, including allowing DHHS to negotiate the cost of Medicare Part B and D drugs, but such significant changes will require either new legislation to be passed by Congress or time-consuming administrative actions. Additionally, the former Biden administration announced new lower prices, to be in effect beginning in 2026, for the first ten drugs selected for Medicare price negotiation in August 2024. The future of these executive orders and prior Administration actions is unclear under the current Trump Administration.

Coverage, Pricing, and Reimbursement

Sales of Evofem's products approved for marketing by the FDA and foreign regulatory authorities depend, in part, on the extent to which such products will be covered by third-party payers, such as government health programs, commercial insurance and managed care organizations. In the U.S., no uniform policy of coverage and reimbursement for drug or biological products exists. Accordingly, decisions regarding the extent of coverage and amount of reimbursement to be provided for any of Evofem's FDA-approved products will be made on a payer-by-payer basis. Prescriptions generated through the telehealth platform may be subject to additional payer requirements.

As a result, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our approved products to each payer separately, with no assurance that coverage and adequate reimbursement will be obtained.

The U.S. government, state legislatures and foreign governments have shown significant interest in implementing cost containment programs to limit the growth of government-paid health care costs, including price-controls, restrictions on reimbursement and requirements for substitution of generic products for branded prescription drugs. For example, the ACA contains provisions that may reduce the profitability of drug products through increased rebates for drugs reimbursed by Medicaid programs, extension of Medicaid rebates to Medicaid managed care plans, and mandatory discounts for certain Medicare Part D beneficiaries and annual fees based on pharmaceutical companies' share of sales to federal health care programs. Adoption of general controls and measures, coupled with the tightening of restrictive policies in jurisdictions with existing controls and measures, could limit payments for pharmaceutical drugs. The Medicaid Drug Rebate Program requires pharmaceutical manufacturers to enter into and have in effect a national rebate agreement with the Secretary of the DHHS as a condition for states to receive federal matching funds for the manufacturer's outpatient drugs furnished to Medicaid patients. The ACA made several changes to the Medicaid Drug Rebate Program, including increasing pharmaceutical manufacturers' rebate liability by raising the minimum basic Medicaid rebate on most branded prescription drugs from 15.1% of average manufacturer price (AMP), to 23.1% of AMP and adding a new rebate calculation for "line extensions" (i.e., new formulations, such as extended release formulations) of solid oral dosage forms of branded products, as well as potentially impacting their rebate liability by modifying the statutory definition of AMP. The ACA also expanded the universe of Medicaid utilization subject to drug rebates by requiring pharmaceutical manufacturers to pay rebates on Medicaid managed care utilization and by enlarging the population potentially eligible for Medicaid drug benefits. Congress has expressed its intention to repeal or repeal and replace the ACA. If that is done, many if not all of the provisions of the ACA may no longer apply to prescription drugs.

The marketability of any products for which Evofem has or will receive regulatory approval for commercial sale may suffer if the government and third-party payers fail to provide adequate coverage and reimbursement. Emphasis on cost containment measures in the U.S. has increased, and Evofem expects will continue to increase, the pressure on pharmaceutical pricing. Coverage policies and third-party reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for one or more products for which we receive regulatory approval, less favorable coverage policies and reimbursement rates may be implemented in the future.

In addition, in most foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing and reimbursement vary widely from country to country. Some countries provide that drug products may be marketed only after a reimbursement price has been agreed. Some countries may require the completion of additional studies that compare the cost-effectiveness of PHEXXI or SOLOSEC to currently available therapies (so called health technology assessment) in order to obtain reimbursement or pricing approval. For example, the EU provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product, or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. There can be no assurance that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of Evofem's approved drug products. Historically, products launched in the EU do not follow price structures of the U.S. and generally prices tend to be significantly lower.

Corporate Information

Our corporate headquarters are located at 7770 Regents Rd, Suite 113-618, San Diego, CA 92122-1967, and our telephone number is (858) 550-1900. Our website is located at www.evofem.com. Our Annual Report, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) will be made available free of charge on our website as soon as reasonably practicable after we electronically file these materials with, or furnish it to, the Securities and Exchange Commission (SEC) on their website located at www.sec.gov. The contents of our website are not incorporated into this Annual Report, and our reference to the URL for our website is intended to be an inactive textual reference only. The information contained on, or that can be accessed through, our website is not a part of this Annual Report.

Employees

As of March 14, 2025, we had a total of 32 full-time employees. We also engage consultants and contract workers on an as-needed basis. We believe that relations with our employees and consultants are good.

Item 1A. Risk Factors.

Summary of Risk Factors

The risk factors described below are a summary of the principal risk factors associated with an investment in Evofem. These are not the only risks we face. You should carefully consider the following risk factors, together with all other information included in this Annual report, including the consolidated financial statements and related notes, when deciding to invest in us. You should be aware that the occurrence of any of the events described in this Risk Factors section and elsewhere in this Annual Report could have a material adverse effect on our business, financial position, results of operations and cash flows and the trading price of our securities could decline and you could lose all or part of your investment.

Risks Related to Our Financial Condition and Capital Requirements

- We are currently over 90 days past due on a significant amount of vendor obligations. We may not be able to refinance, extend or repay our substantial indebtedness owed to our secured and unsecured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.
- We have incurred significant losses and negative cash flows since our inception and anticipate we will continue to incur significant losses and negative cash flow for the foreseeable future.
- We must raise significant additional funds to finance our operations and to remain a going concern. If we are unable to raise additional capital when needed or on acceptable terms, we may be forced to delay, reduce and/or eliminate one or more of our business initiatives.
- We have a limited number of shares of common stock available for future issuance which could adversely affect our ability to raise capital or consummate strategic transactions.

Risks Related to the Aditxt Merger

- Failure to complete the merger could negatively impact our stock price and the future business and financial results of the Company.
- We may not be able to effect the merger pursuant to the Merger Agreement and we could incur substantial costs.
- While the Merger Agreement is in effect, we are subject to certain interim covenants.
- The announcement and pendency of the merger could cause disruptions in our business, which could have an adverse effect on our business and financial results.
- Certain provisions of the Merger Agreement may discourage third parties from submitting alternative acquisition proposals.
- We may be subject to litigation relating to the Merger.

Risks Related to Potential Bankruptcy

- We are subject to risks and uncertainties associated with potential bankruptcy proceedings including a long and protracted restructuring.

Risks Related to Commercialization and sales expansion of our Products

- We face competition from other medical device, biotechnology, and biopharmaceutical companies and our operating results will suffer if we are unable to compete effectively.

Risks Related to Regulatory Approval of our Products

- We may fail to receive approval to market our products outside the U.S.

Risks Related to Our Post-Marketing Legal and Regulatory Compliance

- Developments after a product reaches the market may adversely affect sales of the product.
- Product liability lawsuits against us could cause us to incur substantial liabilities and limit commercialization of our Products.
- The FDA and other regulatory agencies actively enforce the laws and regulations relating to the promotion of our products.

Risks Related to Our Intellectual Property

- Our rights to develop and commercialize PHEXXI are subject, in part, to the terms and conditions of licenses granted to us by third parties. The patent protection and patent prosecution of PHEXXI are dependent on third parties.
- If we are unable to obtain and maintain patent protection for PHEXXI or SOLOSEC, or if the scope of the patent protection we have or will obtain is not sufficiently broad, our competitors could develop and commercialize products and technology similar or identical to our products and technology, and our ability to successfully commercialize PHEXXI and/or SOLOSEC may be adversely affected.
- We may not be able to protect our intellectual property and proprietary rights throughout the world.
- If we do not obtain patent term extensions (PTE) for PHEXXI, our business may be materially harmed.
- An Event of Default under the secured notes issued pursuant to the Baker Bros. Purchase Agreement, as amended, could allow the secured creditor to take possession of all assets owned by us, including any directly owned intellectual property pertaining to PHEXXI.
- The Company received two Notice of Defaults from their largest creditor, Future Pak, LLC, alleging a number of Events of Default, accelerating the Principal due and payable and declaring the termination of the existing Forbearance Agreement.

Risks Related to Our Reliance on Third Parties

- Our success relies on third-party suppliers and two contract manufacturers, one each for PHEXXI and SOLOSEC.
- We have no significant internal distribution capabilities.

Risks Related to Our Commercialization of Health Care Products

- Changes in health care laws and regulations may eliminate current requirements for health insurance plans to cover and reimburse FDA-cleared or FDA-approved contraceptive products without cost sharing, which could reduce demand for products such as PHEXXI.
- Increasing scrutiny of healthcare economics may influence prescribing and utilization practices, which could reduce demand for branded products such as PHEXXI and SOLOSEC.
- Health care legislative reform measures may have a negative impact on our business and results of operations.

Risks Related to Our Common and Preferred Stock

- Our management has identified material weakness in our internal controls and procedures.
- Our stock price is and may continue to be volatile.
- There may not be an active, liquid trading market for our equity securities.
- Because our Common Stock is subject to the "penny stock" rules, brokers cannot generally solicit the purchase of our Common Stock, which adversely affects its liquidity and market price.
- We may not obtain shareholder approval to approve an increase in the authorized, reverse split or other corporate action relating to the common stock when and if needed.
- Our common stock could be further diluted as the result of the issuance of additional shares of common stock, convertible securities, warrants or options.
- We are and may continue to be subject to short-selling strategies.
- Our business could be negatively affected as a result of the actions of activist stockholders.
- We may become a defendant in one or more stockholder derivative or class-action litigation(s), and any such future lawsuit(s) may adversely affect our business, financial condition, results of operations and cash flows.

Risks Related to Our Financial Condition and Capital Requirements

We are currently over 90 days past due on a significant amount of vendor obligations. We may not be able to refinance, extend or repay our substantial indebtedness owed to our secured and unsecured lenders, which would have a material adverse effect on our financial condition and ability to continue as a going concern.

As of February 28, 2025, we had approximately $11.2 million in accounts payable with approximately $9.5 million that is over 90 days past due. If we are unable to repay these amounts, as well as our existing debt obligations at maturity, and we are otherwise unable to extend the maturity dates or refinance these obligations, we would be in default. We cannot provide any assurances that we will be able to raise the necessary amount of capital to repay these obligations or that we will be able to extend the maturity dates or otherwise refinance these obligations. Upon a default, our secured lenders would have the right to exercise their rights and remedies to collect, which would include foreclosing on our assets. Accordingly, a default would have a material adverse effect on our business, and we would likely be forced to seek bankruptcy protection.

Our audited consolidated financial statements included a statement that there is a substantial doubt about our ability to continue as a going concern and a continuation of negative financial trends could result in our inability to continue as a going concern.

Our management has determined that there is substantial doubt about our ability to continue as a going concern over the next 12 months from the filing date of March 24, 2025. Our independent auditors have included a "going concern" explanatory paragraph in their report on our consolidated financial statements as of and for the year ended December 31, 2024 as filed in this Annual Report on Form 10-K. The reaction of investors to the inclusion of a going concern statement by our independent auditors, and our potential inability to continue as a going concern, could materially adversely affect the price of our common stock.

Additionally, if our operating results fail to improve, we could violate additional debt covenants, our liquidity could be further adversely impacted and we may need to seek additional sources of funding. There is no assurance that we will be able to raise additional capital to fund our operations or that debt or equity financing will be available in sufficient amounts or on acceptable terms. If our operating results fail to improve, then our financial condition could render us unable to continue as a going concern.

We have incurred significant losses and negative cash flows since our inception and anticipate we will continue to incur significant losses and negative cash flow for the foreseeable future.

We have incurred yearly losses and negative cash flows since our inception, other than the net income of $53.0 million (excluding deemed dividends) for the year ended December 31, 2023, which was primarily attributable to a non-cash gain on debt extinguishment. As of December 31, 2024, we had an accumulated deficit of $897.7 million. Negative cash flows from our operations are expected to continue for the foreseeable future. To date, we have devoted substantially all our financial resources to the development and commercialization of PHEXXI for hormone-free contraception and to the development of EVO100 for the prevention of chlamydia and gonorrhea and our other product candidates, as well as providing general and administrative support for our operations. Our utilization of cash has historically been highly dependent on these development programs and the commercialization of PHEXXI in the U.S. In October 2022, we discontinued development of EVO100 and have no plans to advance clinical development of this program or to significantly invest in other clinical programs or product candidates for the foreseeable future. We plan to allocate capital to fund our continued commercialization efforts. Our cash expenses will also continue to be dependent on the terms and conditions of our contracts with service providers and any license partners.

To date, we have financed our operations primarily through the sale of equity securities, notes, warrants, convertible notes, convertible preferred stock and through other debt arrangements. The amount of our future net losses will depend, in large part, on our ability to generate revenue from the sale of PHEXXI and SOLOSEC, the rate of our future expenditures and our ability to obtain additional funding through equity or debt financings, strategic collaborations or grants which may be particularly challenging or impossible in light of market conditions. The commercialization and development of biopharmaceutical products involves a substantial degree of risk.

We expect to continue to incur significant operating expenses and to continue to incur significant losses for the foreseeable future as we:

- incur sales, marketing, and distribution costs to commercialize PHEXXI and SOLOSEC;
- incur costs associated with the commercial manufacturing of PHEXXI and SOLOSEC;
- implement post-approval changes and process improvements to manufacturing;
- seek regulatory and marketing approvals for PHEXXI and/or SOLOSEC outside the US;
- seek reimbursement for PHEXXI, SOLOSEC, or any product(s) we may commercialize in the future
- continue our efforts to identify, assess, acquire, and/or commercialize other products;
- make milestone, royalty or other payments under third-party license agreements;
- make payments related to debt agreements;
- seek to maintain, protect, and expand our intellectual property portfolio; and
- seek to attract and retain skilled personnel.

The net losses we incur may fluctuate significantly from quarter to quarter and year to year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance. Due to the recurring losses, negative cash flows from operating activities since inception, and net working capital at December 31, 2024, the report of our independent registered public accountant on our consolidated financial statements as of and for the year ended December 31, 2024 filed with this Annual Report on Form 10-K for the year ended December 31, 2024 includes explanatory language describing the existence of substantial doubt about our ability to continue as a going concern. In addition, our management has further determined that there is a substantial doubt about our ability to continue as a going concern over the next 12 months from the filing date of March 24, 2025.

Although we have generated revenue from product sales, we may never be profitable. Our operating results may differ from any guidance we may announce.

Our current business is substantially dependent on the commercial success of PHEXXI, and to a lesser extent, SOLOSEC. The commercial launch of PHEXXI took place on September 8, 2020, and although we have generated revenue from sales of PHEXXI, we may never achieve or sustain profitability, even with the addition of revenue from SOLOSEC since we acquired global rights to the product in July 2024. Our ability to generate revenue and achieve and sustain profitability depends on our ability, alone or with strategic collaborators, to successfully commercialize PHEXXI and SOLOSEC and, to a lesser extent, any future products we may license, acquire, or otherwise commercialize. Our ability to generate future revenue from product sales depends heavily on our success in many areas, including, but not limited to:

- the rate and degree of market acceptance for PHEXXI, SOLOSEC and any other products in our commercial portfolio;
- the effectiveness of our commercialization strategies, either directly or with distribution partners, including the effectiveness of our sales force, the PHEXXI telehealth platform, media and digital campaigns, and contracted tele-sales vendor;
- reimbursement and pricing for PHEXXI, SOLOSEC and any other approved products in our commercial portfolio in amounts that support profitability;
- successfully competing against other products;
- manufacturing PHEXXI and SOLOSEC and establishing and maintaining supply and manufacturing relationships with third parties that are commercially feasible, as well as complying with applicable regulatory requirements and meeting our supply needs in sufficient quantities to meet market demand for our products;
- obtaining regulatory approval of PHEXXI (Femidence) and/or SOLOSEC in territories outside of the U.S.;
- protecting, maintaining and enforcing our intellectual property rights, including patents, trade secrets and know-how;
- negotiating favorable terms in any collaboration, licensing or other arrangements into which we may enter; and
- attracting, hiring and retaining qualified personnel.

From time to time, we may provide guidance as to our anticipated future performance and certain unit shipment information, prescription and prescriber statistics, website and search statistics and other metrics. We may fail to achieve the performance described in any such guidance, and any information or metrics we may provide may be not be indicative of future results. In addition, we provide co-pay assistance to commercially insured patients with an approved PHEXXI or SOLOSEC prescription and utilize a sample program to promote demand for our products. While the co-pay program reduces the amount of profit we realize per unit sold, it is a value-add program to patients that we aim to continue in 2025. Because of the expense to run the program, we will look to modify the business rules surrounding the co-pay program in the future, particularly as payers increasingly cover PHEXXI at $0 co-pay to comply with HRSA guidelines; compliance was mandated beginning January 1, 2023 and enforcement action is anticipated. If we are not able to generate sufficient net sales of our products, the net sales of our products is not sufficiently profitable, we fail to meet our guidance, or our information or metrics is not indicative of our future results of operations, this could materially and adversely affect our business results of operations, the price of our common stock, our financial condition and our ability to raise additional capital.

We will need to raise significant additional funds to finance our operations, including the commercialization of PHEXXI and SOLOSEC, and to remain a going concern. If we are unable to raise additional capital when needed or on acceptable terms, we may be forced to delay, reduce and/or eliminate one or more of our business initiatives or to cease our operations entirely.

We have incurred significant losses and negative cash flows since our inception. We believe our existing capital resources as of the filing of this Annual Report are sufficient to fund our planned operations into the first half of 2025. Our ability to raise additional funds will depend, in part, on our ability to successfully commercialize PHEXXI and SOLOSEC (collectively our Products) in the U.S. If, for whatever reason, we are unsuccessful in these efforts, it may make any necessary debt, equity or alternative financing more difficult, more costly and more dilutive. Attempting to secure additional financing will divert our management from our day-to-day activities, which may adversely affect our ability to commercialize our Products. In addition, we cannot guarantee that future financing will be available in sufficient amounts or on terms acceptable to us, if at all. Furthermore, the global credit and financial markets have experienced extreme volatility and disruptions in recent history, particularly for life science companies. If the equity and credit markets deteriorate, it may make any necessary debt or equity financing more difficult, more costly and more dilutive. If we are unable to raise additional funds when needed or on acceptable terms, we may be unable to continue commercializing our products. In addition, we may be required to delay, scale back or eliminate some or all of our business initiatives or be forced to cease operations entirely. To the extent we raise additional capital through the sale of equity, convertible debt or other securities convertible into equity, the ownership interest of our stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our stockholders. Future debt financings, if available at all, would likely involve agreements with additional covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures, making additional product acquisitions, or declaring dividends. If we raise additional funds through strategic collaborations, alternative non-dilutive financing, such as royalty-based financing, or licensing arrangements with third parties, we may have to relinquish valuable rights to our products, or future revenue streams or grant licenses on terms that are not favorable to us.

Women's health has historically been an underfunded sector. Recently, a number of public companies focused in women's health have failed to achieve expected commercial success and struggled to access sufficient capital. We are solely focused in women's health and may be unfavorably impacted by weak investor sentiment and a lack of interest in the category. Our ability to access capital and to advance our candidates could be adversely impacted.

We are solely focused in women's health, and primarily in the areas of contraception, vaginal health, reproductive health, and sexual health. The sector has historically been underfunded, with only about one percent of healthcare research and innovation in the U.S. invested in female-specific conditions beyond oncology according to market research. The failure of the women's health sector to receive consistent and committed investment fuels investor sentiment that market opportunities for new products in women's health are limited. Our stock price and our ability to access additional capital on acceptable terms when needed may be adversely impacted by unfavorable investor perception of market opportunities for women's health products, and our business, operating results, financial condition, and prospects could suffer.

We have certain obligations pursuant to our issued and outstanding senior secured notes, promissory notes, convertible notes and related note purchase agreements, and our failure to comply with these obligations could have a material adverse effect on our business, intellectual property, financial condition, or results of operations.

In April 2020, we entered into a Securities Purchase and Securities Agreement (the Baker Bros. Purchase Agreement) with certain institutional investors and their designated agent pursuant to which we issued and sold secured convertible promissory notes in an aggregate principal amount of $25.0 million and warrants to purchase shares of our common stock. In November 2021, we entered into the first amendment to the Baker Bros. Purchase Agreement which extended the affirmative covenant to achieve $100.0 million in cumulative net sales of PHEXXI by June 30, 2022 to June 30, 2023. On March 7, 2023, Baker Bros. Advisors, LP (the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Baker Bros. Purchase Agreement.

In March 2023, the Company received a Notice of Event of Default and Reservation of Rights (the Notice of Default) from Baker Bros claiming that the Company failed to maintain the required shares reserved amount per the Third Baker Amendment as defined in Note 4 – Debt. In addition, the Notice of Default resulted in a cross default under all outstanding debt, which became currently due and which the Company did not have sufficient capital to repay such obligations during the period of default. However, in May 2023 the Company effectuated a Reverse Stock Split, and thereby had a sufficient number of shares reserved as required under the Third Baker Amendment. As of June 30, 2023, the Company had not met the affirmative covenant requiring achievement of $100.0 million in cumulative net sales of PHEXXI by such date as per the First Baker Amendment (as defined in Note 4 – Debt).

In September 2023, the Company entered into a Fourth Baker Amendment (as defined in Note 4 – Debt), upon which the cumulative net sales covenant was removed and all defaults existing at the time of signing were cured.

The Fourth Baker Amendment amends certain provisions within the Baker Bros. Purchase Agreement including:

(i) the rescission of the Notice of Default delivered to the Company on March 7, 2023 and waiving the Events of Default named therein;

(ii) The waiver of any and all other Events of Default existing as of the Fourth Baker Amendment date;

(iii) the removal of the conversion feature into shares of Company common stock, including the removal of any requirement to reserve shares of common stock for conversion of the Baker Notes as well as any registration rights related thereto;

(iv) the clarification that for the sole purpose of enabling an ex-U.S. license agreement for such assets, any Patents, Trademarks or Copyrights acquired after the Effective Date shall be excluded from the definition of Collateral; and,

(v) the removal of the requirement for the Company to obtain $100 million in cumulative net PHEXXI sales in the specified timeframe.

The current outstanding balance of the Baker Notes will continue to accrue interest at 10% per annum and, in the event of a default in the agreement or a failure to pay the Repurchase Price (as defined below) on or before September 8, 2028 (the Maturity Date), the Baker Purchasers may collect on the full principal amount then outstanding. Additionally, the Company was required to make a $1.0 million upfront payment by October 1, 2023 (which payment was made in late September 2023) as well as quarterly cash payments based upon a percentage of the Company's global net product revenue. The cash payments will be determined based upon the quarterly global net revenue of PHEXXI such that if the global net revenue is less than or equal to $5.0 million, the Company will pay 3%; if the global net revenue is over $5.0 million and less than or equal to $7.0 million, the Company will continue to pay 3% on net revenue up to $5.0 million and 4% on the net revenue over $5.0 million; and if the global net revenue is over $7.0 million, the Company will pay 3% on the net revenue up to $5.0 million, 4% on the net revenue over $5.0 million up to $7.0 million, and 5% on net revenue over $7.0 million. The cash payments will be payable beginning in the fourth quarter of 2023. Regardless of the percentage paid, the quarterly cash payment amounts, along with the $1.0 million upfront payment, will be deducted from the Repurchase Price as Applicable Reductions.

The Fourth Baker Amendment also granted the Company the ability to repurchase the principal amount and accrued and unpaid interest of the Baker Notes for up to a five-year period for the one-time Repurchase Price designated below:

Date of Notes' Repurchase	Repurchase Price
On or prior to September 8, 2024	$14,000,000 (less Applicable Reductions)
September 9, 2024-September 8, 2025	$16,750,000 (less Applicable Reductions)
September 9, 2025-September 8, 2026	$19,500,000 (less Applicable Reductions)
September 9, 2026-September 8, 2027	$22,250,000 (less Applicable Reductions)
September 9, 2027-September 8, 2028	$25,000,000 (less Applicable Reductions)

On December 11, 2023, Baker Bros assigned to Aditxt, Inc. all remaining amounts due under the Securities Purchase and Security Agreement by and among Borrower, Baker and Designated Agent, dated as of April 23, 2020, as amended on November 20, 2021, March 21, 2022, September 15, 2022 and September 8, 2023 (the Agreement). Upon such assignment, Aditxt was the Company's senior secured debtholder and the Company was obligated to make all payments under the Fourth Baker Amendment to the Assignee as of December 31, 2023. On February 26, 2024, the notes were re-assigned back to Baker.

On July 23, 2024, the Company consented to the transfer of ownership of the Baker Notes from Baker Brothers Life Sciences, 667, L.P., and Baker Bros. Advisors, LP, each a Delaware limited partnership (collectively, Baker) to Future Pak, LLC (the Assignee). The terms of the Baker Notes were not changed in connection with the assignment from Baker to the Assignee.

On September 27, 2024, the Assignee, as agent for the Purchasers (in such capacity, the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the September 2024 Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, as amended, by and among the Company, Designated Agent, as certain guarantors and the purchasers (each a Purchaser and collectively Purchasers). The September 2024 Notice of Default claims that by entering into arrangements to repay certain existing obligations, including obligations owed to the U.S. Department of Health and Human Services (HHS), an Event of Default has occurred under Section 9.1(e) of the SPA. According to the Notice of Default, the Designated Agent has accelerated repayment of the outstanding principal balance owed by the Company under the Securities Purchase Agreement. If all Purchasers exercise the Section 5.7 Option (as defined below), the repurchase price would be equal to the total outstanding balance, including principal and accrued interest. Pursuant to Section 5.7(b) of the SPA, upon the occurrence of an Event of Default, each Purchaser may elect, at its option, to require the Company to repurchase the Note held by such Purchaser (or any portion thereof) at a repurchase price equal to two times the sum of the outstanding principal balance and all accrued and unpaid interest thereon, due within three business days after such Purchaser delivers a notice of such election (the Section 5.7 Option).

On October 27, 2024, the Designated Agent sent an amended and supplemented notice to the Initial Notice of Default (the Amended Notice of Default) which adds new claims of default based on the Company's current repayment agreements of existing obligations, including obligations owed to HHS, an Event of Default has occurred under Section 9.1(e) of the Baker Bros. Purchase Agreement, as amended. Furthermore, the Amended Notice stated that, because the events of default described in the Amended Notice of Default are not the certain prior events of default listed in the Forbearance Agreement (Specified Defaults), the Designated Agent and the holders of the senior secured promissory notes described in the SPA thereby provided notice to the Company that the Forbearance Agreement is terminated as of October 27, 2024.

On November 8, 2024, the Designated Agent sent an amended and supplemented notice to the Notices (the Third Amended Notice of Default) which adds new claims of default based on (i) the Company's failure to maintain a cash position of $1.0 million or greater, as required under Section 5(b) of the Forbearance Agreement (ii) the Company's failure to deliver financial and operating reports in accordance with the timeline required under the Section 8.1(n) of the Baker Stock Purchase Agreement, and (iii) to clarify the outstanding balance under the notes of the Baker Stock Purchase Agreement plus all accrued and unpaid interest thereon, in the sum of approximately is $107.0 million as opposed to the Repurchase Price as defined in the Fourth Amendment.

Evofem strongly disagrees with the Designated Agent's claim that an Event of Default has occurred. The Company intends to vigorously contest any attempt by the Designated Agent and the Purchasers to exercise their default rights and remedies under the SPA.

In October 2020, we entered into a Securities Purchase Agreement (the Adjuvant Purchase Agreement) pursuant to which we issued and sold to certain institutional investors unsecured convertible promissory notes in an aggregate principal amount of $25.0 million. On April 4, 2022, we entered into the first amendment to the Adjuvant Purchase Agreement (the First Adjuvant Amendment). The First Adjuvant Amendment extended, effective as of the date on which we achieved the Qualified Financing Threshold upon the closing of the May 2022 Public Offering, the affirmative covenant to achieve $100.0 million in cumulative net sales of PHEXXI by June 30, 2022 to June 30, 2023. The First Adjuvant Amendment also provided for an adjustment to the conversion price of the Adjuvant Notes such that the conversion price for these Notes, effective as of the reverse stock split the conversion price will now be the lesser of (i) $678.49, and (ii) 100% of the lowest price per share of common stock (or with respect to securities convertible into common stock, 100% of the applicable conversion price) sold in any equity financing until we have met the Qualified Financing Threshold.

Between December 2022 and September 2023, we entered into various securities purchase agreements (SPAs), with certain investors (the Investors) providing for the sale and issuance of senior secured convertible notes due in the aggregate gross cash receipt of $5.6 million (the Notes), warrants to purchase an aggregate 25,956,854 shares of common stock (Warrants), pre-funded warrants to purchase an aggregate 6,432,306 shares of common stock (Pre-funded Warrants), and an aggregate 70 shares of Series D Preferred Stock (the Preferred Shares) (collectively, the Senior Subordinate Notes). Each Investor paid approximately $650 for each $1,000 of principal amount of Notes, Preferred Shares and Warrants.

These debt arrangements limit our ability to incur debt, merge, or declare dividends and, in certain circumstances. The Baker Notes are secured by substantially all of our assets. Our failure to make payments as due under any of the Notes could be an event of default under all of the Notes. Events of default under these arrangements could also include, but are not limited to, a material breach of representations, our failure to comply with our obligation to convert convertible notes, our failure to perform or observe, and in certain instances, cure, certain covenants, including, but not limited to, a covenant requiring us to maintain the listing of shares of our common stock on the OTCQB. In the event of a default and depending on the terms of each Note, a holder of the Notes may be entitled to redemption premiums, treble amounts and other remedies described in their respective agreements. Any default could materially and adversely impact our business, results of operations and financial condition, as well as increase our need to raise additional capital, cause us to cease our operations entirely and may result in the holders of our common stock not receiving any value for their investment.

We have a limited number of shares of common stock available for future issuance which could adversely affect our ability to raise capital or consummate strategic transactions.

We are currently authorized to issue 3,000,000,000 shares of common stock under our amended and restated certificate of incorporation. As of March 14, 2025 we have issued 113,356,354 shares of common stock and approximately 964 million shares of common stock were committed for issuance giving effect to the assumed exercise of all outstanding warrants, options, purchase rights and the assumed conversion of all issued and outstanding convertible notes after accounting for the security holders who have waived the requirement for shares to be reserved for conversion of their instruments. The conversion prices of the Adjuvant Convertible Notes (as amended) and Senior Subordinate Notes may also be subject to adjustment depending on the price of issuances in future financings as described above. These adjustments would further increase the number of shares of common stock to be reserved as a result of these adjustments. Due to the limited number of authorized shares common stock available for future issuance, we may not be able to raise additional equity capital or complete a merger or other business combination unless we increase the number of shares we are authorized to issue. We would need to seek stockholder approval to increase the number of our authorized shares of Common Stock, and we can provide no assurance that we would succeed in amending our amended and restated certificate of incorporation to increase the number of shares of Common Stock we are authorized to issue which could negatively impact our business, prospects, and results of operations.

Use of net operating loss carryforwards may be limited and U.S. federal income tax reform could adversely affect us.

Our ability to utilize our net operating loss (NOL) carryforwards and other tax attributes to offset future taxable income or tax liabilities may be limited as a result of ownership changes. Corresponding rules may apply under state tax laws. Even if there is no limitation on utilization of our NOL carryforwards as the result of an ownership change, the utilization of NOL carryforwards may be limited by other applicable laws. Pursuant to the TCJA passed in December 2017, carryforwards originating from a loss incurred in a year after 2017 are limited and may reduce taxable income in any post-2020 year by no more than 80% of the pre-NOL taxable income in such year. The Coronavirus Aid, Relief and Economic Security Act (the CARES Act) temporarily suspended this 80% taxable income limitation, allowing an NOL carryforward to fully offset taxable income in tax years beginning before January 1, 2021. Additional legislation or regulation which could affect our tax burden could be enacted by any governmental authority. We cannot predict the timing or extent of such tax-related developments which could have a negative impact on our financial results, including a potential increase in federal corporate tax rates generally. We cannot estimate how the changes in tax law from this legislation will affect our tax liability in future years, but we have recorded a valuation allowance related to our NOLs and other deferred tax assets due to the uncertainty of the ultimate realization of the future benefits from those assets. We have established a full valuation allowance for our deferred tax assets due to uncertainties as to their utilization. While we use our best judgment in attempting to quantify and reserve for our tax obligations. A challenge by a taxing authority, our ability to utilize tax benefits such as carryforwards or tax credits, or a deviation from other tax-related assumptions may cause actual results to deviate from previous estimates.

Risks Related to the Aditxt Merger

The Merger may not be completed on the terms or timeline currently contemplated, or at all. Our stockholders will be subject to a number of material risks if the Merger is not completed.

The consummation of the Merger is subject to certain closing conditions, including:

(1) adoption of the Merger Agreement by the holders of a majority of our outstanding common stock and Series E-1 Shares (shares of which vote on an as-converted basis, and thus have greater voting power than shares of our common stock) at a meeting of our stockholders at which a quorum is present;
(2) no governmental entity having jurisdiction over any party shall have issue any order, decree, ruling injunction or other action that is in effect restraining the Merger;
(3) a voting agreement shall have been executed and delivered by the parties thereto;
(4) all Company preferred stock shall have been converted to Company common stock except for the Unconverted Company Preferred Stock (as defined by the A&R Merger Agreement);
(5) the Company shall have received agreements from all of the holders of the Company's warrants, duly executed, containing waivers with respect to any fundamental transaction, change in control or other similar rights that such warrant holders may have under any such Company warrants and exchange such Company warrants as they hold for an aggregate of not more than 930,336 shares of Parent Preferred Stock (as defined in the A&R Merger Agreement);
(6) the Company shall have cashed out any other warrant holder who has not provided a warrant holder agreement, provided, however, that the aggregate amount of such cash out for any and all other warrant holders who have not provided a warrant holder agreement shall not exceed $0.15 million;
(7) the Company shall have obtained waivers from holders of Company convertible notes of the original principal amount thereof with respect to any fundamental transaction rights such Company convertible note holders may have under any such Company convertible notes, including any right to vote, consent or otherwise approve or veto any of the transaction contemplated by this A&R Merger Agreement;
(8) Aditxt shall have received sufficient financing to satisfy its payment obligations under the A&R Merger Agreement;
(9) the requisite stockholder approval shall have been obtained by Aditxt at a special meeting of its stockholders to approve the Parent Stock Issuance (as defined in the A&R Merger Agreement);
(10) Aditxt shall have received a compliance certificate from the Company certifying Company complied with all reps and warranties in the A&R Merger Agreement;
(11) Aditxt shall have received waivers from the parties to the agreements listed in Section 7.2(f) of the A&R Merger Agreement Parent Disclosure Letter of the issuance of securities in a "Variable Rate Transaction" (as such term in defined in such agreements);

(12) Parent shall have received a certificate certifying that no interest in the Company is a U.S. real property interest, as required under U.S. treasury regulation section 1.897-2(h) and 1.1445-3(c);
(13) Aditxt shall have paid, in full, the Repurchase Price, as defined in the Fourth Amendment to the Securities Purchase and Security Agreement dated as of September 8, 2023, by and among the Company, Baker Brothers Life Sciences, L.P., 667, L.P. and Bakers Bros. Advisors LP (as assigned to Future Pak, LLC in 2024);
(14) there shall be no more than 4,141,434 dissenting shares that are Company common stock or 98 dissenting shares that are Company preferred stock;
(15) Company shall have received from Aditxt a compliance certificate certifying that Parent has complied with all representations and warranties; and
(16) that Aditxt shall be in compliance with stockholders' equity requirements in Nasdaq listing rule 5550(b)(1).

If the Merger is not completed for any reason, the price of our common stock may decline to the extent that the market price of our common stock, as applicable, reflects or previously reflected positive market assumptions that the Merger would be completed and the related benefits would be realized. In addition, the Company and Aditxt have expended significant management time and resources and have incurred and will continue to incur significant expenses due to legal, advisory, printing and financial services fees related to the Merger. These expenses must be paid regardless of whether the Merger is consummated.

There is no assurance that the Merger will be consummated. If the Merger is not timely completed, we may have to materially alter our respective business plans.

We may not be able to effect the Merger pursuant to the Merger Agreement. If we are unable to do so, we will incur substantial costs associated with withdrawing from the transaction.

In connection with the Merger Agreement and its amendments, we have incurred substantial costs planning and negotiating the transaction. These costs include, but are not limited to, costs associated with employing and retaining third-party advisors who perform financial, auditing and legal services required before we were able to enter into the Merger Agreement and which services will continue to be utilized as we seek to complete the transaction. If, for whatever reason, the transactions contemplated by the Merger Agreement fail to close, we will still be responsible for these costs, which could adversely affect our liquidity and financial results.

While the Merger Agreement is in effect, we are subject to certain interim covenants.

The Merger Agreement generally requires us to operate our business in the ordinary course, subject to certain exceptions, including as required by applicable law, pending consummation of the Merger, and subjects us to customary interim operating covenants that restrict us, without approval (such approval not to be unreasonably conditioned, withheld, or delayed), from taking certain specified actions until the Merger is completed or the Merger Agreement is terminated in accordance with its terms. These restrictions could prevent us from pursuing certain business opportunities that may arise prior to the consummation of the Merger and may affect our ability to execute our business strategies and attain financial and other goals and may impact our financial condition, results of operations and cash flows.

The announcement and pendency of the Merger could cause disruptions in our business, which could have an adverse effect on our business and financial results.

We have operated and, until the completion of the Merger, will continue to operate independently. Uncertainty about the effect of the Merger on employees, customers, distributors and vendors may have an adverse effect on us. These uncertainties may impair our ability to retain and motivate key personnel and could cause customers, distributors, vendors and others with whom we deal to seek to change existing business relationships which may materially and adversely affect our business. Moreover, integration efforts will also divert management attention and resources. These integration matters could have an adverse effect on the Company.

Certain provisions of the Merger Agreement may discourage third parties from submitting alternative acquisition proposals.

The terms of the Merger Agreement prohibit us from soliciting alternative acquisition proposals or cooperating with persons making alternative acquisition proposals, except in limited circumstances when our Board of Directors determines in good faith that an alternative acquisition proposal is or is reasonably likely to result in a superior proposal and that failure to cooperate with the proponent of the proposal is reasonably likely to be inconsistent with our Board of Directors' fiduciary duties.

We may be subject to litigation relating to the Merger.

We may be subject to legal claims, including stockholder claims, related to the Merger. Litigation is distracting and costly and subject to inherent uncertainties, and unfavorable rulings could occur. An unfavorable ruling could include monetary damages or other adverse effects. Were an unfavorable ruling to occur, there exists the possibility of a material adverse impact on our business, financial position, and results of operations, and the Merger may not be completed and our stock price could decline significantly.

Risks Related to Potential Bankruptcy

Given our current financial condition, we have considered and may continue to consider filing for bankruptcy protection. While we have not initiated bankruptcy proceedings, we caution that trading in our securities is highly speculative and poses substantial risks relating to the potential of bankruptcy proceedings should we fail to consummate a strategic transaction such as the Merger (as defined in Note 1 – Business). Trading prices for our securities may bear little or no relationship to the actual recovery, if any, by holders of our securities in Bankruptcy proceedings, if any.

We are subject to risks and uncertainties associated with potential bankruptcy proceedings.

Our operations and ability to develop and execute our business plan, our financial condition, our liquidity, and our continuation as a going concern, are subject to risks and uncertainties associated potential or actual bankruptcy. These risks include the following:

- our ability to prosecute, confirm and consummate a plan of reorganization with respect to the Chapter 11 proceedings;
- the high costs of bankruptcy proceedings and related fees;
- our ability to obtain sufficient financing to allow us to emerge from bankruptcy and execute our business plan post emergence;
- our ability to maintain our current relationships with or attract new suppliers, service providers, customers, employees, and other third parties;
- our ability to maintain contracts that are critical to our operations;
- our ability to execute our business plan in the current depressed commodity price environment;
- our ability to attract, motivate and retain key employees;
- the ability of third parties to seek and obtain court approval to terminate contracts and other agreements with us or make other third-party motions in the proceedings;
- the ability of third parties to seek and obtain court approval to convert Chapter 11 proceedings to Chapter 7 proceedings, if applicable; and
- the actions and decisions of our creditors and other third parties who have interests in proceedings that may be inconsistent with our plans.

Delays in filing for or moving forward with the proceedings increase the risks of our being unable to reorganize our business and emerge from bankruptcy and increase our costs associated with the bankruptcy process.

These risks and uncertainties could affect our business and operations in various ways. For example, negative events associated with either Chapter 11 or Chapter 7 proceedings could adversely affect our relationships with our suppliers, service providers, customers, employees, and other third parties, which in turn could adversely affect our operations and financial condition. Also, we need the prior approval of the Bankruptcy Court for transactions outside the ordinary course of business, which may limit our ability to respond timely to certain events, take advantage of

certain opportunities or pursue our business strategies. Because of the risks and uncertainties associated with potential proceedings, we cannot accurately predict or quantify the ultimate impact that events that may occur during the proceedings will have on our business, financial condition and results of operations.

As of December 31, 2024, we have negative stockholders' equity. If we are unable to raise additional capital, or otherwise become unable to satisfy our obligations as they become due, we may become insolvent and face the risk of bankruptcy.

Since inception, we have incurred significant operating losses. As of December 31, 2024, we had a working capital deficit of $66.8 million and an accumulated deficit of $897.7 million. We have financed our operations to date primarily through the issuance of preferred stock, common stock and warrants, cash received from private placement transactions, the issuance of convertible notes and, to a lesser extent, product sales. Accordingly, if we are unable to raise additional capital, or if we otherwise become unable to satisfy our obligations as they become due, we may become insolvent and face the risk of bankruptcy and other adverse action by our existing and future creditors.

Further, we may currently, or in the future, be operating in the "zone of insolvency" as described under Delaware law, which is our jurisdiction of incorporation. Generally, a corporation's directors owe a fiduciary duty to the corporation's shareholders and not to its creditors. However, when a corporation is operating in the "zone of insolvency," some courts have concluded that the fiduciary duty of directors shifts to include creditors. Delaware courts have taken the position that directors of a corporation operating in the zone of insolvency continue to owe a fiduciary duty to the corporation's stockholders but also owe such duty to its creditors. Accordingly, our management and directors may be required to consider their duties with regard to both stockholders and creditors in their decision making processes.

Our businesses could suffer from a long and protracted restructuring.

Our future results could be dependent upon the successful confirmation and implementation of a bankruptcy plan or other alternative restructuring transaction, including a sale of all or substantially all of our assets. A long period of operations under Bankruptcy Court protection could have a material adverse effect on our business, financial condition, results of operations and liquidity. Failure to obtain confirmation of a Chapter 11 plan or approval and consummation of an alternative restructuring transaction in a timely manner may harm our ability to obtain financing to fund our operations, and there is a significant risk that the value of our securities and assets would be substantially eroded to the detriment of all stakeholders. If a Chapter 11 plan that complies with the applicable provisions of the Bankruptcy Code cannot be agreed upon, it is possible that we would have to liquidate our assets, in which case it is likely that holders of claims would receive substantially less favorable treatment than they would receive if we were to emerge as a viable, reorganized entity.

If filed, as long as bankruptcy proceedings continue, we will be required to incur substantial costs for professional fees and other expenses associated with the administration of the Chapter 11 or Chapter 7 proceedings. Chapter 11 proceedings may also require us to seek debtor-in-possession financing to fund operations. If we are unable to obtain such financing on favorable terms or at all, our chances of successfully reorganizing our business may be seriously jeopardized, the likelihood that we instead will be required to liquidate our assets may be enhanced, and, as a result, any securities in us could become further devalued or become worthless.

In the event we decide to initiate bankruptcy proceedings, there can be no assurance that we will successfully reorganize and emerge from Chapter 11 proceedings or, if we do successfully reorganize, as to when we would emerge from the Chapter 11 proceedings. Even after a Chapter 11 plan is confirmed and implemented, our operating results may be adversely affected by the possible reluctance of prospective lenders, suppliers, and other counterparties to do business with a company that recently emerged from bankruptcy proceedings.

In certain instances, a Chapter 11 case may be converted to a case under Chapter 7 of the Bankruptcy Code.

We have not filed for bankruptcy and therefore have not yet decided upon Chapter 11 or Chapter 7. However, should we choose to pursue Chapter 11, upon a showing of cause, the Bankruptcy Court may convert our Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code. In such event, a Chapter 7 trustee would be appointed or elected to liquidate our assets for distribution in accordance with the priorities established by the Bankruptcy Code. We believe that liquidation under Chapter 7 would result in significantly smaller distributions being made to our

creditors because of (i) the likelihood that the assets would have to be sold or otherwise disposed of in a distressed fashion over a short period of time rather than in a controlled manner and as a going concern, (ii) additional administrative expenses involved in the appointment of a Chapter 7 trustee, and (iii) additional expenses and claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of operations.

If we choose to file under Chapter 11, we may be subject to claims that will not be discharged in the bankruptcy proceedings, which could have a material adverse effect on our financial condition and results of operations.

The Bankruptcy Code provides that the confirmation of a plan of reorganization discharges a debtor from substantially all debts arising prior to confirmation. With few exceptions, all claims that arose prior to confirmation of the plan of reorganization (i) would be subject to compromise and/or treatment under the plan of reorganization and/or (ii) would be discharged in accordance with the Bankruptcy Code and the terms of the plan of reorganization. Any claims not ultimately discharged through a plan of reorganization could be asserted against the reorganized entities and may have an adverse effect on our financial condition and results of operations on a post-reorganization basis.

Our financial results may be volatile and may not reflect historical trends.

During bankruptcy proceedings, we expect our financial results to continue to be volatile as asset impairments, asset dispositions, restructuring activities and expenses, contract terminations and rejections, and claims assessments occur, which may significantly impact our consolidated financial statements. As a result, our historical financial performance is likely not indicative of our financial performance after the date of a bankruptcy filing.

In addition, if we emerge from Chapter 11, the amounts reported in subsequent consolidated financial statements may materially change relative to historical consolidated financial statements, including as a result of revisions to our operating plans pursuant to a plan of reorganization. We also may be required to adopt fresh start accounting, in which case our assets and liabilities will be recorded at fair value as of the fresh start reporting date, which may differ materially from the recorded values of assets and liabilities on our consolidated balance sheets. Our financial results after the application of fresh start accounting also may be different from historical trends.

Risks Related to Commercialization of PHEXXI, SOLOSEC, and Any Other Approved Products

Our success will depend heavily on whether we can successfully commercialize PHEXXI for prevention of pregnancy, and our newly acquired product, SOLOSEC, for the treatment of bacterial vaginosis (BV) and trichomoniasis (Trich). Failure to successfully commercialize our products would likely cause our business to fail.

Our overall success will rely heavily on the commercial success of PHEXXI vaginal gel for prevention of pregnancy as well as of SOLOSEC for the treatment of BV and Trich. Failure to successfully commercialize our products would likely cause our business to fail.

If we are unable to maintain effective internal sales and marketing capabilities, or to enter into agreements with third parties to market and sell our products, our ability to continue to successfully commercialize our products and generate revenue would be adversely affected.

We may not be able to maintain the requisite sales force to market our products and we may face difficulties recruiting and hiring sales representatives and otherwise obtaining marketing capabilities. In the fourth quarter of 2022 and first quarter of 2023, we completed two reductions in workforce (RIFs) which reduced overall headcount and notably the total number of sales employees; this negatively impacted our ability to maintain our sales and marketing capabilities. Any failure or future delay in the timely development of our internal commercialization capabilities could adversely impact the potential for commercial success of our products. We expect to continue to expend significant time and resources to train our sales consultants in marketing our products. In addition, we must train our sales force to ensure that an appropriate and compliant message about our products is being delivered. If we are unable to effectively train our sales force and equip them with compliant and effective materials, including medical and sales literature to help them appropriately inform and educate physicians regarding the potential benefits of our products, our efforts to successfully commercialize our products could be put in jeopardy, which would negatively impact our ability to generate product revenues.

Our use of social media platforms to market and promote our prescription products, presents risks and operational challenges.

We believe that our customer base and potential patient populations for our products are active on social media, and we have engaged and intend to continue to engage through those platforms to conduct direct-to-consumer marketing. Social media practices in the pharmaceutical, biotechnology and medical device industries are evolving, which creates uncertainty and risk of noncompliance with regulations applicable to our business. For example, patients may use social media platforms to comment on the effectiveness of, or adverse experiences with, our products, which could result in regulatory reporting obligations or the need for us to conduct an investigation. The use of influencers and patient ambassadors to promote our products also may be subject to federal truth-in-advertising laws enforced by the Federal Trade Commission (FTC), as well as comparable state consumer protection laws, and we are responsible for training those influencers on the compliant messages they can deliver to consumers about our products. Any actual or perceived non-compliance by our influencers and patient ambassadors with those requirements could lead to an investigation by the FTC or a comparable state agency or could lead to allegations of misleading advertising by private plaintiffs. In addition, there is a risk of inappropriate disclosure of sensitive information or negative or inaccurate posts or comments about us or our products on any social networking website. If any of these events were to occur or we otherwise fail to comply with any applicable regulations, we could incur liability, face restrictive regulatory actions, or incur other harm to our business such as reputational damage.

We face competition from other medical device, biotechnology and biopharmaceutical companies and our operating results will suffer if we are unable to compete effectively.

The medical device, biotechnology and biopharmaceutical industries, and the women's health sector, are intensely competitive. Significant competition among various contraceptive products already exists. Existing products have name recognition, are marketed by companies with established commercial infrastructures, and are marketed with greater financial, technical and personnel resources than we have. To compete and gain market share, any new product must demonstrate advantages in efficacy, convenience, tolerability, and/or safety, among other things. In addition, new products developed by others could emerge as competitors to PHEXXI. These products could potentially offer an alternative form of non-hormonal contraception that is more convenient, is more effective, and/or provides protection over longer periods of time as compared to PHEXXI. We also compete with these organizations to recruit management and sales and marketing personnel. Any failure to attract and retain such personnel could negatively affect our level of expertise and our ability to execute our business plan. We also face competition in connection with identifying and engaging in strategic transactions. If we are not able to compete effectively against our current and future competitors, our business will not grow and our financial condition and operations will suffer.

With respect to SOLOSEC, there are many FDA-approved products for the treatment of bacterial vaginosis, and many are generic. SOLOSEC competes with those products. Current therapies for the treatment of bacterial vaginosis primarily consist of oral and vaginal formulations of antibiotics delivered as a single dose or through multiple doses over consecutive days. If health care providers do not view the prescribing information for SOLOSEC as compelling compared with other products available for the treatment of bacterial vaginosis, or if competitive products have better insurance coverage or reimbursement levels than SOLOSEC, health care providers may opt to continue to prescribe existing treatments rather than recommend or prescribe SOLOSEC to their patients.

Our potential competitors include large, well-established pharmaceutical companies and specialty pharmaceutical companies who have significantly more resources than Evofem. These companies include Merck & Co., Inc., Organon, Allergan PLC, Pfizer Inc., Bayer AG, Johnson & Johnson, CooperSurgical Inc. and Mylan Inc. Additionally, several generic manufacturers currently market and continue to introduce new generic contraceptives.

PHEXXI, SOLOSEC, and any other approved products we promote may not gain sufficient market acceptance among physicians, patients or the medical community, thereby limiting our potential to generate revenue, which will undermine our future growth prospects.

Even though PHEXXI has been approved by the FDA for commercial sale for the prevention of pregnancy, and SOLOSEC has been approved by the FDA for commercial sale for the treatment of BV and trichomoniasis, the degree of market acceptance of any new product by physicians, patients and the medical community will depend on a number of factors, including:

- demonstrated evidence of efficacy and safety and potential advantages compared to competing products;
- perceptions by the medical community, physicians, and patients, regarding the safety and effectiveness of the product and the willingness of the target patient population to try it and of physicians to prescribe it;
- relative convenience and ease of administration compared to other products approved for the same indication;
- the regulatory label requirements for the product, including any potential restrictions on use or precautionary statements;
- sufficient third-party insurance coverage and adequate reimbursement;
- the terms of any approvals, such as any restrictions on the use of our product together with other medications;
- the willingness of wholesalers and pharmacies to stock the products;
- the prevalence and severity of any adverse side effects;
- the ability to sufficiently educate physicians with respect to the product's safety and efficacy; and
- availability of alternative products and the cost-effectiveness of our product relative to competing products.

If any approved product that we may license, acquire or sell, including PHEXXI and SOLOSEC, does not provide a benefit over currently available options, that product is unlikely to achieve market acceptance, and we will not generate sufficient revenues to achieve profitability.

The telehealth market continues to develop. If it encounters negative publicity over privacy issues, fails to engage sufficient numbers of providers, or if limitations on reimbursement or new state law regulatory requirements impede our ability to implement our telehealth strategy, the growth of our business may be harmed.

We utilize a telehealth platform where women can directly meet with HCPs to determine their eligibility for PHEXXI and potentially have prescriptions written. Our success will depend to a substantial extent on the willingness of women to use the telehealth platform. Negative publicity concerning our telehealth platform, or the telehealth industry as a whole, could limit market acceptance and utilization of the PHEXXI telehealth platform. Additionally, telehealth laws are rapidly changing. There is no guarantee that telehealth will be permitted in the same way in perpetuity. Changes by state professional licensing boards to the standards of care or other requirements governing the practice of telehealth, including the imposition of new requirements for prescriptions from state and federal regulatory bodies, could impact the success of our telehealth solution. Similarly, individual and health care industry concerns or negative publicity regarding patient confidentiality and privacy in the context of telehealth could limit market acceptance and utilization of our platform. If any of these events occur, it could have a material adverse effect on our business, financial condition, or results of operations.

The success of PHEXXI will depend on the availability of competitive products and women's preferences, in addition to the market's acceptance of the vaginal pH modulator.

The commercial success of PHEXXI will depend upon the contraceptive market as well as market acceptance of PHEXXI as a new form of contraception, a vaginal pH modulator. Risks related to market acceptance include, among other things:

- minimum acceptable contraceptive efficacy rates and the related regulatory label requirements, including any potential restrictions on use or precautionary statements;
- perceived safety differences of hormonal and/or non-hormonal contraceptive options;
- changing women's preferences;
- the effect of the Affordable Care Act (ACA) on pharmaceutical coverage, reimbursement and pricing, and the coverage of preventable services (including contraception under certain conditions); and
- new generic contraceptive options including the possibility of a future potential generic version of PHEXXI.

For example, the pregnancy rate with typical use of PHEXXI in the FDA-approved label is higher than that of hormonal contraceptives, and we cannot be certain that the associated risk of unintended pregnancy will not deter adoption of PHEXXI as a method of pregnancy prevention. In addition, PHEXXI's label contains a warning related

to use by women with a history of recurrent urinary tract infections, which could limit the willingness of HCPs to prescribe or certain women to use PHEXXI. These risks could reduce the market potential for PHEXXI or any future contraceptive product we may seek to develop, and place pressure on our business, financial condition, results of operations and prospects.

The commercial success of PHEXXI, SOLOSEC and/or any future products we promote will depend in significant measure on the label claims that the FDA or other regulatory authorities approve for those products.

The commercial success of our products will depend in significant measure upon the prescribing information and the patient-directed labeling describing the product's features, benefits, and risks.

We are required to submit all revisions to approved product labeling for our products as part of a supplemental NDA to the FDA for review and approval. Failure to achieve approval from the FDA or other regulatory authorities of product labeling revisions could have a material adverse impact on our business, financial condition, results of operations and prospects.

The FDA and other regulatory agencies actively enforce laws and regulations prohibiting the promotion of off-label uses for prescription drugs and medical devices. If we are found or alleged to have improperly promoted our commercial product for off-label uses, we may become subject to significant liability.

The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription products such as PHEXXI and SOLOSEC. In particular, a product may not be promoted for uses that are not approved by the FDA or such other regulatory agencies as reflected in the product's approved labeling. Promotional labeling for PHEXXI, SOLOSEC and for any other products that we may promote, must be submitted to FDA at the time of first use. The agency actively solicits reports from health care professionals about improper drug manufacturer promotional claims or activities. If we are found to have promoted our products for any off-label use, we may become subject to significant liability and potentially reputational harm. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed. If we cannot successfully manage the promotion of our products to ensure compliance with these legal and regulatory requirements, we could become subject to significant liability, which would materially adversely affect our business and financial condition.

If we suffer negative publicity concerning the safety or efficacy of our products, our reputation and the commercialization of such products could be harmed.

If concerns should arise about the safety or efficacy of our products, such concerns could adversely affect the market's perception which could lead to a decline in investors' expectations, adverse effects on our results of operations, and a decline in the price of our common stock.

We rely, and expect to continue to rely, on market research conducted internally to evaluate the potential commercial acceptance of PHEXXI for the prevention of pregnancy.

We expect to continue to perform internal market research and our research findings may not be indicative or predictive of actual or overall market acceptance and any future market research may not be indicative of the acceptance for PHEXXI for contraception. Moreover, our internal research that has informed our views with respect to our sales and marketing strategy, payer coverage, pricing and reimbursement with respect to PHEXXI may prove to be incorrect. For example, we believe that women who are most likely to use PHEXXI as their primary method of preventing pregnancy are those who are unwilling to use hormone-based contraceptives and are unsatisfied with other commercially available non-hormonal alternatives. If our market research has overestimated the size of this population or the willingness of these women to try PHEXXI, the commercialization of PHEXXI may be less successful than we or others expect.

There can be no assurance on the accuracy or completeness of certain facts, forecasts and other statistics obtained from various government publications, market data providers and other independent third-party sources, including industry expert reports, contained in this Annual Report or other statements we may make from time to time.

Certain facts, forecasts and other statistics contained herein and that we may discuss from time to time have been derived from various government publications, market data providers and other third-party sources. While we have no reason to believe that this information is false or misleading or that any fact has been omitted that would render this information false or misleading, we cannot guarantee the accuracy and completeness of this information. While we have taken reasonable care to ensure that these facts, forecasts and other statistics have been accurately reproduced from their respective sources, these facts, forecasts and other statistics have not been independently verified by us, our directors, advisers or any other parties and none of us make any representation as to the accuracy or completeness of such information. Due to possibly flawed or ineffective collection methods or discrepancies between published information and market practice and other problems, the facts, forecasts and statistics contained herein may be inaccurate or may not be comparable to information produced by other parties. Therefore, you should give consideration as to how much weight or importance you should attach to or place on these facts, forecasts or statistics and in all cases, but particularly with respect to market size, this information should not be unduly relied upon.

The proportion of the contraceptive market that is made up of generic products continues to increase, making the introduction of a branded contraceptive difficult and expensive.

The proportion of the U.S. market that is made up of generic products has increased over time. This trend is occurring in the women's health segment as well, where many of the most popular oral contraceptive pills brands have experienced genericization. Assuming this trend continues, it may be more challenging to commercialize PHEXXI at a price that will maximize our revenue and profits. Also, there may be additional marketing costs to commercialize PHEXXI in order to overcome the trend towards generics and to gain access to reimbursement by payers. If we are unable to gain or maintain favorable reimbursement from payers for PHEXXI, or if patients are unwilling to pay any price differential between PHEXXI and a generic contraceptive product, our revenues will be limited. We are covering the cost of initial fills of PHEXXI at a $0 co-pay and subsequent refills at $25 co-pay up to a reduction of $75 per box. However, we cannot be certain that these initiatives will be successful in overcoming general inclinations of physicians and their patients to avoid branded contraceptives and these initiatives may become prohibitively expensive. If we choose to curtail our co-pay programs, demand for PHEXXI may decrease. In addition, if health care plans do not add PHEXXI to their covered formularies within the timelines we expect, or continue to include it on their covered formularies, or impose a more restrictive co-pay than we expect, our costs of providing these incentive programs will increase beyond our expectations and reduce our product margins and net revenues from sales of PHEXXI.

Even though we have received approval from the FDA in the U.S. to market PHEXXI for the prevention of pregnancy, and, as Femidence, by the National Agency for Food and Drug Administration and Control of Nigeria, and to market SOLOSEC for the treatment of BV and Trich, we may fail to receive similar approvals in other territories outside the U.S.

To market a new product outside the U.S., we must obtain separate marketing approvals in each jurisdiction and comply with numerous and varying regulatory requirements of other countries, including clinical trials, commercial sales, pricing manufacture distribution and safety requirements. The time required to obtain approval in other countries might differ from, and be longer than, that required to obtain FDA approval. The marketing approval process in other countries may include all the risks associated with obtaining FDA approval in the U.S., as well as other risks. In addition, in many countries outside the U.S., a new product must receive pricing and reimbursement approval prior to commercialization. This can result in substantial delays in these countries. Additionally, the product labeling requirements outside the U.S. are different and may be inconsistent with the U.S. labeling requirements, negatively affecting our ability to market our products in countries outside the U.S.

In addition, if we are unable to comply with applicable foreign regulatory requirements, we may be subject to fines, suspension or withdrawal of marketing approvals, product recalls, seizure of products, operating restrictions and criminal prosecution. In such an event, our ability to market to our full target market will be reduced and our ability to realize the full market potential of the approved products will be harmed, which could have a materially adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Our Post-Marketing Legal and Regulatory Compliance

Even though we have obtained FDA approval for PHEXXI for prevention of pregnancy and of SOLOSEC for the treatment of BV and Trich, we remain subject to ongoing regulatory requirements.

Even though PHEXXI vaginal gel has been approved by the FDA for the prevention of pregnancy and SOLOSEC has been approved by the FDA for the treatment of BV and Trich, we are and will be subject to ongoing regulatory requirements with respect to manufacturing, labeling, packaging, storage, advertising, promotion, sampling, record-keeping, conduct of post-marketing clinical trials and submission of safety, efficacy and other post-approval information, including both federal and state requirements in the U.S. and requirements of comparable foreign regulatory authorities.

In addition, manufacturers and manufacturers' facilities are required to continuously comply with FDA and comparable foreign regulatory authority requirements, including ensuring quality control and manufacturing procedures conform to cGMP regulations and corresponding foreign regulatory manufacturing requirements. Accordingly, we and our contract manufacturers will be subject to continual review and inspections to assess compliance with cGMP and adherence to commitments made in any NDA submission to the FDA or any other type of domestic or foreign MAA.

Any regulatory approvals we have received and may in future receive for our products may be subject to limitations on the approved indicated uses for which it may be marketed, and usual and customary surveillance to monitor its safety and efficacy. We will be required to report adverse reactions and production problems, if any, to the FDA and comparable foreign regulatory authorities. Any new legislation addressing drug safety issues could result in delays in commercialization, or increased costs to ensure compliance.

If a regulatory agency discovers previously unknown problems with our products, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, or it disagrees with the promotion, marketing or labeling of a product, the regulatory agency may impose restrictions on that product or on us, including requiring withdrawal of the product from the market. If we are unable to comply with applicable regulatory requirements, a regulatory agency or enforcement authority may, among other things:

- issue warning letters or untitled letters;
- impose civil or criminal penalties;
- suspend or withdraw regulatory approval;
- suspend any of our ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications submitted by us;
- impose restrictions on our operations, including closing our contract manufacturers' facilities; or
- require a product recall.

Any government investigation of alleged violations of law would require us to expend significant time and resources in response and could generate adverse publicity. Any inability to comply with ongoing regulatory requirements may significantly and adversely affect our ability to develop and commercialize our products and the value of our business and our operating results would be adversely affected.

Developments after a product reaches the market may adversely affect sales of the product.

Even though PHEXXI has been approved in the U.S. for the prevention of pregnancy and SOLOSEC for the treatment of BV and Trich, certain developments could decrease market demand for it, including the following:

- the re-review of a product that is already marketed;
- new scientific information and evolution of scientific theories;
- the recall or loss of marketing approval of a product that is already marketed;
- changing government standards or public expectations regarding safety, efficacy or labeling changes; and
- greater examination of advertising and promotion.

In the past, clinical trials and post-marketing surveillance of certain marketed drugs have raised concerns that have led to recalls, withdrawals, or the addition of restrictive labeling of marketed products. If previously unknown side effects are discovered with one of the active ingredients in, or if there is an increase in negative publicity regarding known side effects related to PHEXXI, SOLOSEC, or any other product we may commercialize, this could significantly reduce demand for the product or require us to take actions that could negatively affect sales, including removing the product from the market, restricting its distribution or applying for labeling changes.

Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of our products. If we are unable to obtain adequate insurance or are required to pay for liabilities resulting from a claim excluded from, or beyond the limits of, our insurance coverage, a material liability claim could adversely affect our financial condition.

We face an inherent risk of product liability exposure in commercializing our products. If serious adverse events or undesirable side effects occur, the following events could occur which would materially and adversely affect our business:

- regulatory authorities may require the addition of specific warnings or contraindications to product labeling or the issuance of alerts to physicians, pharmacies, and the general public;
- we may be required to change the way our products are administered or to revise the labeling of our products;
- we may be subject to promotional and marketing limitations on our products;
- sales of our products may decrease significantly;
- regulatory authorities may require us to take one or more of our products off the market;
- we may be required to conduct additional clinical trials with more patients or over longer periods of time than anticipated;
- we may be required to implement risk evaluation and mitigation strategies (REMS), which could result in substantial cost increases and have a negative impact on our ability to commercialize our products;
- we may be required to limit the patients who can receive our products;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of our products, or could substantially increase commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from our products. Serious adverse events or side effects could require one or more of our products to be taken off the market, may require it to be packaged with safety warnings, or may otherwise limit our sales.

Further, if we cannot successfully defend ourselves against these product liability claims, we may incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in decreased demand for our products, injury to our reputation, negative media attention and the diversion of our management's time and attention from our commercialization efforts to address claim related matters.

We will need to maintain liability insurance coverage as we continue to commercialize our products. This insurance may become increasingly expensive and difficult to procure. In the future, this insurance may not be available to us at all or may only be available at a very high cost and, if available, may not be adequate to cover all liabilities we may incur. In addition, while we have increased our liability insurance coverage in connection with the commercialization of our products, we cannot be certain our coverage limits will be sufficient to cover liability claims we may face. We will also need to increase liability coverage if we promote any other product. If we are not able to obtain and maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise, our business could be harmed, possibly materially.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on our business, financial condition or results of operations.

The activities of our third-party manufacturers and suppliers may involve the controlled storage, use, and disposal of hazardous materials. We and our manufacturers and suppliers, and our potential future manufacturers and

suppliers, are and will be subject to laws and regulations governing the use, manufacture, storage, handling, and disposal of these hazardous materials. In some cases, these hazardous materials and various wastes resulting from their use may be stored at our and our current and potential future manufacturers' facilities pending their use and disposal. We cannot eliminate the risk of contamination, which could cause an interruption of our commercialization efforts and business operations; environmental damage resulting in costly clean-up; and liabilities under applicable laws and regulations governing the use, storage, handling, and disposal of these materials and specified waste products. Although we believe the safety procedures utilized by us and our current third-party manufacturers for handling and disposing of materials generally comply with the standards prescribed by these laws and regulations, we cannot guarantee this is the case or eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources and state or federal or other applicable authorities may curtail our use of specified materials and/or interrupt our business operations. Furthermore, environmental laws and regulations are complex, change frequently, and have tended to become more stringent. We cannot predict the impact of such changes and cannot be certain of our future compliance. We do not currently carry biological or hazardous waste insurance coverage.

The FDA and other regulatory agencies actively enforce the laws and regulations relating to the promotion of our products.

If we are found to have improperly promoted uses of our products in the U.S., we may become subject to significant liability. Such enforcement has become more common in the industry. The FDA and other regulatory agencies strictly regulate the promotional claims that may be made about prescription drug and device products. In particular, a product may not be promoted in a manner that results in the company making false or misleading claims. If the FDA determines that our or our partners' public disclosures, promotional materials or training constitutes promotion of false or misleading claims, it could request modifications to disclosure policies, training or promotional materials or subject us or our partners to regulatory or enforcement actions, including the issuance of an untitled letter, a Warning Letter, injunction, seizure, civil fine or criminal penalties and a requirement for corrective advertising, including "Dear Doctor" letters. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our or our partners' promotional or training materials to constitute promotion of false or misleading claims which could result in significant civil, criminal and/or administrative penalties, damages, fines, disgorgement, individual imprisonment, exclusion from government-funded healthcare programs, such as Medicare and Medicaid, contractual damages, reputational harm, increased losses and diminished profits and the curtailment or restructuring of operations, any of which could adversely affect our or our partners' ability to operate and, thus, adversely impact our business and our financial results. The FDA or other enforcement authorities could also request that we enter into a consent decree or a corporate integrity agreement or seek a permanent injunction against us under which specified promotional conduct is monitored, changed, or curtailed. If we cannot successfully manage the promotion of our product in the U.S., we could become subject to significant liability, which would materially adversely affect our business and financial condition.

Risks Related to Our Intellectual Property

Our rights to develop and commercialize PHEXXI are subject, in part, to the terms and conditions of licenses granted to us by third parties. The patent protection and patent prosecution of PHEXXI is dependent on third parties.

We are reliant upon licenses to certain patent rights and proprietary technology from third parties that are important or necessary to the commercialization of PHEXXI. For example, the Rush License Agreement includes intellectual property rights to PHEXXI. This agreement currently requires us, as a condition to the maintenance of our license and other rights, to make milestone and royalty payments and satisfy certain performance obligations through March 2025. As of December 31, 2024, we have accrued all such obligations pursuant to the Rush License Agreement, we have obtained a waiver of any potential claim of breach based on any provisions requiring us to timely exploit the licensed patent or make minimum royalty payments.

In addition, with respect to PHEXXI, Rush University has the right, in certain instances, to control the defense against any infringement litigation arising from the manufacture or development (but not the sale) of PHEXXI. While the Rush License Agreement requires Rush University to indemnify us for certain losses arising from these claims, this indemnification may not be sufficient to adequately compensate us for any related losses or the potential loss of our ability to manufacture and develop PHEXXI. In general, the agreements under which we currently license

intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology or increase what we believe to be our financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our business, financial condition, results of operations, and prospects. Moreover, if disputes over intellectual property we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize PHEXXI, which could have a material adverse effect on our business, financial conditions, results of operations, and prospects.

Our licensors may have relied on third-party consultants or collaborators or on funds from third parties such that our licensors are not the sole and exclusive owners of the patents we in-license. If other third parties have ownership rights to our in-licensed patents, they may be able to license such patents to our competitors, and our competitors could market competing products and technology. This could have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

TherapeuticsMD may take adverse action against the Company and its use of the PHEXXI mark.

On December 14, 2020, a trademark dispute captioned TherapeuticsMD, Inc. v Evofem Biosciences, Inc., was filed in the U.S. District Court for the Southern District of Florida against the Company, alleging trademark infringement of certain trademarks owned by TherapeuticsMD under federal and state law (Case No. 9:20-cv-82296). On July 18, 2022, the Company settled the lawsuit with TherapeuticsMD, with certain requirements which were required to be performed by July 2024 (the Settlement Timeline), including changing the name of PHEXXI. On July 29, 2024 the Company received a cease and desist letter from TherapeuticsMD, demanding that the Company change the name of PHEXXI. The Company is currently finalizing plans to re-brand PHEXXI in connection with the settlement reached with TherapeuticsMD in 2022.

If we are unable to obtain and maintain patent protection for our products and their underlying technologies, or if the scope of the patent protection we have or will obtain is not sufficiently broad, our competitors could develop and commercialize products and technology similar or identical to our product and technology, and our ability to successfully commercialize our products may be adversely affected.

Our success depends in large part on our ability to obtain and maintain patent protection in the U.S. and other countries with respect to our product and proprietary. We seek to protect our proprietary position by in-licensing intellectual property and filing patent applications in the U.S. and abroad relating to our products and their underlying technologies. If we or our licensors are unable to obtain or maintain patent protection with respect to our products and their underlying technologies, our business, financial condition, results of operations, and prospects could be materially harmed.

Changes in either the patent laws or their interpretation in the U.S. and other countries may diminish our ability to protect our inventions, obtain, maintain, and enforce our intellectual property rights and, more generally, could affect the value of our intellectual property or narrow the scope of our owned and licensed patents. With respect to both in-licensed and owned intellectual property, we cannot predict whether the patent applications we and our licensors are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors or other third parties. Our pending and issued patent claims for PHEXXI are not broad, and it is possible that a competitor may seek to make modifications to their product in an effort to design around our patent claims and avoid infringement. Furthermore, if any such competitor or third party is able to demonstrate bioequivalence without infringing our patents, then such a competitor or third party would then be able to introduce a competitive generic product onto the market once any available regulatory exclusivity has expired. The FDA has broad discretion in determining whether a potential competitive product demonstrates bioequivalence; we are not able to predict the extent to which a competitor or third party might be able to demonstrate bioequivalence without infringing our patents.

The patent prosecution process is expensive, time-consuming, and complex, and we may not be able to file, prosecute, maintain, enforce, or license all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible we will be unsuccessful in our efforts to identify patentable aspects of our research and development output in time to obtain patent protection. Although we enter into non-disclosure and confidentiality agreements with parties who have access to confidential or patentable aspects of our research and development output,

such as our employees, corporate collaborators, outside scientific collaborators, CROs, contract manufacturers, consultants, advisors, and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. In addition, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our inventions and the prior art allow our inventions to be patentable over the prior art. Furthermore, publications of discoveries in the scientific literature often lag the actual discoveries, and patent applications in the U.S. and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we or our licensors were the first to make the inventions claimed in any of our owned or licensed patents or pending patent applications, or that we or our licensors were the first to file for patent protection of such inventions.

The patent position of biotechnology and biopharmaceutical companies generally is highly uncertain, involves complex legal and factual questions, and has been the subject of much litigation in recent years. As a result, the issuance, scope, validity, enforceability, and commercial value of our patent rights are highly uncertain. Our owned or in-licensed pending and future patent applications may not result in patents being issued which protect our products, or which effectively prevent others from commercializing competitive technologies and product candidates.

Moreover, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if patent applications we license or own currently or in the future issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors or other third parties from competing with us, or otherwise provide us with any competitive advantage. Any patents we own or in-license may be challenged, narrowed, circumvented, or invalidated by third parties. Consequently, we do not know whether our products and other proprietary technology will be protectable or remain protected by valid and enforceable patents. Our competitors or other third parties may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner which could materially adversely affect our business, financial condition, results of operations and prospects.

The issuance of a patent is not conclusive as to its inventorship, scope, validity, or enforceability, and our patents may be challenged in the courts or patent offices in the U.S. and abroad. We or our licensors may be subject to a third-party pre-issuance submission of prior art to the USPTO, or become involved in opposition, derivation, revocation, reexamination, post-grant and *inter partes* review, or interference proceedings or other similar proceedings challenging our owned or licensed patent rights. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate or render unenforceable, our owned or in-licensed patent rights, allow third parties to commercialize generic versions of our products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. Moreover, we, or one of our licensors, may have to participate in interference proceedings declared by the USPTO to determine priority of invention or in post-grant challenge proceedings, such as oppositions in a foreign patent office, that challenge our or our licensor's priority of invention or other features of patentability with respect to our owned or in-licensed patents and patent applications. Such challenges may result in loss of patent rights, loss of exclusivity, or in patent claims being narrowed, invalidated, or held unenforceable, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our products. Such proceedings also may result in substantial cost and require significant time from our scientists and management, even if the eventual outcome is favorable to us.

The patent rights licensed to us under the Rush University License are believed to have expired in March 2025. Upon expiration, these patent rights will no longer protect PHEXXI, and we now rely solely on our directly owned patent formulas and patent application families for patent protection for PHEXXI. Moreover, some of our owned and in-licensed patents and patent applications may in the future be co-owned with third parties. If we are unable to obtain an exclusive license to any such third-party co-owners' interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us. Furthermore, our owned and in-licensed patents may be subject to a reservation of rights by one or more third parties. Any of the foregoing could have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

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

Filing, prosecuting, and defending patents on PHEXXI (Femidence) and SOLOSEC in all countries throughout the world would be prohibitively expensive, and the laws of foreign countries may not protect our rights to the same extent as the laws of the U.S. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our inventions in and into the U.S. or other jurisdictions. Competitors may use our technology in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection but enforcement is not as strong as that in the U.S. These products may compete with our products, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets, and other intellectual property protection, particularly those relating to biopharmaceutical products, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our intellectual property and proprietary rights generally. In addition, some jurisdictions, such as Europe, Japan, and China, may have a higher standard for patentability than in the U.S., including for example the requirement of claims having literal support in the original patent filing and the limitation on using supporting data that is not in the original patent filing. Under those heightened patentability requirements, we may not be able to obtain sufficient patent protection in certain jurisdictions even though the same or similar patent protection can be secured in U.S. and other jurisdictions.

Proceedings to enforce our intellectual property and proprietary rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly, could put our patent applications at risk of not issuing, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property and proprietary rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property we develop or license.

Many countries have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of such patent. If we or any of our licensors are forced to grant a license to third parties with respect to any patents relevant to our business, our competitive position may be impaired, and our business, financial condition, results of operations, and prospects may be adversely affected.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment, and other requirements imposed by government patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees, and various other government fees on patents and applications will be due to be paid to the USPTO and various government patent agencies outside of the U.S. over the lifetime of our owned or licensed patents and applications. In certain circumstances, we rely on our licensing partners to pay these fees due to U.S. and non-U.S. patent agencies. The USPTO and various non-U.S. government agencies require compliance with several procedural, documentary, fee payment, and other similar provisions during the patent application process. We are also dependent on our licensors to take the necessary action to comply with these requirements with respect to our licensed intellectual property. In some cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with the applicable rules. There are situations, however, in which non-compliance can result in abandonment or lapse of the patent or patent application, resulting in a partial or complete loss of patent rights in the relevant jurisdiction. In such an event, potential competitors might be able to enter the market with similar or identical products or technology, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our products.

Changes in either the patent laws or interpretation of the patent laws in the U.S. could increase the uncertainties and costs surrounding the prosecution of patent applications and the enforcement or defense of issued patents. Assuming other requirements for patentability are met, prior to March 2013, in the U.S., the first to invent the claimed invention was entitled to the patent, while outside the U.S., the first to file a patent application was entitled to the patent. After March 2013, under the Leahy-Smith America Invents Act (the America Invents Act) enacted in September 2011, the U.S. transitioned to a first inventor to file system in which, assuming other requirements for patentability are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. A third party that files a patent application in the USPTO after March 2013, but before we do could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by such third party. This will require us to be cognizant going forward of the time from invention to filing of a patent application. Since patent applications in the U.S. and most other countries are confidential for a period after filing or until issuance, we cannot be certain that we or our licensors were the first to either (i) file any patent application related to PHEXXI or (ii) invent any of the inventions claimed in our or our licensor's patents or patent applications.

The America Invents Act also includes a number of significant changes that affect the way patent applications will be prosecuted and also may affect patent litigation. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, *inter partes* review, and derivation proceedings. Because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in U.S. federal courts necessary to invalidate a patent claim, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third party as a defendant in a district court action. Therefore, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our owned or in-licensed patent applications and the enforcement or defense of our owned or in-licensed issued patents, all which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

In addition, the patent positions of companies in the development and commercialization of biologics and pharmaceuticals are particularly uncertain. Recent U.S. Supreme Court rulings have narrowed the scope of patent protection available in certain circumstances and weakened the rights of patent owners in certain situations. This combination of events has created uncertainty with respect to the validity and enforceability of patents, once obtained. Depending on future actions by the U.S. Congress, the federal courts, and the USPTO, the laws and regulations governing patents could change in unpredictable ways that could have a material adverse effect on our existing patent portfolio and our ability to protect and enforce our intellectual property in the future.

Issued patents covering PHEXXI or SOLOSEC could be found invalid or unenforceable if challenged in court or before administrative bodies in the U.S. or abroad.

If we or one of our licensors initiated legal proceedings against a third party to enforce a patent covering PHEXXI or SOLOSEC, the defendant could counterclaim that such patent is invalid or unenforceable. In patent litigation in the U.S., defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld relevant information from the USPTO, or made a misleading statement, during prosecution. Third parties may raise claims challenging the validity or enforceability of our owned or in-licensed patents before administrative bodies in the U.S. or abroad, even outside the context of litigation. Such mechanisms include re-examination, post-grant review, *inter partes* review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings). Such proceedings could result in the revocation of, cancellation of, or amendment to our patents in such a way that they no longer cover our products. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we or our licensing partners and the patent examiner were unaware during prosecution. If a third party were to prevail on a legal

assertion of invalidity or unenforceability, we would lose at least part, and perhaps all, of the patent protection on our products. Such a loss of patent protection would have a material adverse impact on our business, financial condition, results of operations, and prospects.

If we do not obtain a Patent Term Extension (PTE) for PHEXXI, our business may be materially harmed.

One or more of our owned or in-licensed U.S. patents covers PHEXXI for the prevention of pregnancy, and our patents may be eligible for limited PTE under the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a PTE of up to 5 years as compensation for patent term lost during the FDA regulatory review process. A PTE cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval, only one patent may be extended, and only those claims covering the approved drug, a method for using it, or a method for manufacturing it may be extended. Similar patent term restoration provisions to compensate for commercialization delay caused by regulatory review are also available in certain foreign jurisdictions, such as in Europe under Supplemental Protection Certificate (SPC). Further, if the FDA determines that the PHEXXI does not represent the first permitted commercial marketing or use of the product, or the active ingredients, we may fail to satisfy applicable requirements which could materially harm us and our operations.

In 2020, Rush University submitted a PTE application for the U.S. patent which we licensed from them, requesting a five-year PTE to 2026. Two Orders Granting Interim Extension (OGIEs) were received from the USPTO, extending the expiration of this patent to 2023. An additional request for interim patent term extension was granted, extending the exclusivity through March 2025. No further extensions have been received to date in the U.S., and we may not be granted a similar extension outside the U.S., such as SPC for the European patents, because of, for example, our inability to exercise due diligence during the testing phase or regulatory review process, our inability to apply within applicable deadlines, our inability to apply prior to expiration of relevant patents, or if we are otherwise unable to satisfy applicable requirements. Moreover, the applicable time or the scope of patent protection afforded could be less than our or Rush University's request. If we or Rush University are unable to obtain PTE, or the term of any such extension is shorter than what we request, our competitors may obtain approval of competing products following our patent expiration, and our business, financial condition, results of operations, and prospects could be materially harmed.

The patent protection and patent prosecution for our products is dependent on third parties, including Rush University.

While we normally seek to obtain the right to control prosecution, maintenance and enforcement of the patents relating to our products, as we do with our four solely owned *Orange Book*-listed U.S. patents, there may be times, such as with respect to our agreement with Rush University for PHEXXI, when the filing and prosecution activities for patents relating to certain products is controlled by our licensors or collaboration partners. If any of our current or future licensing or collaboration partners fail to prosecute, maintain and enforce such patents and patent applications in a manner consistent with the best interests of our business, including by payment of all applicable fees for patents covering PHEXXI, we could lose our rights to the intellectual property or our exclusivity with respect to those rights, our ability to develop and commercialize PHEXXI for the prevention of pregnancy may be adversely affected, and we may not be able to prevent competitors from making, using and selling competing products. In addition, even where we have the right to control patent prosecution of patents and patent applications we have licensed to and from third parties, we may still be adversely affected or prejudiced by actions or inactions of our licensees, our licensors and their counsel that took place prior to the date upon which we assumed control over patent prosecution.

An Event of Default under the secured notes issued pursuant to the Baker Bros. Purchase Agreement, as amended, could allow the secured creditor to take possession of all assets owned by us, including any directly owned intellectual property.

On March 7, 2023, Baker Bros. Advisors, LP (the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, and subsequently amended (SPA), by and among Evofem, Designated Agent, the Guarantors and Baker Purchasers. The Notice of Default claimed that the Company failed to maintain the "Required Reserve Amount" as required by Section 2.7 of the Third Amendment to the Securities Purchase Agreement and Section 8.1(e) of the SPA. The Designated Agent claims such failure constitutes an immediate Event of Default pursuant to Section 9.1(e)

of the SPA. The Designated Agent, at the direction of the Baker Purchasers, accelerated repayment of the outstanding balance payable and elected its remedies pursuant to Section 5.07(b) of the Securities Purchase Agreement. As a result, approximately $92.7 million, representing two times the sum of the outstanding balance and all accrued and unpaid interest thereon and all other amounts due under the SPA and other documents, was due and payable within three business days of receipt of the Notice of Default.

In September 2023, the Company and Baker entered into the Fourth Amendment, which, as described in more detail in Note 4 – Debt, waived the Notice of Default, cured all existing defaults, and removed the Company's need to reserve enough equity to cover the value of the note and allowed the company to repurchase the note at a discounted price.

On December 11, 2023, Baker Bros assigned to Aditxt, Inc. (Assignee) all remaining amounts due under the Securities Purchase and Security Agreement. The notes were transferred back to Baker Bros on February 26, 2024 and then assigned to Future Pak, LLC on July 23, 2024. Given our current inability to pay any amounts due under the Purchase Agreement or under the convertible notes, the designated agent of these note holders has the right to take possession of all of our assets and/or pursue any available legal remedies against us.

The Company received two Notice of Defaults (on September 27, 2024 and October 27, 2024) from their largest creditor, Future Pak, LLC, alleging a number of Events of Default, accelerating the Principal due and payable and declaring the termination of the existing Forbearance Agreement.

On September 27, 2024, Future Pak, LLC, as agent for the Purchasers (in such capacity, the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, as amended (SPA), by and among the Company, Designated Agent, as certain guarantors and the purchasers (each a Purchaser and collectively Purchasers). The Notice of Default claims that by entering into arrangements to repay certain existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the SPA.

According to the Notice of Default, the Designated Agent has accelerated repayment of the outstanding principal balance owed by the Company under the Securities Purchase Agreement. If all Purchasers exercise the Section 5.7 Option (as defined below), the repurchase price would be equal to $106.8 million. Pursuant to Section 5.7(b) of the SPA, upon the occurrence of an Event of Default, each Purchaser may elect, at its option, to require the Company to repurchase the Note held by such Purchaser (or any portion thereof) at a repurchase price equal to two times the sum of the outstanding principal balance and all accrued and unpaid interest thereon, due within three business days after such Purchaser delivers a notice of such election (the Section 5.7 Option).

On October 27, 2024, the Designated Agent sent an amended and supplemented notice to the Notice of Default which adds additional claims of default based on the Company's current repayment agreements of existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the Securities Purchase and Security Agreement dated April 23, 2020, as amended. Furthermore, the Amended Notice stated that, because the events of default described in the Amended Notice of Default are not the certain prior events of default listed in the Forbearance Agreement (the Specified Defaults), the Designated Agent and the holders of the senior secured promissory notes described in the SPA thereby provided notice to the Company that the Forbearance Agreement is terminated as of October 27, 2024.

Subsequently, on November 8, 2024, the Designated Agent sent an amended and supplemented notice to the Notices (the Third Amended Notice of Default) which adds new claims of default based on (i) the Company's failure to maintain a cash position of $1.0 million or greater, as required under Section 5(b) of the Forbearance Agreement (ii) the Company's failure to deliver financial and operating reports in accordance with the timeline required under the Section 8.1(n) of the Baker Stock Purchase Agreement, and (iii) to clarify the outstanding balance under the notes of the Baker Stock Purchase Agreement plus all accrued and unpaid interest thereon, in the sum of approximately is $107.0 million as opposed to the Repurchase Price as defined in the Fourth Amendment.

Evofem strongly disagrees with Future Pak LLC's claim that an Event of Default has occurred. We intend to vigorously contest any attempt by Future Pak, LLC to exercise its default rights and remedies under the SPA. We

further maintain that the Repurchase Price as defined in the Fourth Amendment remains in effect; this amount is currently $15.1 million.

If an Event of Default were to occur, the Designated Agent could take significant, adverse action against the Company, its assets and its accounts. There can be no assurances that the Company would be able to cure any Event(s) of Default or otherwise stop or mitigate any adverse action(s) taken by the Designated Agent.

We may be subject to claims challenging the inventorship of our patents and other intellectual property.

We or our licensors may be subject to claims that former employees, collaborators or other third parties have an interest in our owned or in-licensed patents, trade secrets, or other intellectual property as an inventor or co-inventor. For example, we or our licensors may have inventorship disputes arise from conflicting obligations of consultants or others who are involved in developing PHEXXI. Litigation may be necessary to defend against these and other claims challenging inventorship or our or our licensor's ownership of our owned or in-licensed patents, trade secrets or other intellectual property. If we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, intellectual property that is important to our product. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and prospects.

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

In addition to seeking and maintaining patents for our products, we also rely on trade secrets and confidentiality agreements to protect our unpatented know-how, technology, and other proprietary information and to maintain our competitive position. With respect to PHEXXI, we consider trade secrets and know-how to be one of our important sources of intellectual property. Trade secrets and know-how can be difficult to protect. In particular, our trade secrets and know-how in connection with PHEXXI may be disseminated within the industry through independent development, the publication of journal articles describing the methodology, and the movement of personnel with scientific positions in academic and industry.

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

We may be subject to claims that third parties have an ownership interest in our trade secrets. For example, we may have disputes arise from conflicting obligations of our employees, consultants or others who are involved in developing PHEXXI. Litigation may be necessary to defend against these and other claims challenging ownership of our trade secrets. If we fail in defending any such claims, in addition to paying monetary damages, it may lose valuable trade secret rights, such as exclusive ownership of, or right to use, trade secrets that are important to PHEXXI. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we have no knowledge of any claims against us, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. To date, none of our employees have been subject to such claim.

We may be at risk that our former employees may wrongfully use or disclose our trade secrets.

In addition to patent protection, we rely heavily upon know-how and trade secret protection, as well as non-disclosure agreements and invention assignment agreements with our employees, consultants, and third parties, to protect our confidential and proprietary information, especially where we do not believe patent protection is appropriate or obtainable. In addition to contractual measures, we try to protect the confidential nature of our proprietary information using physical and technological security measures. Such measures may not, for example, in the case of misappropriation of a trade secret by an employee, former employee, consultant, former consultant or third party with authorized access, provide adequate protection for our proprietary information. Our security measures may not prevent an employee or consultant from misappropriating our trade secrets and providing them to a competitor, and recourse we take against such misconduct may not provide an adequate remedy to protect our interests fully. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive, and time-consuming, and the outcome is unpredictable. In addition, trade secrets may be independently developed by others in a manner that could prevent legal recourse by us. If any of our confidential or proprietary information, such as our trade secrets, were to be disclosed or misappropriated, or if any such information was independently developed by a competitor, our competitive position could be harmed.

We may be subject to claims that our employees, consultants, or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.

Many of our employees, consultants and advisors are currently or were previously employed at universities or other biotechnology or biopharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. If we fail to defend any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to our management.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that it regards as its own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Such claims could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Third-party claims of intellectual property infringement, induced intellectual property infringement, misappropriation or other violation against us or our collaborators may prevent or delay the commercialization of our product.

The contraceptive market is competitive and dynamic. Due to the significant research and development activities being conducted by several companies in this field, including us and our competitors, the intellectual property landscape is in flux, and it may remain uncertain in the future. There may be significant intellectual property

related litigation and proceedings relating to our owned and in-licensed and other third-party intellectual property and proprietary rights in the future.

Our commercial success depends in part on our and our collaborators' ability to avoid infringing, inducing infringement, misappropriating and otherwise violating the patents and other intellectual property rights of third parties. There is a substantial amount of complex litigation involving patents and other intellectual property rights in the biotechnology and biopharmaceutical industries, as well as administrative proceedings for challenging patents, including interference, derivation, and reexamination proceedings before the USPTO or oppositions and other comparable proceedings in foreign jurisdictions. As discussed above, recently, due to changes in U.S. law referred to as patent reform, new procedures including *inter partes* review and post-grant review have been implemented. As stated above, this reform adds uncertainty to the possibility of a challenge to our patents in the future.

Numerous U.S. and foreign issued patents and pending patent applications owned by third parties exist in the fields in which we intend to commercialize PHEXXI. We cannot assure you that PHEXXI will not infringe patents owned by third parties. We may not be aware of patents that have already been issued and that a third party, for example, a competitor in the fields in which we are commercializing our product, might assert are infringed by PHEXXI, including claims to compositions, formulations, methods of manufacture or methods of use or treatment that cover our product. It is also possible that patents owned by third parties of which we are aware, but which we do not believe are relevant to PHEXXI, could be found to be infringed by our product. In addition, because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that our product may infringe.

Third parties may currently have patents or obtain patents in the future and may claim that use of our technology infringes upon these patents. In the event a third party claims we infringed their patents or that we are otherwise employing their proprietary technology without authorization and initiates litigation against us, even if we believe such claims are without merit, a court of competent jurisdiction could hold that such patents are valid, enforceable and infringed by our technology or product. In this case, the holders of such patents may be able to block our ability to commercialize PHEXXI unless we obtain a license under the applicable patents, or until such patents expire or are finally determined to be held invalid or unenforceable. Such a license may not be available on commercially reasonable terms or at all. Even if we are able to obtain a license, the license would likely obligate us to pay license fees or royalties or both, and the rights granted to us might be nonexclusive, which could result in our competitors gaining access to the same intellectual property. If we are unable to obtain a necessary license to a third-party patent on commercially reasonable terms, we may be unable to commercialize PHEXXI or such commercialization efforts may be significantly delayed, which could in turn significantly harm our business.

Defense of infringement claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of management and other employee resources from our business, and may impact our reputation. In the event of a successful claim of infringement against us, we may be enjoined from further developing or commercializing our infringing products or technology. In addition, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties, pay royalties and/or redesign our infringing products or technology, which may be impossible or require substantial time and monetary expenditure. In that event, we would be unable to further develop and commercialize our product, which could harm our business significantly. Further, we cannot predict whether any required license would be available at all or whether we would be available on commercially reasonable terms. In the event we could not obtain a license, we may be unable to further commercialize our product, which could harm our business significantly. Even if we are able to obtain a license, the license would likely obligate us to pay license fees or royalties or both, and the rights granted to us might be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be forced to cease some aspect of our business operations such as the commercialization of PHEXXI, if, as a result of actual or threatened patent infringement claims, we are unable to enter licenses on acceptable terms.

Engaging in litigation defending us against third parties alleging infringement of patent and other intellectual property rights is very expensive, particularly for a company of our size, and time-consuming. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources. Patent litigation and other proceedings may also absorb significant management time. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could impair our

ability to compete in the marketplace. The occurrence of any of the foregoing could have a material adverse effect on our business, financial condition or results of operations.

In the ordinary course of business, we have been and again may become involved in lawsuits to protect or enforce our patents and other intellectual property rights, which could be expensive, time consuming, and unsuccessful.

Competitors or other third parties may infringe our patents or the patents of our licensing partners. We have and may again be required to defend against claims of infringement or otherwise engage in legal action to protect our intellectual property. Any commercial success we may achieve with PHEXXI for the prevention of pregnancy may incentivize third parties to challenge or infringe our intellectual property. In addition, our patents or the patents of our licensing partners also may become involved in inventorship, priority or validity disputes. To counter or defend against these claims is expensive and time consuming. In an infringement proceeding, a court may decide a patent owned or in-licensed by us is invalid or unenforceable or may refuse to stop the other party from using the technology at issue on the grounds our owned and in-licensed patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our owned or in-licensed patents at risk of being invalidated or interpreted narrowly. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our common stock. These litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing, or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace.

Some intellectual property that we have in-licensed may have been discovered through government funded programs and thus may be subject to federal regulations such as "march-in" rights, certain reporting requirements and a preference for U.S.-based companies. Compliance with such regulations may limit our exclusive rights, and limit our ability to contract with non-U.S. manufacturers.

Intellectual property rights we have licensed or may in the future license are generated through the use of U.S. government funding and are therefore subject to certain federal regulations. As a result, the U.S. government may have certain rights to intellectual property embodied in our current product pursuant to the Bayh-Dole Act of 1980 (Bayh-Dole Act) and implementing regulations. These U.S. government rights in certain inventions developed under a government-funded program include a non-exclusive, non-transferable, irrevocable worldwide license to use inventions for any governmental purpose. In addition, the U.S. government has the right to require us or our licensors to grant exclusive, partially exclusive, or non-exclusive licenses to any of these inventions to a third party if it determines that: (i) adequate steps have not been taken to commercialize the invention; (ii) government action is necessary to meet public health or safety needs; or (iii) government action is necessary to meet requirements for public use under federal regulations (also referred to as "march-in rights"). The U.S. government also has the right to take title to these inventions if we, or the applicable licensor, fail to disclose the invention to the government and fail to file an application to register the intellectual property within specified time limits. These time limits have recently been changed by regulation and may change in the future. Intellectual property generated under a government funded program is also subject to certain reporting requirements, compliance with which may require us or the applicable licensor to expend substantial resources. In addition, the U.S. government requires that any products embodying the subject invention or produced through the use of the subject invention be manufactured substantially in the U.S. The manufacturing preference requirement can be waived if the owner of the intellectual property can show that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible. This preference for U.S. manufacturers may limit our ability to contract with non-U.S. product manufacturers

for products covered by such intellectual property. To the extent any of our current or future intellectual property is generated through the use of U.S. government funding, the provisions of the Bayh-Dole Act may similarly apply.

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

Our registered or unregistered trademarks or trade names have, in the ordinary course of our business, been challenged and may again be challenged by third parties. These trademarks and trade names may also be infringed, circumvented or may not be registered with the USPTO or determined to be infringing on other marks. During trademark registration proceedings, we may receive rejections of our applications by the USPTO or in other foreign jurisdictions. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. Moreover, any name we have proposed to use with our product in the U.S. must be approved by the FDA, regardless of whether we have registered it, or applied to register it, as a trademark. Similar requirements exist in Europe. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. Furthermore, in many countries, owning and maintaining a trademark registration may not provide an adequate defense against a subsequent infringement claim asserted by the owner of a senior trademark.

We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition among potential partners or customers in our markets of interest. At times, competitors or other third parties may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. In addition, we may be subject to potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names or that allege we have infringed on their trademarks and trade names. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected. Our efforts to enforce or protect our proprietary rights or to defend ourselves in suits related to our trademarks, trade secrets, domain names, copyrights or other intellectual property may be ineffective and could result in substantial costs and diversion of resources and could adversely affect our business, financial condition, results of operations and prospects.

Intellectual property rights do not necessarily address all potential threats.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations and may not adequately protect our business or permit us to maintain our competitive advantage. For example:

- others may be able to make products that are similar to our product or utilize similar technology but that are not covered by the claims of the patents that we license or may own;
- we, or our current or future licensors or collaborators, might not have been the first to make the inventions covered by the issued patent or pending patent application that we license or may own in the future;
- we, or our current or future licensors or collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technology without infringing our owned or licensed intellectual property rights;
- it is possible that our current or future pending owned or licensed patent applications will not lead to issued patents;
- issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors or other third parties;
- our competitors or other third parties might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we may not develop additional proprietary technologies that are patentable;
- the patents of others may harm our business; and

- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Should any of these events occur, they could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Risks Related to Our Reliance on Third Parties

Our success relies on third-party suppliers and two contract manufacturers. Any failure by these third parties, including their inability to successfully perform and comply with regulatory requirements, could negatively impact our business and our ability to develop and market our products, and our business could be substantially harmed.

We have a small number of employees and no internal manufacturing capability. Our management does not expect to manufacture any products and expects to rely solely on third parties to manufacture our products, including our FDA-approved commercial products PHEXXI and SOLOSEC, and as such we will be subject to inherent uncertainties related to product safety, availability, and security. We currently have only one contract manufacturer for each of our drug products.

PHEXXI is manufactured by DPT Laboratories, Ltd. (DPT), with whom we entered into a supply and manufacturing agreement in November 2019 (the PHEXXI Manufacturing Agreement). Pursuant to the PHEXXI Manufacturing Agreement, subject only to a supply failure, we are obligated to purchase all of our requirements with respect to PHEXXI from DPT. We expect to rely on DPT to increase the manufacturing of PHEXXI in amounts needed to support commercialization including anticipated demand in the CGG under our agreement with Pharma 1, assuming regulatory approvals in the UAE and subsequent countries. If DPT does not perform as agreed, is unable to increase manufacturing of PHEXXI as needed to support ongoing commercialization, or terminates our agreement, we will be required to replace them as our manufacturer, and we may be unable to do so on a timely basis, on similar terms or at all. Furthermore, we have only a single source of supply for some of the key raw materials and components of PHEXXI, and while we believe we would be able to obtain supplies through alternative sources if needed, alternate sources of supply may not be readily available.

Our current supply of SOLOSEC comes from its former owner, which has an existing finished goods supply. We inherited the former owner's manufacturing agreement with Catalent, which will ensure uninterrupted commercial supply of SOLOSEC.

We do not control the manufacturing processes for the production of either of our products, which must be made in accordance with relevant regulations including, among other things, quality control, quality assurance, compliance with cGMP and the maintenance of records and documentation. In the future, it is possible that our suppliers or manufacturers may fail to comply with FDA regulations, the requirements of other regulatory bodies or our own requirements, any of which would result in suspension or prevention of commercialization and/or manufacturing of PHEXXI; suspension of ongoing research; disqualification of data or other enforcement actions such as product recall, injunctions, civil penalties or criminal prosecutions against us. Furthermore, we may be unable to replace any supplier or manufacturer with an alternate supplier or manufacturer on a commercially reasonable or timely basis, or at all.

If we were to experience an unexpected loss of supply of, or if any supplier or manufacturer were unable to meet demand for our products, we could experience delays in commercialization. We might be unable to find alternative suppliers or manufacturers with FDA approval, of acceptable quality, and that are able to supply products/ingredients in the appropriate volumes and at an acceptable cost. The long transition periods necessary to switch manufacturers and suppliers would significantly delay our timelines, including our commercialization timeline, which would materially adversely affect our business, financial conditions, results of operations and prospects.

In addition, our reliance on DPT and anticipated future third-party manufacturers exposes us to the following additional risks:

- we may be unable to identify other manufacturers on acceptable terms or at all;
- our third-party manufacturers might be unable to timely formulate and manufacture our product or produce the quantity and quality required to meet our clinical and commercial needs, if any;

- DPT and anticipated future third-party manufacturers may not be able to execute our manufacturing procedures appropriately;
- our anticipated future third-party manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to successfully produce, store and distribute our products;
- manufacturers are subject to ongoing periodic unannounced inspections by the FDA and corresponding state agencies to ensure strict compliance with cGMPs and other government regulations and corresponding foreign standards, and we do not have control over third-party manufacturers' compliance with these regulations and standards;
- we may not own, or may have to share, the intellectual property rights to any improvements made by our third-party manufacturers in the manufacturing process for our product; and,
- our third-party manufacturers could breach or terminate their agreements with us.

Each of these risks could impact the continued availability of our products or could result in higher costs or deprive us of potential product revenue. In addition, we rely on third parties to perform release testing on PHEXXI and SOLOSEC prior to delivery to patients. If these tests are not appropriately conducted and test data are not reliable, patients could be put at risk of serious harm, which could result in product liability suits.

The manufacture of medical products is complex and requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of medical products often encounter difficulties in production, particularly in scaling up and validating initial production and absence of contamination. These problems include difficulties with production costs and yields, quality control, including stability of the product, quality assurance testing, operator error, shortages of qualified personnel, timely availability of raw materials, lot consistency, as well as compliance with strictly enforced federal, state and foreign regulations. Furthermore, if contaminants are discovered in our supply of our product or in the manufacturing facilities, such manufacturing facilities may need to be closed for an extended period to investigate and remedy the contamination. We cannot be assured that any stability or other issues relating to the manufacture of our products will not occur in the future. Additionally, our manufacturers may experience manufacturing difficulties due to resource constraints or as a result of labor disputes or unstable political environments. If our manufacturers were to encounter any of these difficulties, or otherwise fail to comply with their contractual obligations, our ability to distribute our products would be harmed. There is no assurance that our manufacturers will be successful in establishing a larger-scale commercial manufacturing process for PHEXXI that achieves our objectives for manufacturing capacity and cost of goods. There is no assurance that our manufacturers will be able to manufacture or continue to manufacture our products to specifications acceptable to the FDA or other regulatory authorities, or to produce it in sufficient quantities to meet future demand. Any delay or failure in the production of our products would impair our ability to commercialize and obtain revenue therefrom. These circumstances would materially harm our business, results of operations, financial conditions and prospects.

We have no significant internal distribution capabilities. We intend to engage third-party distributors for distribution of products outside the U.S., if approved, and have engaged additional third-party wholesale distributors for the distribution of our products in the U.S. Our inability to identify, or enter into an agreement with, any such third-party distributor, would likely have a material adverse effect on our business and operations.

If we are unable to engage additional wholesale distributors and/or maintain our relationship with our wholesale distributors within the U.S., our domestic commercialization activities may be disrupted. If we are able to identify and enter into additional strategic relationships with one or more third party collaborators for the development of our products outside of the U.S., beyond our commercial agreement with Pharma 1 Drug Store for the GCC we intend to work with that third party or third parties to obtain marketing approval for our products in each relevant jurisdiction and to enter into distribution agreements with such third party or parties for distribution of our products in each relevant jurisdiction outside the U.S. We cannot guarantee that we will be able to enter into any such additional wholesale distribution agreements on commercially reasonable terms, or at all, or that we will be able to identify additional third party collaborators for the development and commercialization of our products outside the U.S. or that we will be able to enter into any such distribution agreement with any such third party for the distribution of our products outside the U.S. For our current distribution agreements and for any future distribution agreements we may enter into, we would be subject to uncertainties related to such distribution services, including the quality of such distribution services. For example, distributors may not have the capacity to supply sufficient product if demand

increases rapidly. Further, we would be dependent on the distributors to ensure that the distribution process accords with applicable foreign and U.S. regulations, which include, among other things, compliance with current good documentation practices, the maintenance of certain records, and compliance with other regulations, including, without limitation, the Foreign Corrupt Practices Act (FCPA) and the Drug Supply Chain Security Act (DSCSA) in the U.S. Failure to comply with these requirements could result in significant remedial action, including enforcement action requiring distributors to implement physical changes or improvements to their facilities, suspension of distribution or recall product. Additionally, any failure by us to forecast demand for finished product and failure by us to ensure our distributors have appropriate capacity to distribute such quantities of finished product, could result in an interruption in the supply of certain products and a decline in sales of that product. If we grant any such third-party distributor the right to manufacture any applicable product, we would also be subject to the risk factors set forth above with respect to third-party manufacturing of our product as well as the requirement to have any such additional manufacturer pre-approved by FDA or other relevant regulatory authorities. Further, third-party distributors may not perform as agreed or may terminate their agreements with us. Any significant problem or disruption that our distributors experience could delay or interrupt our sale of products in the applicable jurisdiction until the applicable distributor cures the problem or until we identify and negotiate an acceptable agreement with an alternative distributor, if one is available. Any failure or delay in distributing products would likely have a negative impact on our business and operations.

We rely on third parties for the delivery of telehealth services through the PHEXXI telehealth platform. Failure of these third parties to provide services of a suitable quality, in accordance with applicable regulations and within acceptable time frames may cause the delay or failure of our telehealth strategy.

We employ a business model that relies on the outsourcing of certain functions, tests and services to CROs, medical institutions and other specialist providers, including, without limitation, quality assurance, clinical monitoring, and regulatory expertise. There is no assurance that such organizations or individuals will be able to provide the functions, tests or services as agreed upon, or to the requisite quality. We rely on the efforts of these organizations and individuals and could suffer significant delays in our processes should they fail to perform as expected.

There is also no assurance that these third parties will not make errors in, or simply fail to be effective in, the design, management or retention of our data or data systems. Any failures by such third parties could lead to a loss of data or data integrity, which in turn could lead to delays in clinical development and obtaining regulatory approval. Third parties may not pass FDA or other regulatory audits. In addition, the cost of such services could significantly increase over time.

The PHEXXI telehealth platform is designed to provide physicians with on-demand educational support, and to remove certain barriers to women's access to PHEXXI by removing the need for an in-office visit. With the PHEXXI telehealth platform, women can directly meet with an HCP to determine their eligibility for a PHEXXI prescription and potentially have it written by the HCP, filled, and mailed directly to them by a third-party pharmacy. These telehealth platform services are not core to our business of developing and commercializing innovative products to address unmet needs in women's sexual and reproductive health. These services are also subject to complex federal and state laws and regulations and professional practice standards, and we do not have the resources to provide these telehealth services internally. Any pharmacy that fills PHEXXI prescriptions will be fully independent from us. We do not control or own or possess any ownership stake in any pharmacy that we expect may fill prescriptions for PHEXXI or in any telehealth service provider. All prescriptions will be routed through our independent third-party telehealth service providers. If our telehealth service providers fail to perform or fail to perform in compliance with applicable laws, regulations and standards of care, our business, financial condition, commercial launch of PHEXXI and results of operation would be adversely affected.

If we are unable to enter into or maintain strategic relationships or collaborations with respect to PHEXXI for the prevention of pregnancy, or if we are unable to realize the potential benefits from such collaborations, our business, financial condition, commercialization prospects and results of operations may be materially adversely affected.

We do not presently expect to commercialize PHEXXI or SOLOSEC outside of the U.S., assuming international marketing approval is obtained, unless we enter into a strategic relationship or collaboration with a third party, such as our July 2024 agreement with Pharma 1. We face significant competition in seeking appropriate collaborators. Collaborations are complex and time-consuming arrangements to negotiate and document.

Our success in entering into a definitive agreement for any collaboration will depend upon, among other things, our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design and outcomes of any clinical trials that may be required by relevant foreign regulatory authorities, the collaborator's history of regulatory compliance, the likelihood of approval by regulatory authorities, the potential market for the product, the costs and complexities of manufacturing and delivering such products to customers, the potential of competing products, the strength of the intellectual property and industry and market conditions generally. The collaborator may also consider alternative products or technologies for similar indications on which they might collaborate with one of our competitors and whether such collaboration could be more attractive than the one with us for our products.

Any potential collaboration agreement into which we might enter may call for licensing or cross-licensing of potentially blocking patents, know-how or other intellectual property. Due to the potential overlap of data, know-how and intellectual property rights, there can be no assurance that one of our collaborators will not dispute our right to use, license or distribute such data, know-how or other intellectual property rights, and this may potentially lead to disputes, liability or termination of the collaboration.

We may also be restricted under existing and future collaboration agreements from entering into agreements on certain terms with other potential collaborators and may not be able to negotiate collaborations on a timely basis, on acceptable terms, or at all. If that were to occur, we may have to curtail the development of a particular product, reduce or delay our development program, delay commercialization, reduce the scope of sales or marketing activities, or increase expenditures and undertake commercialization activities at our own expense.

If we were to elect to fund commercialization activities on our own, we would need to obtain additional capital, which may not be available to us on acceptable terms or at all.

If we enter into a collaboration agreement regarding a product, we could be subject to, among other things, the following risks, each of which may materially harm our business, commercialization prospects and financial condition:

- we may not be able to control the amount and timing of resources that the collaborator devotes to the product development program;
- we may experience financial difficulties and thus not commit sufficient financial resources to the product development program;
- we may be required to relinquish important rights to the collaborator such as marketing, distribution and intellectual property rights;
- a collaborator could move forward with a competing product developed either independently or in collaboration with third parties, including our competitors;
- a collaborator could terminate the agreement either for convenience, if permitted, or for our breach; or
- business combinations or significant changes in a collaborator's business strategy may adversely affect our willingness to complete our obligations under any arrangement.

As a result, a collaboration may not result in the successful development or commercialization of our product. In addition, actions taken by a collaborator within its licensed territory, many of which we may not be able to control, could negatively impact our commercialization of the product in the U.S.

We enter into various contracts in the normal course of our business in which we indemnify the other party to the contract. In the event we must perform under these indemnification provisions, it could have a material adverse effect on our business, financial condition and results of operations.

In the normal course of business, we periodically enter into or will enter into manufacturing, distribution, wholesale, academic, commercial, service, collaboration, licensing, consulting, and other agreements that contain indemnification provisions. With respect to our academic and other research agreements, including the Rush License Agreement, we typically indemnify the institution and related parties from losses arising from claims relating to the products, processes or services made, used, sold or performed pursuant to the agreements for which we have secured licenses, and from claims arising from our or our sublicensees' exercise of rights under the agreement. With respect to collaboration agreements, we may have to indemnify our collaborators from any third-party product liability claims

that could result from the production, use or consumption of the product, as well as for alleged infringements of any patent or other intellectual property right owned by a third party. With respect to consultants, we indemnify them from claims arising from performance of their services in accordance with legal and contractual requirements.

If our obligations under an indemnification provision exceed applicable insurance coverage or if we were denied insurance coverage, our business, financial condition, and results of operations could be adversely affected. Similarly, if we are relying on a collaborator to indemnify us and the collaborator is denied insurance coverage or the indemnification obligation exceeds the applicable insurance coverage, and if the collaborator does not have other assets available to indemnify us, our business, financial condition, and results of operations could be adversely affected.

Risks Related to Our Commercialization of Health Care Products

Our products may face follow-on competition sooner than anticipated.

Although PHEXXI and SOLOSEC are FDA-approved for commercialization in the U.S., they and any other product we may commercialize may face competition from generic products earlier or more aggressively than anticipated, depending upon how well such approved products perform in the U.S. prescription drug market. In addition to creating the 505(b)(2) NDA pathway, the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act (FDCA) authorized the FDA to approve generic drugs that are the same as drugs previously approved for marketing under the NDA provisions of the statute pursuant to an Abbreviated New Drug Application (ANDA). An ANDA relies on the preclinical and clinical testing conducted for a previously approved reference listed drug (RLD) and must demonstrate to the FDA that the generic drug product is identical to the RLD with respect to the active ingredients, the route of administration, the dosage form, and the strength of the drug and also that it is "bioequivalent" to the RLD. The FDA is prohibited by statute from approving an ANDA when certain marketing or data exclusivity protections apply to the RLD. If any such competitor or third party is able to demonstrate bioequivalence without infringing our patents, then this competitor or third party may then be able to introduce a competing generic product onto the market.

PHEXXI is indicated for the prevention of pregnancy and was granted three (3) years of data exclusivity that expired on May 22, 2023, and it has been designated as an RLD by the FDA. We cannot predict the future PHEXXI market, whether someone will attempt to force the FDA to take other actions, or how quickly others may seek to come to market with competing products now that the three-year data exclusivity period has ended.

SOLOSEC is indicated for the treatment of bacterial vaginosis in females 12 years of age and trichomoniasis in people 12 years of age and older. It was granted was granted three (3) years of NCE exclusivity that expired on September 15, 2022 and ten years of exclusivity under GAIN that will expire on September 15, 2027.

If the FDA approves generic versions of our products, it could negatively impact our future revenue, profitability and cash flows and substantially limit our ability to obtain a return on our investments in those products.

Changes in health care laws and regulations may eliminate current requirements for health insurance plans to cover and reimburse FDA-cleared or FDA-approved contraceptive products without cost sharing, which could reduce demand for products such as PHEXXI. Our management expects our success will be dependent on the willingness or ability of patients to pay out-of-pocket for our products should they not be able to obtain third-party reimbursement or should such reimbursement be limited.

We cannot be certain that third-party reimbursement will remain available for our products, or if reimbursement is available, that the amount of any such reimbursement would not change. We provide a financial assistance program for patients to offset any co-pay or patient out of pocket costs, but we do not know if this program will be successful in increasing market acceptance or that such program will not prove to be prohibitively costly. Demand for our products may decrease if we elect to discontinue our co-pay programs. The ACA and subsequent regulations enacted by the U.S. Department of Health and Human Services (DHHS) require, under certain conditions, health plans to provide coverage for women's preventive care, including all forms of FDA-cleared or FDA-approved contraception, without imposing any cost sharing on the plan beneficiary. These regulations ensure that women who wish to use an approved form of contraception may request it from their doctors and their health insurance plan must cover all costs associated with such products, under certain conditions. In January 2022, the DHHS, Department of

Labor, and Treasury Department jointly issued guidance on implementation of this ACA mandate, among other things. The recently issued federal guidance makes clear that all FDA-approved or cleared contraceptive products that are determined by an individual's medical provider to be medically appropriate for such individual must be covered without-cost sharing, regardless of whether the product is specifically identified in the FDA's Birth Control Guide.

However, certain members of Congress and other stakeholders may attempt to repeal or repeal and replace the ACA and corresponding regulations, as more fully described below, which could eliminate the requirement for health plans to cover women's preventive care without cost sharing. Even if the ACA is not repealed, the DHHS regulations to specifically enforce the preventive health coverage mandate could be repealed or modified; for example, the Trump administration in 2017 altered the mandate to allow certain employers and insurers to opt-out of birth control coverage for religious or moral reasons, which was partially upheld by the Supreme Court in July 2020. We cannot predict the timing or impact of any future rulemaking or changes in the law. Any repeal or elimination of the preventive care coverage rules would mean that women seeking to use prescribed forms of contraceptives may have to pay some portion of the cost for such products out-of-pocket, which could deter some women from using prescription contraceptive products, such as PHEXXI, at all. We expect that health care reform measures that may be adopted in the future may result in more rigorous coverage criteria and lower reimbursement, and in additional downward pressure on the price that may be charged for PHEXXI or any other product we commercialize. Even with coverage for any approved product, the resulting reimbursement payment rates might not be adequate or may require a co-pay that patients find unacceptably high. Patients are unlikely to use any products we may market unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of those products. As a result, we expect that our success, to some degree, will be dependent on the willingness of patients to pay out-of-pocket for our products in the event that their third-party payer either does not cover and reimburse or requires payment of a portion of the cost of our products by the patient, thus increasing the patient's overall cost to use them. This could reduce market demand for our products, which would have a material adverse effect on our business, financial conditions, and prospects.

We may also experience pressure from payers as well as state and federal government authorities concerning certain promotional approaches that we may implement, such as our co-pay programs. Certain state and federal enforcement authorities and members of Congress have initiated inquiries about co-pay programs. Some state legislatures have been considering proposals that would restrict or ban co-pay coupons. For example, legislation was recently signed into law in California that would limit the use of co-pay coupons in cases where a lower cost generic drug is available and if individual ingredients in combination therapies are available over the counter at a lower cost. It is possible that similar legislation could be proposed and enacted in additional states. If we are unsuccessful with or discontinue our co-pay programs, or we are unable to secure adequate coverage from third-party payers, we may experience financial pressure which would have a material adverse effect on our business and make it difficult to commercialize successfully.

Despite FDA-approval for our products and even if we are successful in obtaining additional products to commercialize in the U.S., revenues may be adversely affected if our products do not obtain coverage and adequate reimbursement from third-party payers in the U.S.

Market acceptance and sales of PHEXXI, SOLOSEC, or any other product we may commercialize will depend in part on the extent to which reimbursement for these products will be available from third-party payers, including government health administration authorities, managed care organizations and private health insurers. Third-party payers decide which therapies they will pay for and establish reimbursement levels. Third-party payers in the U.S. often rely upon Medicare coverage policy and payment limitations in setting their own coverage and reimbursement policies. However, decisions regarding the extent of coverage and amount of reimbursement to be provided for any product that we commercialize will be made on a payer-by-payer basis. One payer's determination to provide coverage for a drug does not assure that other payers will also provide coverage and adequate reimbursement for the drug. Additionally, a third-party payer's decision to provide coverage for a therapy does not imply that an adequate reimbursement rate will be approved.

Third-party payers are increasingly challenging the prices charged for pharmaceutical and medical device products. The U.S. government and other third-party payers are increasingly limiting both coverage and the level of reimbursement for new drugs and medical devices, in addition to questioning their safety and efficacy. Coverage decisions can depend upon clinical and economic standards that disfavor new drug products when more established or lower cost therapeutic alternatives are already available or subsequently become available. We may incur significant

costs to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our future products, in addition to the costs required to obtain the necessary FDA marketing approvals. Third-party payer coverage may not be available to patients for PHEXXI, SOLOSEC, or any future product we may seek to commercialize. If third-party payers do not provide coverage and adequate reimbursement for PHEXXI or other products we may commercialize, if approved, HCPs may not prescribe them or patients may ask their HCPs to prescribe competing products with more favorable reimbursement.

Managed care organizations and other private insurers frequently adopt their own payment or reimbursement reductions. Consolidation among managed care organizations has increased the negotiating power of these entities. Third-party payers increasingly employ formularies to control costs by negotiating discounted prices in exchange for formulary inclusion. Failure to obtain timely or adequate pricing or formulary placement for our products or obtaining such pricing or placement at unfavorable pricing levels, could materially adversely affect our business, financial conditions, results of operations and prospects.

The pharmaceutical and medical device industries are highly regulated and subject to various fraud and abuse, data privacy, transparency, and other health care laws, including, without limitation, the U.S. Federal Anti-Kickback Statute, the U.S. Federal False Claims Act and the FCPA.

HCPs and third-party payers play a primary role in the recommendation and prescription of drug products and medical devices that are granted marketing approval. Our current and future arrangements with health care professionals, principal investigators, consultants, third-party payers, customers and other organizations may expose us to broadly applicable fraud and abuse and other health care laws and regulations in the U.S. These regulations are complex, and even minor irregularities can potentially give rise to claims that a statute or prohibition has been violated. The laws that may affect our ability to operate include, among others:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal health care program, such as the Medicare and Medicaid programs;

- federal civil and criminal false claims laws, including the False Claims Act, which can be enforced by private individuals through civil whistleblower or *qui tams* actions, and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other third-party payers that are false or fraudulent;

- the Health Insurance Portability and Accountability Act (HIPAA) which, among other things, created new federal criminal statutes that prohibit executing a scheme to defraud any health care benefit program and making false statements relating to health care matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), and its implementing regulations, which imposes certain requirements on certain covered HCPs, health plans, and health care clearinghouses as well as their respective business associates that perform services for them that involve the use, or disclosure of, individually identifiable health information, relating to the privacy, security, and transmission of individually identifiable health information;

- the Physician Payments Sunshine Act, enacted as part of the ACA, which requires manufacturers of drugs, devices, biologics, and medical supplies to report annually to the Centers for Medicare & Medicaid Services (CMS) information related to payments and other transfers of value to physicians, as defined by such law, teaching hospitals, and certain advanced non-physician health care practitioners and ownership and investment interests held by physicians and their immediate family members; and,

- foreign and state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws that may apply to items or services reimbursed by any third-party payer, including commercial insurers; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance

promulgated by the federal government, or otherwise restrict payments that may be made to HCPs and other potential referral sources; state laws that require product manufacturers to report information related to payments and other transfers of value to physicians and other HCPs or marketing expenditures; state and local laws that require the registration of pharmaceutical sales representatives; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and which may conflict, thus complicating compliance efforts.

The scope and enforcement of these laws and regulations is uncertain and subject to rapid change. Notably, in November 2020, DHHS finalized significant changes to the regulations implementing the Anti-Kickback Statute, as well as the civil monetary penalty rules regarding beneficiary inducements, with the goal of offering the health care industry more flexibility and reducing the regulatory burden associated with those fraud and abuse laws, particularly with respect to value-based arrangements among industry participants. Regulatory authorities might challenge our current or future activities under these laws. Any such challenge could have a material adverse effect on our reputation, business, results of operations and financial condition. These risks may be increased where there are evolving interpretations of applicable regulatory requirements, such as those applicable to manufacturer co-pay programs. Pharmaceutical manufacturer co-pay programs, including pharmaceutical manufacturer donations to patient assistance programs offered by charitable foundations, are the subject of ongoing litigation, enforcement actions and settlements (involving other manufacturers and to which we are not a party) and evolving interpretations of applicable regulatory requirements and certain state laws, and any change in the regulatory or enforcement environment regarding such programs could impact our ability to offer such programs. In addition, efforts to ensure that our business arrangements with third parties will comply with these laws will involve substantial costs. Any investigation of us or the third parties with whom we contract, regardless of the outcome, would be costly and time-consuming. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, monetary fines, imprisonment, disgorgement of profits, possible exclusion and debarment from participation in Medicare, Medicaid and other federal health care programs, debarment under the FDCA, additional reporting or oversight obligations if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with the law, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations.

Health care legislative reform measures may have a negative impact on our business and results of operations.

In the U.S. and some foreign jurisdictions, there have been, and continue to be, several legislative and regulatory changes and proposed changes regarding the health care system that could restrict or regulate post-approval activities and affect our ability to profitably sell any product.

Among policy makers and payers in the U.S. and elsewhere, there is significant interest in promoting changes in health care systems with the stated goals of containing health care costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a focus of these efforts and has been significantly affected by major legislative initiatives. In March 2010, Congress passed the ACA, which substantially changed the way health care is financed by both the government and private insurers, and significantly impacts the U.S. pharmaceutical industry. As another example, the 2021 Consolidated Appropriations Act signed into law on December 27, 2020 incorporated extensive health care provisions and amendments to existing laws, including a requirement that all manufacturers of drug products covered under Medicare Part B report the product's Average Sales Price (ASP) to DHHS beginning on January 1, 2022, subject to enforcement via civil money penalties.

There remain judicial and Congressional challenges to certain aspects of the ACA, and as a result certain sections of the ACA have not been fully implemented or effectively repealed. However, following several years of litigation in the federal courts, in June 2021, the U.S. Supreme Court upheld the ACA when it dismissed a legal challenge to the ACA's constitutionality. Further legislative and regulatory changes under the ACA remain possible, although the new federal administration under President Biden has signaled that it plans to build on the ACA and expand the number of people who are eligible for health insurance subsidies under it. It is unknown what form any such changes or any law would take, and how or whether it may affect the biopharmaceutical industry as a whole or our business in the future. We expect that changes or additions to the ACA, the Medicare and Medicaid programs, such as changes allowing the federal government to directly negotiate drug prices, and changes stemming from other

health care reform measures, especially with regard to health care access, financing, or other legislation in individual states, could have a material adverse effect on the health care industry in the U.S.

Additionally, the 2020 federal spending package permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, also eliminated the health insurer tax. Further, the Bipartisan Budget Act of 2018, among other things, amended the ACA, effective January 1, 2019, to close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole". In addition, CMS published a final rule that would give states greater flexibility, effective January 1, 2020, in setting benchmarks for insurers in the individual and small group marketplaces, which may have the effect of relaxing the essential health benefits required under the ACA for plans sold through such marketplaces.

The uncertainty around the future of the ACA, and in particular the impact to reimbursement levels, may lead to uncertainty or delay in the purchasing decisions of our customers, which may in turn negatively impact our product sales. If there are not adequate reimbursement levels, our business and results of operations could be adversely affected.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year pursuant to the Budget Control Act of 2011, which began in 2013 and will remain in effect through 2030 unless additional Congressional action is taken. However, the Medicare sequester reductions under the Budget Control Act of 2011 will be suspended from May 1, 2020 through December 31, 2020 due to the COVID-19 pandemic, pursuant to provisions of the CARES Act which also extended the sequester by one year, through 2030, in order to offset the added expense of the 2020 cancellation. The suspension was subsequently extended through March 31, 2022, with a reduction of the suspension to 1% sequester through June 30, 2022.

In addition, in 2013, the Drug Supply Chain Security Act (DSCSA) enacted imposed obligations on manufacturers of pharmaceutical products related to product tracking and tracing. On December 20, 2019, President Trump signed the Further Consolidated Appropriations Act for 2020 into law (P.L. 116-94) that includes a piece of bipartisan legislation called the CREATES Act. The CREATES Act aims to address the concern articulated by both the FDA and others in the industry that some brand manufacturers have improperly restricted the distribution of their products, including by invoking the existence of a REMS for certain products, to deny generic and biosimilar product developers access to samples of brand products. The CREATES Act establishes a private cause of action that permits a generic or biosimilar product developer to sue the brand manufacturer to compel it to furnish the necessary samples on "commercially reasonable, market-based terms." Whether and how generic and biosimilar product developments will use this new pathway, as well as the likely outcome of any legal challenges to provisions of the CREATES Act, remain highly uncertain and its potential effects on our future commercial products are unknown. Other legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We are unsure whether additional legislative changes will be enacted, or whether the current regulations, guidance or interpretations will be changed, or whether such changes will have any impact on our business.

Additionally, there has been heightened governmental scrutiny in the U.S. of pharmaceutical pricing practices considering the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. For example, state legislatures are increasingly passing legislation and implementing regulations designed to control pharmaceutical pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. In December 2020, the U.S. Supreme Court unanimously held that federal law does not preempt the states' ability to regulate PBMs or other members of the health care and pharmaceutical supply chain, an important decision that may lead to further and more aggressive efforts by states in this area.

At the federal level, DHHS has solicited feedback on various measures intended to lower drug prices and reduce the out of pocket costs of drugs and has implemented others under its existing authority. For example, in May 2019, CMS issued a final rule to allow Medicare Advantage plans the option to use step therapy for Part B drugs

beginning January 1, 2020. This final rule codified CMS's policy change that was effective January 1, 2019. In addition, in 2020, the FDA finalized a rulemaking to establish a system whereby state governmental entities could lawfully import and distribute prescription drugs sourced from Canada. In July 2021, former President Biden issued a sweeping executive order on promoting competition in the American economy that includes several mandates pertaining to the pharmaceutical and health care insurance industries. Among other things, the executive order directed the FDA to work towards implementing a system for importing drugs from Canada (following on the Trump administration notice-and-comment rulemaking on Canadian drug importation finalized in October 2020). The Biden order also called on DHHS to release a comprehensive plan to combat high prescription drug prices, and it includes several directives regarding the Federal Trade Commission's oversight of potentially anticompetitive practices within the pharmaceutical industry. The drug pricing plan released by DHHS in September 2021 in response to the executive order makes clear that the Biden Administration supports aggressive action to address rising drug prices, including allowing DHHS to negotiate the cost of Medicare Part B and D drugs, but such significant changes will require either new legislation to be passed by Congress or time-consuming administrative actions. The implementation of cost containment measures or other health care reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our products.

Current and future health care legislation could have a significant impact on our business. There is uncertainty with respect to the impact these changes, if any, may have, and any changes likely will take time to unfold. Any additional federal or state health care reform measures could limit the amounts that third-party payers will pay for health care products and services, and, in turn, could significantly reduce the projected value of certain development projects and reduce our profitability.

We may be subject to numerous and varying privacy and security laws, and our failure to comply could result in penalties and reputational damage.

We and our third-party service providers are subject to laws and regulations covering data privacy and the protection of personal information including health information. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing focus on privacy and data protection issues which may affect our business. In the U.S., we and our third-party service providers may be subject to state security breach notification laws, state health information privacy laws and federal and state consumer protections laws which impose requirements for the collection, use, disclosure and transmission of personal information. These laws overlap and often conflict and each of these laws are subject to varying interpretations by courts and government agencies, creating complex compliance issues for us and our third-party service providers. In particular, our PHEXXI telehealth platform and our online, digital and media marketing strategies are required to comply with these laws and regulations. If we fail to comply with applicable laws and regulations, we could be subject to penalties or sanctions, including criminal penalties if we knowingly obtain information that is protected by HIPAA (protected health information) from a covered entity or business associate in a manner that is not authorized or permitted by HIPAA or for aiding and abetting a violation of HIPAA.

The regulatory environment surrounding information security, data collection, and privacy is increasingly demanding. We are subject to numerous U.S. federal and state laws and regulations governing the protection of health, personal information, and financial information of our customers, clinical subjects, clinical investigators, employees, and vendors/business contacts. For example, California has implemented the California Confidentiality of Medical Information Act that imposes restrictive requirements regulating the use and disclosure of health information and other personally identifiable information, and California has recently adopted the CCPA, which went into effect in January of 2020. The CCPA mirrors a number of the key provisions of the EU General Data Protection Regulation (GDPR) described below. The CCPA establishes a new privacy framework for covered businesses by creating an expanded definition of personal information, establishing new data privacy rights for consumers in the State of California, imposing special rules on the collection of consumer data from minors, and creating a new and potentially severe statutory damages framework for violations of the CCPA and for businesses that fail to implement reasonable security procedures and practices to prevent data breaches. Additionally, a new privacy law, the California Privacy Rights Act (CPRA), was a ballot measure approved by California voters in the election on November 3, 2020, and certain provisions are effective as of January 1, 2022 with full effectiveness as of January 1, 2023. The CPRA modifies and expands the CCPA significantly, and among other things, creates the California Privacy Protection Agency with full administrative power, authority and jurisdiction to implement and enforce CCPA. CPRA transferred rulemaking authority from the California attorney General to the California Privacy Protection Agency effective July 1, 2021 with

final CPRA regulations due by July 1, 2022. CPRA enforcement began July 1, 2023. The CCPA creates the potential for further uncertainty, additional costs and expenses in our efforts to comply with California privacy requirements and additional potential for harm and liability for failure to comply. Virginia and Colorado enacted similar data protection laws in 2021, and other U.S. states have proposals under consideration, increasing the regulatory compliance risk.

Numerous other countries have, or are developing, laws governing the collection, use and transmission of personal information as well. EU member states and other jurisdictions have adopted data protection laws and regulations, which impose significant compliance obligations.

On May 25, 2018, the GDPR went into effect, implementing a broad data protection framework that expanded the scope of EU data protection law, including to non-EU entities that process, or control the processing of, personal data relating to individuals located in the EU, including clinical trial data. The GDPR sets out a number of requirements that must be complied with when handling the personal data of EU based data subjects, including: providing expanded disclosures about how their personal data will be used; higher standards for organizations to demonstrate that they have obtained valid consent or have another legal basis in place to justify their data processing activities; the obligation to appoint data protection officers in certain circumstances; new rights for individuals to be "forgotten" and rights to data portability, as well as enhanced current rights (e.g. access requests); the principal of accountability and demonstrating compliance through policies, procedures, training and audit; and a new mandatory data breach regime. In particular, medical or health data, genetic data and biometric data where the latter is used to uniquely identify an individual are all classified as "special category" data under the GDPR and afford greater protection and require additional compliance obligations. Further, EU member states have a broad right to impose additional conditions—including restrictions—on these data categories. This is because the GDPR allows EU member states to derogate from the requirements of the GDPR mainly in regard to specific processing situations (including special category data and processing for scientific or statistical purposes). As the EU states continue to reframe their national legislation to harmonize with the GDPR, we will need to monitor compliance with all relevant EU member states' laws and regulations, including where permitted derogation from the GDPR are introduced.

We will also be subject to evolving EU laws on data export if we transfer data outside the EU to ourselves or third parties. The GDPR only permits exports of data outside the EU where there is a suitable data transfer solution in place to safeguard personal data (e.g. the EU Commission approved Standard Contractual Clauses). On July 16, 2020, the Court of Justice of the EU (CJEU) issued a landmark opinion in the case Maximilian Schrems vs. Facebook (Case C-311/18) (Schrems II). This decision calls into question certain data transfer mechanisms as between the EU member states and the U.S. The CJEU is the highest court in Europe and the Schrems II decision heightens the burden on data importers to assess U.S. national security laws on their business future actions of EU data protection authorities are difficult to predict at the early date. Consequently, there is some risk of any data transfers from the EU being halted. If we have to rely on third parties to carry out services for us, including processing personal data on our behalf, we are required under GDPR to enter into contractual arrangements to help ensure that these third parties only process such data according to our instructions and have sufficient security measures in place. Any security breach or non-compliance with our contractual terms or breach of applicable law by such third parties could result in enforcement actions, litigation, fines and penalties or adverse publicity and could cause customers to lose trust in us, which would have an adverse impact on our reputation and business. Any contractual arrangements requiring the processing of personal data from the EU to us in the U.S. will require greater scrutiny and assessments as required under Schrems II and may have an adverse impact on cross-border transfers of personal data or increase costs of compliance. The GDPR provides an enforcement authority to impose large penalties for noncompliance, including the potential for fines of up to €20 million or 4% of the annual global revenues of the noncompliant company, whichever is greater. We will be subject to GDPR when we have a EU presence or "establishment" (e.g. EU based subsidiary or operations), when conducting clinical trials with EU based data subjects, whether the trials are conducted directly by us or through a vendor or partner, or offering approved products or services to EU based data subjects, regardless of whether involving a EU based subsidiary or operations.

Applicable data privacy and data protection laws may conflict with each other, and by complying with the laws or regulations of one jurisdiction, we may find that we are violating the laws or regulations of another jurisdiction. Despite our efforts, we may not have fully complied in the past and may not in the future. If we become liable under laws or regulations applicable to us, we may be required to pay significant fines and penalties, our reputation may be

harmed, and we may be forced to change the way we operate. That could require us to incur significant expenses, which could significantly affect our business.

Our business may be adversely affected by unfavorable macroeconomic conditions, including potential future pandemics, geopolitical conflicts and other factors.

Various macroeconomic factors could adversely affect our business, our results of operations and our financial condition, including changes in inflation, interest rates and foreign currency exchange rates and overall economic conditions and uncertainties, including those resulting from political instability (including workforce uncertainty), trade disputes between nations and the current and future conditions in the global financial markets. For example, if inflation or other factors were to significantly increase our business costs, we may be unable to pass through price increases to patients. The cost of importing similar products from foreign markets may affect our sales in any domestic market.

In addition, U.S. and global financial markets have experienced disruption due to various macroeconomic and geopolitical events. These include, but are not limited to, rising inflation, rising interest rates, the risk of a recession and other ongoing global conflicts. We cannot predict at this time to what extent our or our collaborators, employees, suppliers, contract manufacturers and/or vendors could be negatively impacted by these and other macroeconomic and geopolitical events.

Interest rates and the ability to access credit markets could also adversely affect the ability of patients, payers and distributors to purchase, pay for and effectively distribute our products. Similarly, these macroeconomic factors could affect the ability of our current or potential future third-party manufacturers, sole source or single source suppliers, licensors or licensees to remain in business, or otherwise manufacture or supply our product. Failure by any of them to remain in business could affect our ability to manufacture our products.

Some physician offices appear to have been negatively impacted by restrictions on elective procedures and office visits during the pandemic. To the extent physician offices are again closed or visits are again reduced, patients could be less likely to be prescribed PHEXXI. Even with our ongoing telehealth efforts through channels such as the PHEXXI telehealth platform, we may not be able to effectively commercialize PHEXXI for the prevention of pregnancy as a result of our reduced sales force, any reduction in physician office visits, or other circumstances related to a public health emergency. Any such emergency may adversely affect us and our business in manner we may be unable to reliably predict or quantify.

Ongoing geopolitical tensions, conflict between Russia and Ukraine, the Israel-Hamas wars, and any escalations thereof may result in adverse impacts on the global economy which may in turn negatively impact our business. These and any additional sanctions and export controls, as well as any counter responses by the governments of the countries in conflict or at war, or other jurisdictions, could adversely affect, directly or indirectly, the global supply chain, with negative implications on the availability and prices of raw materials, energy prices, and our customers, as well as the global financial markets and financial services industry.

Risks Related to Our Business Operations

As we mature and expand our sales and marketing infrastructure, we will need to expand the size of our organization. If we experience difficulties in managing this growth or are unable to attract and retain management and other key personnel, we may be unable to successfully commercialize our products or otherwise implement our business plan.

As of March 14, 2025, we had a total of 32 full-time employees. In addition, we use third-party consultants to assist with finance, including regulatory filings, sales, marketing and market access research and programs, as well as general and administrative activities. As our development and commercialization plans and strategies continue to develop, we expect that we will expand the size of our employee base for managerial, operational, sales, marketing, financial, regulatory affairs and other resources. Future growth would impose significant added responsibilities on members of management, including the need to identify, recruit, maintain, motivate and integrate additional employees. In addition, management may have to divert a disproportionate amount of its attention away from day-to-day activities and devote a substantial amount of time to managing these growth activities, which would lead to disruptions in our operations. We cannot provide assurance that we will be able to retain adequate staffing levels to

run our operations and/or to accomplish all the objectives that we otherwise would seek to accomplish, or that our staffing levels may turn out to be too robust for our actual business activity.

Our ability to compete in the highly competitive pharmaceutical industry depends upon our ability to attract and retain highly qualified managerial and key personnel. We are highly dependent on our senior management, and the loss of the services of any members of our senior management team could impede, delay or prevent the development and commercialization of our product, hurt our ability to raise additional funds and negatively impact our ability to implement our business plan. If we lose the services of any of these individuals, we might not be able to find suitable replacements on a timely basis or at all, and our business could be harmed as a result. We do not maintain "key man" insurance policies on the lives of these individuals.

We might not be able to attract or retain qualified management and other key personnel in the future due to the intense competition for qualified personnel among biotechnology, medical device, biopharmaceutical and other businesses, particularly in the San Diego area where we are headquartered. As a result, we may be required to expend significant financial resources in our employee recruitment and retention efforts, including the grant of significant equity incentive awards which would be dilutive to stockholders. Many of the other companies within the contraceptive industry with whom we compete for qualified personnel have greater financial and other resources, different risk profiles and longer histories in the industry than we do. They also may provide more diverse opportunities and better chances for career advancement. If we are not able to attract and retain the necessary personnel to accomplish our business objectives or if we are not able to effectively manage any future growth, we may experience constraints that will harm our ability to implement our business strategy and achieve our business objectives.

Our current or future employees, principal investigators, consultants and commercial partners may engage in misconduct or other improper activities, including non-compliance with legal requirements or regulatory standards.

We may become exposed to the risk of employees, independent contractors, principal investigators, consultants, suppliers, commercial partners or vendors engaging in fraud or other misconduct. Misconduct by employees, independent contractors, principal investigators, consultants, suppliers, commercial partners and vendors could include intentional conduct such as failures: (i) to comply with FDA or other regulators' regulations; (ii) to provide accurate information to such regulators; or (iii) to comply with manufacturing standards established by us and/or required by law. In particular, sales, marketing and business arrangements in the health care industry are subject to extensive laws, regulations and industry guidance intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct by current or future employees, independent contractors, principal investigators, consultants, suppliers, commercial partners and vendors could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory or civil sanctions and serious harm to our reputation. It is not always possible to identify and deter misconduct by employees, independent contractors, principal investigators, consultants, suppliers, commercial partners and vendors, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses, or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending or asserting our rights, those actions could have a significant adverse impact on our business and we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, monetary fines, individual imprisonment, disgorgement of profits, possible exclusion from participation in Medicare, Medicaid and other federal health care programs, additional reporting or oversight obligations if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with the law, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations.

We may be vulnerable to disruption, damage and financial obligations as a result of information technology system failures, cybersecurity breaches, loss of data or other disruptions that could compromise our proprietary information or other sensitive information.

Despite the implementation of security measures and internal policies and controls, any of the internal computer systems belonging to us or our third-party service providers are vulnerable to damage from computer viruses, unauthorized access, natural disasters, malicious attack, human error, and telecommunication and electrical failure.

Cybersecurity risks continue to increase for our industry, including for our third-party vendors, who may hold some of our data, and the proliferation of new technologies and the increased sophistication and activities of the actors behind such attacks present risks for compromised or lost data, which could result in substantial costs and harm to our reputation. Any system failure, accident, security breach or data breach that causes interruptions in our own or in third-party service vendors' operations could result in a material disruption of our commercialization or product development programs. For example, the loss of clinical study data from future clinical trials could result in liability, delays in our or our partners' regulatory approval efforts and significantly increase our costs to recover or reproduce the lost data. Further, our information technology and other internal infrastructure systems, including firewalls, servers, leased lines and connection to the Internet, face the risk of systemic failure, which could disrupt our operations. In addition, our commercialization of PHEXXI is partially reliant on the use of the PHEXXI telehealth platform and our other digital or media marketing strategies. We are in turn reliant on third parties and limited internal resources to ensure the PHEXXI telehealth platform and these other digital and marketing resources function appropriately. Our commercialization of PHEXXI may be adversely affected to the extent the PHEXXI telehealth platform and our other online marketing resources do not work properly or are disrupted. To the extent any disruption or security breach results in a loss or damage to our data or applications, sensitive information or inappropriate disclosure of confidential or proprietary information, we may incur resulting liability and reputation damage, our product development programs and competitive position may be adversely affected and the further commercialization or development of our products may be delayed. Furthermore, we may incur additional costs to remedy the damage caused by these disruptions or security breaches and these costs could be significant.

The U.S. federal and various state and foreign governments have adopted or proposed requirements regarding the collection, distribution, use, security, and storage of personally identifiable information and other data relating to individuals, and federal and state consumer protection laws are being applied to enforce regulations related to the collection, use, and dissemination of data. Some of these federal, state and foreign government requirements include obligations of companies to notify individuals and others of security breaches involving health information or particular personally identifiable information, which could result from breaches experienced by us or by our vendors, contractors, or organizations with which we have formed strategic relationships. Even though we may have contractual protections with such vendors, contractors, or other organizations, notifications and follow-up actions related to a security breach could impact our reputation, cause us to incur significant costs, including legal expenses, harm customer confidence, hurt our expansion into new markets, cause us to incur remediation costs, or cause us to lose existing customers.

The techniques used by criminal elements to attack computer systems are sophisticated, change frequently and may originate from less regulated or remote areas of the world. For example, there may be an increased risk of cybersecurity attacks by state actors due to the current conflict between either Russia and Ukraine or between Israel and Hamas. Additionally, Russian ransomware gangs have threatened to increase hacking activity against critical infrastructure of any nation or organization that retaliates against Moscow for its invasion of Ukraine. Any such increase in such attacks on our third-party provider or other systems could adversely affect our network systems or other operations. We may not be able to address these techniques proactively or implement adequate preventative measures. There can be no assurance that we will promptly detect any such disruption or security breach, if at all. If our computer systems are compromised, we could be subject to fines, damages, reputational harm, litigation and enforcement actions, and we could lose trade secrets, the occurrence of which could harm our business, in addition to possibly requiring substantial expenditures of resources to remedy. For example, any such event that leads to unauthorized access, use or disclosure of personal information, including personal information regarding our patients or employees, could harm our reputation, require us to comply with federal and/or state breach notification laws and foreign law equivalents, and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information. In addition, a cybersecurity breach could adversely affect our reputation and could result in other negative consequences, including disruption of our internal operations, increased cyber security protection costs, lost revenues or litigation. Despite precautionary measures to prevent unanticipated problems that could affect our IT systems, sustained or repeated system failures that interrupt our ability to generate and maintain data could adversely affect our ability to operate our business.

Any such security breach may compromise information stored on our networks and may result in significant data losses or theft of our intellectual property or proprietary business information, it may also subject us to significant fines, penalties or liabilities for any noncompliance with certain privacy and security laws. In addition, our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyber-attacks

and other related breaches. A cybersecurity breach could adversely affect our reputation and could result in other negative consequences, including disruption of our internal operations, increased cybersecurity protection costs, lost revenue or litigation.

We expect to continue to incur increased costs as a result of operating as a public company and our management will be required to devote substantial time to compliance initiatives and corporate governance practices.

As a public company, we incur and expect to continue to incur additional significant legal, accounting and other expenses in relation to our status as a public reporting company. Now that we are no longer an emerging growth company, we expect these expenses will further increase. We may need to hire additional accounting, finance and other personnel in connection with our continuing efforts to comply with the requirements of being a public company, and our management and other personnel will need to continue to devote a substantial amount of time towards maintaining compliance with these requirements. In addition, the Sarbanes-Oxley Act of 2002 and rules subsequently implemented by the SEC and the OTC Markets have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly.

While we remain a smaller reporting company and have revenues of less than $100 million per year, we will not be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm. If and when we are required to achieve compliance with regulatory auditor attestation report requirements within the prescribed period, we will be engaged in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. As described herein, we have identified one or more material weaknesses. This could result in an adverse reaction in the financial markets due to a loss of confidence in the reliability of our consolidated financial statements.

The inability to attract and retain qualified key management personnel would impair our ability to implement our business plan.

Our team is lean and highly focused, and has been largely stable since 2023. The loss of one or more members of our key employees or advisors could hinder our commercialization efforts and have a material adverse effect on our business, financial condition, results of operations and prospects.

Our continued ability to attract and retain highly qualified management, advisors and other specialized personnel is tantamount to our future success. Key members of management include Saundra Pelletier our Chief Executive Officer and Ivy Zhang, our Chief Financial Officer and Secretary, both of whom are employed at-will and for whom we do not have “key man” insurance coverage.

We face competition for personnel, notably those with expertise in women’s health care, drug development, governmental regulation and commercialization, from other companies, universities, public and private research institutions, government entities and other organizations (many of whom have substantially greater financial resources than us). As a result of this competition, we might not be able to attract or retain these key employees on conditions that are economically acceptable. Our inability to attract and retain these key employees could prevent us from achieving our objectives and implementing our business strategy, which could have a material adverse effect on our business and prospects.

In connection with the departure of key personnel, we may be subject to certain separation payments, legal actions or other claims.

We are and may continue to be responsible for the payment of all earned and unpaid wages, vacation, bonuses and other forms of compensation due to certain employees. Our failure to pay such may result in claims being filed against us and us being subject to further penalties for any violations. The failure to successfully remediate any such

disputes or pay any amounts payable could negatively impact our business, financial conditions, results of operations and prospects.

We are subject to U.S. and certain foreign export and import controls, sanctions, embargoes, anti-corruption laws, and anti-money laundering laws and regulations. Compliance with these legal standards could impair our ability to compete in domestic and international markets. We can face criminal liability and other serious consequences for violations which can harm our business.

We are subject to export control and import laws and regulations, including the U.S. Export Administration Regulations, U.S. Customs regulations, various economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls, the FCPA, the U.S. domestic bribery statute contained in 18 U.S. Code (U.S.C.) § 201, the U.S. Travel Act, the USA PATRIOT Act, and other state and national anti-bribery and anti-money laundering laws in the countries in which we conduct activities. Anti-corruption laws are interpreted broadly and prohibit companies and their employees, agents, contractors, and other partners from authorizing, promising, offering, or providing, directly or indirectly, improper payments or anything else of value to recipients in the public or private sector. We may engage third parties for clinical trials outside of the U.S., to sell our products abroad once we enter a commercialization phase, and/or to obtain necessary permits, licenses, patent registrations, and other regulatory approvals. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities, and other organizations. We can be held liable for the corrupt or other illegal activities of our employees, agents, contractors, and other partners, even if we do not explicitly authorize or have actual knowledge of such activities. Any violations of the laws and regulations described above may result in substantial civil and criminal fines and penalties, imprisonment, the loss of export or import privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm, and other consequences.

We or the third parties upon whom we depend may be adversely affected by earthquakes, medical epidemics or pandemics, or other natural disasters including wildfires. These natural disasters may be exacerbated by the effects of climate change.

Our principal offices are located in San Diego, California. Any unplanned event, such as flood, fire, explosion, earthquake, wildfires, extreme weather condition, medical epidemics or pandemics, power shortage, telecommunication failure or other natural or man-made accidents or incidents that results in us being unable to fully utilize our facilities, effects the ability of our employees working remotely to communicate with us and our systems, or that affects the operations of our third party manufacturers, distributors, service providers or consultants may have a material and adverse effect on our ability to operate our business and have significant negative consequences on our financial and operating conditions. These natural events may become worse over time due to the ongoing effects of climate change. Any business interruption may have a material and adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Our Common Stock

There can be no assurance that we will be able to comply with the continued listing standards of OTCQB.

OTC Markets has certain continued listing standards that we must meet to maintain our listing on the OTCQB exchange.

On January 6, 2025, the Company received a written notice (the OTC Markets Notice) from the OTC notifying the Company that, because the closing bid price for the Company's common stock was below $0.01 per share for 30 consecutive calendar days, the Company is not currently in compliance with the minimum bid price requirement for continued listing on the OTCQB, as set forth in the OTCQB listing standards, section 2.3 (the Minimum Bid Price Requirement).

In accordance with OTCQB Listing Standards, Section 4.1 the Company has a compliance period of 90 calendar days, or until April 6, 2025, to regain compliance with the Minimum Bid Price Requirement. Compliance may be achieved if the Company's closing bid price is equal to or greater than $0.01 for ten consecutive trading days at any time during the 90-day compliance period, in which case OTC Markets will notify the Company of its compliance and the matter will be closed.

If we are unable to comply with these continued listing standards by April 6, 2025, our common stock will be delisted from the OTCQB, and will begin trading on the OTC Pink Current.

Our Common Stock may become quoted only on the OTC Pink Current Information Marketplace (OTC Pink), which may have an unfavorable impact on our stock price and liquidity.

Our common stock may become listed on the OTC Pink if the Company does not regain compliance with the Minimum Bid Price Requirement. The OTC Pink is a more limited market than the OTCQB or NASDAQ. The quotation of our shares on the OTC Pink may result in a less liquid market available for existing and potential stockholders to trade shares of our common stock, could depress the trading price of our common stock and could have a long-term adverse impact on our ability to raise capital in the future.

There can be no assurance that there will be an active market for our shares of common stock either now or in the future. Market liquidity will depend on the perception of our operating business and any steps that our management might take to bring us to the awareness of investors. There can be no assurance given that there will be any awareness generated. Consequently, investors may not be able to liquidate their investment or liquidate it at a price that reflects the value of the business. As a result, holders of our securities may not find purchasers for our securities should they to desire to sell them. Consequently, our securities should be purchased only by investors having no need for liquidity in their investment and who can hold our securities for an indefinite period of time.

Our stock price is and may continue to be volatile.

Our Common Stock is currently quoted for public trading on the OTCQB under the symbol "EVFM". The market price for our common stock is volatile and may fluctuate significantly in response to a number of factors, many of which we cannot control, such as potential irregularity in financial results from quarter to quarter, political developments related to women's reproductive rights and contraception, the content and tone of media coverage and commentary, or changes in securities analysts' recommendations, any of which could cause the price of our common stock to fluctuate substantially. Each of these factors, among others, could harm your investment in our securities and could result in your being unable to resell any of our securities that you purchase at a price equal to or above the price you paid.

In addition, the stock market in general and the market for biopharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to companies operating performance. The market price for our common stock may be influenced by many factors, including:

- the potential delisting of our common stock from OTCQB, should we not comply with continued listing standards;
- the adverse effects resulting from a potential delisting;
- failure to timely file future required filings;
- the loss of key personnel;
- the results of our efforts to commercialize PHEXXI, SOLOSEC, or any other products, particularly in the event of a rebrand;
- the results of our efforts to acquire or in-license products;
- commencement or termination of any collaboration or licensing arrangement;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technology;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures and capital commitments;
- additions or departures of key management personnel;
- variations in our financial results or those of companies that are perceived to be similar to us;
- new products, product candidates or new uses for existing products introduced or announced by our competitors, and the timing of these introductions or announcements;
- results of clinical trials of product candidates of our competitors;
- general economic and market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies, wars, terrorism and political unrest, outbreak of major disease, boycotts and other business restrictions;

- regulatory or legal developments in the U.S. and other countries;
- changes in the structure of healthcare payment systems;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- actual or anticipated changes in earnings estimates, development timelines or recommendations by securities analysts;
- announcement or expectation of additional financing efforts and related debt and equity issuances;
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock;
- stockholder activism;
- any stockholder derivative actions; and
- other factors described in this "Risk Factors" section.

Upon being listed on the OTCQB Marketplace on October 10, 2022 the closing sales price started at $21.25, was $0.0099 as of December 31, 2024, and was $0.008 as of March 14, 2025. These broad market fluctuations may adversely affect the trading price or liquidity of our common stock. In the past, following periods of volatility in companies' stock prices, securities class-action litigation has often been instituted against such companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business and financial condition.

There may not be an active, liquid trading market for our equity securities.

Our common stock trades exclusively on the OTCQB Marketplace. Trading volumes on the OTCQB Marketplace can fluctuate significantly, which could make it difficult for investors to execute transactions in our securities and could cause declines or volatility in the prices of our equity securities.

Because our Common Stock is subject to the "penny stock" rules, brokers cannot generally solicit the purchase of our Common Stock, which adversely affects its liquidity and market price.

The SEC has adopted regulations which generally define "penny stock" to be an equity security that has a market price of less than $5.00 per share, subject to specific exemptions. The market price of our Common Stock on the OTCQB Marketplace is presently less than $5.00 per share and therefore we are considered a "penny stock" company according to SEC rules. Further, we do not expect our stock price to rise above $5.00 in the foreseeable future. The "penny stock" designation requires any broker-dealer selling our securities to disclose certain information concerning the transaction, obtain a written agreement from the purchaser and determine that the purchaser is reasonably suitable to purchase the securities. These rules limit the ability of broker-dealers to solicit purchases of our Common Stock and therefore reduce the liquidity of the public market for our shares.

Moreover, as a result of apparent regulatory pressure from the SEC and the Financial Industry Regulatory Authority (FINRA), a growing number of broker-dealers decline to permit investors to purchase and sell or otherwise make it difficult to sell shares of penny stocks. The "penny stock" designation may have a depressive effect upon our Common Stock price.

Because we do not have sufficient authorized capital on a fully diluted basis, the excess outstanding capital exposes us to liability, and we will need to increase our authorized capital, effectuate a reverse split or obtain effective waivers from derivative securityholders.

As of December 31, 2024, and March 14, 2025, our authorized capital consists of 3,000,000,000 shares of common stock and 5,000,000 shares of Preferred Stock. As of December 31, 2024, of the authorized common stock, 113,356,354 shares were issued and outstanding and 958,185,542 shares were reserved for issuance under potential conversions of convertible notes, purchase rights, preferred shares, warrants and all other derivatives. As of March 14, 2025, of the authorized common stock, 113,356,354 shares were issued and outstanding and approximately 963,564,509 shares were reserved for issuance under potential conversions of convertible notes, purchase rights, preferred shares, warrants and all other derivatives, exclusive of instruments for which the reservation requirement was waived by the respective holders. As such, our fully diluted capital structure is more than the amount of common stock we are authorized to issue. Therefore, until we either increase our authorized common stock, effectuate a reverse split, or another manner of reducing the number of instruments convertible to common stock, we are exposed to the risk of liability arising from the excess fully diluted capitalization. In addition to the dilutive effect any exercises of

the derivative securities would have, in the event we are unable to obtain the requisite approvals or the current waivers are rescinded, or we are delayed in those efforts, the Company and your investment in us would be at risk.

Our common stock could be further diluted as the result of the issuance of additional shares of common stock, convertible securities, warrants or options.

In the past, we have issued common stock, convertible securities (such as convertible notes) and warrants in order to raise capital. We have also issued common stock as compensation for services and incentive compensation for our employees, directors and certain vendors. We have shares of common stock reserved for issuance upon the exercise of certain of these securities and may increase the shares reserved for these purposes in the future. Our issuance of additional common stock, convertible securities, options and warrants could affect the rights of our stockholders, could reduce the market price of our common stock or could result in adjustments to exercise prices of outstanding warrants (resulting in these securities becoming exercisable for, as the case may be, a greater number of shares of our common stock), or could obligate us to issue additional shares of common stock to certain of our stockholders.

A significant portion of our total outstanding shares of common stock may be sold into the public market at any point, which could cause the market price of our common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market could occur. These sales, or the perception in the market that holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. Future issuances of our securities may cause additional reduction in the percentage interests of our current stockholders in the voting power, liquidation value, our book and market value, and in any future earnings. As of March 14, 2025, there were approximately 3,372 shares of our common stock subject to outstanding options which have been registered on registration statements on Form S-8. Furthermore, as of March 14, 2024, there were an aggregate of approximately and approximately 964 million shares were reserved for issuance under potential conversions of convertible notes, purchase rights, preferred shares, warrants and all other derivatives, exclusive of instruments for which the reservation requirement was waived by the respective holders. We have granted (or are required to grant) certain of our security holders registration rights pursuant to our agreements with these holders, including agreements requiring us to register for resale the shares of our common stock issued upon the conversion or exercise of our convertible notes and related warrants.

The issuance or resale of our common stock issued to our security holders upon conversion of convertible notes or upon exercise of our warrants or options could cause the market price of our common stock to decline. In addition, the increase in the number of issued shares of our common stock issuable upon conversion of our convertible notes or upon exercise of our warrants may have an incidental anti-takeover effect in that these additional shares could be used to dilute the stock ownership of parties seeking to obtain control of us. The resulting increased number of issued shares could discourage the possibility of, or render more difficult, certain mergers, tender offers, proxy contests or other change of control or ownership transactions.

We are and may continue to be subject to short-selling strategies.

Short sellers of our stock may be manipulative and may attempt to drive down the market price of shares of our Common Stock. Short selling is the practice of selling securities that the seller does not own but rather has, borrowed from a third party with the intention of buying identical securities back at a later date to return to the lender. The short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is therefore in the short seller's best interests for the price of the stock to decline, many short sellers (sometime known as "disclosed shorts") publish, or arrange for the publication of, negative opinions regarding the relevant issuer and its business prospects to create negative market momentum and generate profits for themselves after selling a stock short. Although traditionally these disclosed shorts were limited in their ability to access mainstream business media or to otherwise create negative market rumors, the rise of the Internet and technological advancements regarding document creation, videotaping and publication by weblog (blogging) have allowed many disclosed shorts to publicly attack a company's credibility, strategy and veracity by means of so-called "research reports" that mimic the type of investment analysis performed by large Wall Street firms and independent research analysts. These short attacks have, in the past, led to selling of shares in the market, on occasion in large scale and

broad base. Issuers who have limited trading volumes and are susceptible to higher volatility levels than large-cap stocks, can be particularly vulnerable to such short seller attacks. These short seller publications are not regulated by any governmental, self-regulatory organization or other official authority in the U.S., are not subject to certification requirements imposed by the SEC and, accordingly, the opinions they express may be based on distortions or omissions of actual facts or, in some cases, fabrications of facts. In light of the limited risks involved in publishing such information, and the enormous profit that can be made from running a successful short attack, unless the short sellers become subject to significant penalties, it is more likely than not that disclosed short sellers will continue to issue such reports.

Significant short selling of a company's stock creates an incentive for market participants to reduce the value of that company's common stock. Short selling may lead to the placement of sell orders by short sellers without commensurate buy orders because the shares borrowed by short sellers do not have to be returned by any fixed period of time. If a significant market for short selling our common stock develops, the market price of our common stock could be significantly depressed.

Continued failure to remediate current material weaknesses and establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.

As a publicly traded company, we are required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which requires management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. As discussed below, we have identified internal control weaknesses, and need to undertake various actions, such as implementing new internal controls, new systems and procedures and hiring additional accounting or internal audit staff, which could increase our operating expenses. In addition, we may identify additional deficiencies in our internal control over financial reporting as part of that process.

In addition, if we are unable to resolve internal control deficiencies in a timely manner, investors could lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could be negatively affected.

We identified material weaknesses in our internal control over financial reporting as of December 31, 2024 and 2023 and these or other material weaknesses could continue to materially impair our ability to report accurate financial information in a timely manner.

As of December 31, 2024 (the period covered by this Annual Report), the Company's management, with the participation of its principal executive officer and principal financial officer, has evaluated the effectiveness of its disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on such evaluation, the principal executive officer and principal financial officer have concluded that the Company's disclosure controls and procedures were not effective as of December 31, 2024 due to the identified material weaknesses in internal control over financial reporting as discussed below.

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). Management, under the supervision and with the participation of the principal executive officer and principal financial officer, conducted an assessment of the effectiveness of internal control over financial reporting as of December 31, 2024, based on the framework and criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO framework). Based on this assessment, management concluded that, as of December 31, 2024, its internal control over financial reporting was not effective due to the existence of material weaknesses described below.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that a reasonable possibility exists that a material misstatement of the annual or interim financial statements would not be prevented or detected on a timely basis.

Management identified material weaknesses in the Company's internal control over financial reporting primarily related to limited finance and accounting staffing levels that are not commensurate with the Company's

complexity and its financial accounting and reporting requirements. The Company continued to operate with a very lean finance and accounting department throughout 2024. Despite performing some remediation activities in 2023 and 2024, bringing new staff up to speed with key processes, including some very complicated financial instruments and transactions, caused the Company to lack the resources to fully monitor and operate internal controls of financial reporting.

Based on the above, the Company did not fully implement components of the COSO framework, including elements of the control environment, risk assessment, control activities, information and communication, and monitoring activities components.

Management continues to evaluate the material weaknesses discussed above and is implementing its remediation plan. However, assurance as to when the remediation efforts will be complete cannot be provided and the material weaknesses cannot be considered remedied until the applicable controls have operated for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. Management cannot assure readers that the measures that have been taken to date, and are continuing to be implemented, will be sufficient to remediate the material weaknesses identified or to avoid potential future material weaknesses.

We are a "smaller reporting company", and the reduced disclosure requirements applicable to smaller reporting companies may make our common stock less attractive to investors.

We are a "smaller reporting company" under SEC regulations. For so long as we remain a smaller reporting company, we will be permitted to and intend to rely on exemptions from certain disclosure requirements applicable to other public companies that are not smaller reporting companies. These exemptions include:

- for so long as we remain a smaller reporting company with annual revenues of less than $100 million per year and a public float value as of our most recently completed second fiscal quarter of less than $700 million, not being required to comply with the auditor attestation requirements in the assessment of our internal control over financial reporting; and
- reduced disclosure obligations regarding executive compensation.

We cannot predict whether investors will find our common stock less attractive if we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and the price of our common stock price may be more volatile.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future; capital appreciation, if any, will be your sole source of gain as a holder of our common stock.

We have never declared or paid cash dividends on shares of our common stock. As noted above, we are also restricted from paying cash dividends pursuant to our debt arrangements. Except as may be required to redeem our issued and outstanding promissory notes or shares of Series E-1 Shares, we currently plan to retain all our future earnings, if any, and any cash received through future financings to finance the growth and development of our business. Accordingly, capital appreciation, if any, of our common stock will be the sole source of gain for our common stockholders for the foreseeable future.

Provisions in our amended and restated certificate of incorporation, our bylaws or Delaware law might discourage, delay or prevent a change in control of the Company or changes in our management and, therefore, depress the trading price of our common stock.

Provisions in our amended and restated certificate of incorporation, our bylaws or Delaware law may discourage, delay, or prevent a merger, acquisition or other change in control stockholders may consider favorable, including transactions in which our stockholders might otherwise receive a premium for their shares. These provisions could also limit the price investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions might frustrate or prevent any attempts by our stockholders to replace or remove the current management by making it more difficult for our stockholders to replace members of our board of directors. These provisions include the following:

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- prohibiting our stockholders from calling a special meeting of stockholders or acting by written consent other than unanimous written consent;
- permitting our board of directors to issue additional shares of our preferred stock, with such rights, preferences, and privileges as they may designate, including the right to approve an acquisition or other changes in control;
- establishing an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- providing that our directors may be removed only for cause;
- providing that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- requiring the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

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

Our amended and restated certificate of incorporation and amended and restated bylaws provides that we will indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. In addition, as permitted by Section 145 of the DGCL, our amended and restated bylaws and our indemnification agreements that we have entered with our directors and officers provide that:

- We will indemnify our directors and officers for serving us in those capacities, or for serving other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We are required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- We will not be obligated pursuant to our amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person against us or our other indemnities, except with respect to proceedings authorized by our board of directors or brought to enforce a right to indemnification.
- The rights conferred in our amended and restated bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.
- We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

If securities analysts cease publishing research or reports about our business, or if they publish negative evaluations of our common stock, the price of our common stock could decline.

The trading market for our common stock relies in part on the research and reports industry or financial analysts publish about us or our business. We do not have any control over these analysts. If one or more of the analysts covering our business downgrade their evaluations of our common stock, the price of our common stock could decline. In addition, if one or more of these analysts cease coverage or cease regularly publishing reports on our business, we could lose visibility in the financial markets, which in turn could cause our common stock price or trading volume to decline.

Our business could be negatively affected as a result of the actions of activist stockholders.

It is possible that one or more of our stockholders may publicly voice opposition to our financing strategy, the A&R Merger Agreement, and/or certain aspects of our corporate governance and strategy, or undertake a proxy contest to reconstitute our board. Proxy contests have been waged against many companies in the biopharmaceutical industry over the last several years. If faced with a proxy contest or other type of stockholder activism, we may not be able to respond successfully to the contest or other type of activism which would be disruptive to our business. Even if we are successful, our reputation and/or business could be adversely affected by a proxy contest or other form of stockholder activism because:

- responding to proxy contests and other actions by activist stockholders can be costly and time-consuming, disrupting operations and diverting the attention of management and employees;
- perceived uncertainties as to our company and future strategic direction may result in the loss of potential financing, acquisitions, collaboration, in-licensing or other business opportunities, and may make it more difficult to attract and retain qualified personnel and business partners; and
- if individuals are elected to our board of directors with a specific agenda, it may adversely affect our ability to effectively and timely implement our strategic plan and create additional value for our stockholders.

Any or all of these activities could cause our stock price to decline or experience periods of volatility, and could be particularly problematic as our company seeks to establish itself as a profitable a commercial enterprise in a challenging environment.

We may become a defendant in one or more stockholder derivative or class-action litigations, and any such future lawsuit may adversely affect our business, financial condition, results of operations and cash flows.

We and certain of our officers and directors may become defendants in one or more future stockholder derivative actions or other class-action lawsuits. These lawsuits would divert our management's attention and resources from our ordinary business operations, and we would likely incur significant expenses associated with their defense (including, without limitation, substantial attorneys' fees and other fees of professional advisors and potential obligations to indemnify current and former officers and directors who are or may become parties to such actions). If these lawsuits do arise, we may be required to pay material damages, consent to injunctions on future conduct and/or suffer other penalties, remedies or sanctions. In addition, any such future stockholder lawsuits could adversely impact our reputation and/or to launch and commercialize our products, thereby harming our ability to generate revenue. Accordingly, the ultimate resolution of these matters could have a material adverse effect on our business, financial condition, results of operation and cash flow and, consequently, could negatively impact the trading price of our common stock.

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity.

We recognize the importance cybersecurity has to the success of our business. We also recognize the need to continually assess cybersecurity risk and evolve our response in the face of a rapidly and ever-changing environment. Accordingly, we aim to protect our business operations, including customer records and information, against known and evolving cybersecurity threats.

Risk Management and Strategy

We have established policies and processes for assessing, identifying, and managing material risk from cybersecurity threats, and have integrated these processes into our overall risk management systems and processes. We routinely assess material risks from cybersecurity threats, including any potential unauthorized occurrence on or conducted through our information systems that may result in adverse effects on the confidentiality, integrity, or availability of our information systems or any information residing therein.

We conduct periodic risk assessments to identify cybersecurity threats, as well as assessments in the event of a material change in our business practices that may affect information systems that are vulnerable to such cybersecurity threats. These risk assessments include identification of reasonably foreseeable internal and external risks, the likelihood and potential damage that could result from such risks, and the sufficiency of existing policies, procedures, systems, and safeguards in place to manage such risks.

Following these risk assessments, we re-design, implement, and maintain reasonable safeguards to minimize identified risks; reasonably address any identified gaps in existing safeguards; and regularly monitor the effectiveness of our safeguards. Primary responsibility for assessing, monitoring and managing our cybersecurity risks rests with the Director, Information Technology who reports to our Head of Human Resources and the Chief Executive Officer, to manage the risk assessment and mitigation process.

As part of our overall risk management system, we monitor and test our safeguards and train our employees on these safeguards, in collaboration with Information Technology and management. Personnel at all levels and departments are made aware of our cybersecurity policies through trainings.

We engage consultants, or other third parties in connection with our risk assessment processes if required. These service providers assist us in designing and implementing our cybersecurity policies and procedures. We require each third-party service provider to certify that it has the ability to implement and maintain appropriate security measures, consistent with all applicable laws, to implement and maintain reasonable security measures in connection with their work with us, and to promptly report any suspected breach of its security measures that may affect our company.

We have not encountered cybersecurity challenges that have materially impaired our operations or financial standing. For additional information regarding risks from cybersecurity threats, please refer to Item 1A, “Risk Factors,” in this annual report on Form 10-K.

Governance

One of the key functions of our board of directors is informed oversight of our risk management process, including risks from cybersecurity threats. Our board of directors is responsible for monitoring and assessing strategic risk exposure, and our executive officers are responsible for the day-to-day management of the material risks we face. Our board of directors administers its cybersecurity risk oversight function directly as a whole, as well as through the audit committee.

Our management team is primarily responsible for assessing and managing our material risks from cybersecurity threats with assistance from third-party service providers as needed.

Our management team oversees our cybersecurity policies and processes, including those described in the “Risk Management and Strategy” above. The cybersecurity risk management program includes tools and activities to prevent, detect, and analyze current and emerging cybersecurity threats, and plans and strategies to address threats and incidents.

Our management team will also provide periodic briefings to the audit committee regarding our Company’s cybersecurity risks and activities, including any recent cybersecurity incidents and related responses, cybersecurity systems testing, activities of third parties, and the like. Our audit committee will then provide updates to the Board on such reports.

Item 2. Properties.

Our corporate headquarters are now virtual and are located at 7770 Regents Rd, Suite 113-618, San Diego, California. We maintain this address for mail service.

We believe that our existing facilities are adequate for our current needs.

Item 3. Legal Proceedings.

From time to time, we may be involved in various actual and threatened legal proceedings, claims, investigations and government inquiries arising in the ordinary course of our business, including intellectual property, securities, stockholder derivative claims, employment, governance, workplace culture, contractual rights, false or misleading advertising, or other legal claims relating to our products and operations. Any proceedings, claims or inquiries involving us, whether successful or not, may be time consuming, result in costly litigation, unfavorable outcomes, increased costs of business, may require us to change our business practices or products, require significant amount of management's time, may harm our reputation or otherwise harm our business and future financial results.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Market Information

Our common stock began trading on the Nasdaq Global Market on November 20, 2014 under the ticker symbol "NEOT" and corporate name Neothetics, Inc. (Neothetics). Prior to November 20, 2014, there was no public market for our common stock. On January 17, 2018, we completed a merger (the Merger) with privately-held Evofem Biosciences Operations, Inc. (Private Evofem) where Private Evofem survived as our wholly owned subsidiary. In connection with the Merger, we changed our name from "Neothetics, Inc." to "Evofem Biosciences, Inc." and changed the ticker symbol for our common stock to "EVFM." Shares of our common stock began trading on the Nasdaq Capital Market (Nasdaq) under the ticker symbol EVFM on January 18, 2018.

On August 11, 2022, our stock was suspended from trading on the Nasdaq due to noncompliance with its minimum bid price requirement. On October 26, 2022, our common stock was formally delisted from Nasdaq. The delisting of our shares from Nasdaq made our common stock less liquid and makes it more difficult for us to raise funds when and as needed to fund operations. Our common stock began trading on the OTCQB® Venture Market (the OTCQB) of the OTC Markets Group, Inc., (the OTC Markets) a centralized electronic quotation service for over-the-counter securities, effective October 3, 2022 under the symbol "EVFM."

On January 6, 2025, the Company received a written notice (the OTC Markets Notice) from the OTC Markets notifying the Company that, because the closing bid price for the Company's common stock was below $0.01 per share for 30 consecutive calendar days, the Company is not currently in compliance with the minimum bid price requirement for continued listing on the OTCQB, as set forth in the OTCQB listing standards, section 2.3 (the Minimum Bid Price Requirement).

The OTC Markets Notice has no immediate effect on the listing of the Company's common stock on OTCQB, and, therefore, the Company's listing remains fully effective. In accordance with OTCQB Listing Standards, Section 4.1 the Company has a compliance period of 90 calendar days, or until April 6, 2025, to regain compliance with the Minimum Bid Price Requirement. Compliance may be achieved if the Company's closing bid price is equal to or greater than $0.01 for ten consecutive trading days at any time during the 90-day compliance period, in which case OTC Markets will notify the Company of its compliance and the matter will be closed.

If the Company does not regain compliance with the Minimum Bid Price Requirement by April 6, 2025, OTC Markets will provide written notification to the Company that its common stock will be removed from OTCQB and will begin trading on the OTC's Pink Current tier.

The Company intends to continue actively monitoring the closing bid price for the Company's common stock between now and April 6, 2025, and will consider available options to resolve the deficiency and regain compliance with the Minimum Bid Price Requirement, however there can be no assurance that the Company can regain compliance.

Holders of Common Stock

As of March 14, 2025, there were 113,356,354 shares of our common stock outstanding and 14 holders of record of our common stock. This number was derived from our stockholder records and does not include beneficial owners of our common stock whose shares are held in the name of various dealers, clearing agencies, banks, brokers and other fiduciaries.

Recent Sales of Unregistered Securities

We had no sales of unregistered equity securities during the three months ended December 31, 2024.

Dividend Policy

We have never declared or paid any cash dividend on our common stock. We currently anticipate that we will retain future earnings, if any, for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors.

Our series E-1 Shares does earn shares dividends payable in shares of common stock, at a rate of 10% per annum. On the 18-month anniversary of the initial issuance date for the Series E-1 convertible preferred stock, the dividend rate shall further increase by 30% on the first calendar day of each calendar quarter thereafter until no shares of Series E-1 Shares remain outstanding.

Equity Compensation Plan Information

Information about our equity compensation plans is incorporated herein by reference to Part III, Item 12 of this Annual Report.

Issuer Repurchases of Equity Securities

For the quarter ended December 31, 2024, we did not repurchase any equity securities.

Item 6. [RESERVED]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and related notes appearing elsewhere in this Annual Report. Some of the information contained in this discussion and analysis is set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the "Risk Factors" section of this Annual Report, our actual results could differ materially from the results described in, or implied by, the forward-looking statements contained in the following discussion and analysis.

Overview

We are a San Diego-based commercial-stage biopharmaceutical company with a strong focus on innovation in women's health. Our first commercial product, PHEXXI, was approved by the FDA on May 22, 2020. PHEXXI is the first and only non-hormonal prescription contraceptive gel. It is locally acting, with no systemic activity, and used on-demand by women only when they have sex. Because PHEXXI is a non-hormonal contraceptive, it is not associated with side effects of exogenous hormone use like depression, weight gain, headaches, loss of libido, mood swings and irritability. Taking hormones may not be right for some women, especially those with certain medical conditions, including clotting disorders hormone-sensitive cancer, diabetes or a BMI over 30, or those who are breast feeding or smoke. More than 23.3 million women in the U.S. will not use a hormonal contraceptive.

Evofem has delivered PHEXXI net sales growth in each consecutive year since it was launched in Sept 2020. Key growth drivers for 2025 include expanded use of PHEXXI in women who take oral birth control pills in conjunction with GLP-1 prescription medications like Ozempic, Mounjaro and Zepbound for weight loss. These drugs may make oral birth control pills less effective at certain points in the dosing schedule. Per the USPI, prescribers are instructed to "advise patients using oral contraceptives to switch to a non-oral contraceptive method or add a barrier method" to prevent unintended pregnancy during these times.

Outside the U.S., PHEXXI was approved in Nigeria on October 6, 2022, as Femidence™ by the National Agency for Food and Drug Administration and Control. To-date, PHEXXI has been submitted for approval in Mexico, Ethiopia and Ghana. We intend to commercialize PHEXXI in all other global markets through partnerships or licensing agreements.

On July 17, 2024, we licensed exclusive commercial rights to PHEXXI in the Middle East to Pharma 1 Drug Store, an emerging Emirati health care company. The licensed territory includes the United Arab Emirates (UAE),

Kuwait, Saudi Arabia, Qatar and certain other countries in the region. Pharma 1 is responsible for obtaining and maintaining any regulatory approvals required to market and sell PHEXXI, and will handle all aspects of distribution, sales and marketing, pharmacovigilance and all other commercial functions in these countries. Evofem will supply PHEXXI to Pharma 1 at cost-plus. Pharma 1 is expected to file for regulatory approval of PHEXXI in the UAE in the first half of 2025.

In July 2024 we acquired global rights to SOLOSEC. This FDA-approved single-dose oral antimicrobial agent provides a complete course of therapy for the treatment of two common sexual health infections – bacterial vaginosis (BV) and trichomoniasis. The SOLOSEC acquisition aligns with and advances our mission to improve access to innovative and differentiated options that impact women's daily lives. We expect commercialization of SOLOSEC will benefit from our commercial infrastructure and strong physician relationships.

We halted clinical development of our investigational product candidates in October 2022 to focus resources on growing domestic sales of PHEXXI for the prevention of pregnancy.

Recent Developments

Notice of Default and Termination of Forbearance Agreement

On September 27, 2024, Future Pak, LLC, as agent for the Purchasers (in such capacity, the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, as amended (SPA), by and among the Company, Designated Agent, as certain guarantors and the purchasers (each a "Purchaser" and collectively Purchasers). The Notice of Default claims that by entering into arrangements to repay certain existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the SPA.

According to the Notice of Default, the Designated Agent has accelerated repayment of the outstanding principal balance owed by the Company under the Securities Purchase Agreement. If all Purchasers exercise the Section 5.7 Option (as defined below), the repurchase price would be equal to $106.8 million. Pursuant to Section 5.7(b) of the SPA, upon the occurrence of an Event of Default, each Purchaser may elect, at its option, to require the Company to repurchase the Note held by such Purchaser (or any portion thereof) at a repurchase price equal to two times the sum of the outstanding principal balance and all accrued and unpaid interest thereon, due within three business days after such Purchaser delivers a notice of such election (the Section 5.7 Option).

On October 27, 2024, the Designated Agent sent an amended and supplemented notice to the Notice of Default which adds additional claims of default based on the Company's current repayment agreements of existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the Securities Purchase and Security Agreement dated April 23, 2020, as amended. Furthermore, the Amended Notice stated that, because the events of default described in the Amended Notice of Default are not the certain prior events of default listed in the Forbearance Agreement (the Specified Defaults), the Designated Agent and the holders of the senior secured promissory notes described in the SPA thereby provided notice to the Company that the Forbearance Agreement is terminated as of October 27, 2024.

Subsequently, on November 8, 2024, the Designated Agent sent an amended and supplemented notice to the Notices (the Third Amended Notice of Default) which adds new claims of default based on (i) the Company's failure to maintain a cash position of $1.0 million or greater, as required under Section 5(b) of the Forbearance Agreement (ii) the Company's failure to deliver financial and operating reports in accordance with the timeline required under the Section 8.1(n) of the Baker Stock Purchase Agreement, and (iii) to clarify the outstanding balance under the notes of the Baker Stock Purchase Agreement plus all accrued and unpaid interest thereon, in the sum of approximately is $107.0 million as opposed to the Repurchase Price as defined in the Fourth Amendment.

The Company strongly disagrees with the Designated Agent's claim that any Event of Default has occurred. The Company intends to vigorously contest any attempt by the Designated Agent and the Purchasers to exercise their default rights and remedies under the SPA.

Aditxt Merger

On December 11, 2023, the Company entered into an Agreement and Plan of Merger, as amended, (the Merger Agreement) with Aditxt, Inc., a Delaware corporation (Aditxt), Adifem, Inc., a Delaware corporation and wholly-owned Subsidiary of Aditxt (Merger Sub), pursuant to which, and on the terms and subject to the conditions thereof, Merger Sub will merge with and into the Company, with the Company surviving as a wholly owned subsidiary of Aditxt (the Merger).

On July 12, 2024, the Company, the Merger Sub and Aditxt entered into the Amended and Restated Merger Agreement (the A&R Merger Agreement) which amends and restates in its entirety the Agreement and Plan of Merger (as amended January 10, 2024, January 30, 2024, February 29, 2024, and May 2, 2024 (collectively, the Original Merger Agreement)). Except as described below, the terms and provisions of the A&R Merger Agreement are consistent with the terms and provision of the original Merger Agreement.

- As consideration for the Merger, Parent will (i) pay $1.8 million less an amount equal to the product of (x) the number of Dissenting Shares represented by Company Common Stock and (y) the Common Exchange Ratio (as defined in the A&R Merger Agreement) (the Common Consideration)
- Each share of the Company's Series E-1 Preferred Stock, par value $0.0001 (the Series E-1), issued and outstanding as of the Effective Time (as defined in the A&R Merger Agreement) shall automatically be converted into the right to receive from Aditxt one share Parent Preferred Stock (the Preferred Merger Consideration)

At the Effective Time of the Merger:

(i) The Company Convertible Note Holders will enter into an Exchange Agreement, pursuant to which these Note Holders exchange the value of their then-outstanding Company Convertible Notes and purchase rights for an aggregate of not more than 88,161 shares of Parent Preferred Stock.
(ii) Each stock option of the Company (the Options), that was outstanding and unexercised immediately prior to the Effective Time will be cancelled without the right to receive any consideration.
(iii) all shares of Company Common Stock or Company Preferred Stock held by Parent or Merger Sub or by any wholly-owned Subsidiary thereof, shall be automatically cancelled and retired and shall cease to exist and no consideration shall be delivered or deliverable in exchange therefore;

Further, Aditxt agreed to, on or prior to: (a) July 12, 2024, purchase 500 shares of the Company's Series F-1 Preferred Shares for an aggregate purchase price of $0.5 million (the July Purchase) (b) August 9, 2024, purchase an additional 500 shares of F-1 Preferred Shares for an aggregate purchase price of $0.5 million (the August Purchase), (c) the earlier of August 30, 2024 or within five business days of the closing of a public offering by Aditxt resulting in aggregate net proceeds to Aditxt of no less than $20.0 million, purchase an additional 2,000 shares of F-1 Preferred Shares for an aggregate purchase price of $2.0 million (the Third Parent Equity Investment); and (d) September 30, 2024, purchase an additional 1,000 shares of F-1 Preferred Stock at an aggregate purchase price of $1.0 million (the Fourth Parent Equity Investment). The July Purchase and subsequent August Purchase of 500 shares of the Company's Series F-1 Preferred Shares in each respective purchase were completed as scheduled.

On August 16, 2024, the Company, Parent and Merger Sub entered into the first amendment to the A&R Merger Agreement (the First Amendment), to change the funding date for the Third Parent Equity Investment Date (as defined in the A&R Merger Agreement) from August 30, 2024 to the earlier of (i) September 6, 2024 or (ii) within five (5) business days of the closing of a public offering by Parent resulting in aggregate net proceeds to Parent of no less than $20.0 million.

On September 6, 2024, the Company, Parent and Merger Sub entered into the second amendment to the A&R Merger Agreement (the Second Amendment), to (i) change the date of the Third Parent Equity Investment Date and Fourth Parent Equity Investment Date (as defined in the A&R Merger Agreement) from September 6, 2024 and September 30, 2024 to September 30, 2024 and October 31, 2024, respectively and (ii) to change the required consummation date to November 29, 2024.

On October 2, 2024, the Company, Parent and Merger Sub entered into the third amendment to the A&R Merger Agreement (the Third Amendment), to (i) change the date of the Third Parent Equity Investment Date (as

defined in the A&R Merger Agreement) from September 30, 2024 to October 2, 2024, (ii) change the Third Parent Equity Investment from 1,500 shares of Series F-1 Preferred Shares to 720 shares of Series F-1 Preferred Shares, and (iii) amend the Fourth Parent Equity Investment (as defined in the A&R Merger Agreement) from 1,500 shares of Series F-1 Preferred Shares to 2,280. The Third and Fourth Parent Equity Investments were timely completed on October 2 and October 28, 2024, respectively.

On November 19, 2024, the Company, Parent and Merger Sub entered into the fourth amendment to the A&R Merger Agreement (the Fourth Amendment) to change the required consummation date to January 31, 2025.

On March 22, 2025, the Company, Parent and Merger Sub entered into the fifth amendment to the A&R Merger Agreement (the Fifth Amendment), to (i) change the required consummation date to September 30, 2025; (ii) add a Parent Investment of $1.5 million to be completed by April 7, 2025; and (iii) add a special meeting consummation date being on or prior to September 26, 2025.

On September 23, 2024, the Company filed a preliminary proxy statement with the SEC. Subject to certain exceptions, the Company's Board of Directors will recommend that the A&R Merger Agreement be adopted by the Company's stockholders at a special meeting of the Company's stockholders (the Company Board Recommendation). However, subject to the satisfaction of certain terms and conditions, the Company and the Board are permitted to take certain actions which may, as more fully described in the A&R Merger Agreement, include changing the Company Board Recommendation and entering into a definitive agreement with respect to a Company Change of Recommendation (as defined in the A&R Merger Agreement) if the Company Board or any committee thereof determines in good faith, after consultation with the Company's outside legal and financial advisors and after taking into account relevant legal, financial, regulatory, estimated timing of consummation and other aspects of such proposal that the Company Board considers in good faith and the Person or group making such proposal, would, if consummated in accordance with its terms, result in a transaction more favorable to the Company Shareholders than the Merger. If the Company has a Company Change of Recommendation, the Company must provide Aditxt with a ten (10) calendar day written notice thereof and negotiate with Aditxt in good faith to provide a competing offer.

On December 23, 2024, Evofem announced its decision to cancel its special meeting and the withdrawal from consideration by the stockholders of the Company the proposals set forth in its preliminary proxy statement.

In connection with the Merger Agreement, Aditxt, the Company and the holders (the Holders) of certain senior indebtedness of Evofem (the Notes) entered into an Assignment Agreement dated December 11, 2023 (the December Assignment Agreement), pursuant to which the Holders assigned the Notes to Aditxt in consideration for the issuance by Aditxt of (i) an aggregate principal amount of $5.0 million in secured notes of Aditxt due on January 2, 2024 (the January 2024 Secured Notes), (ii) an aggregate principal amount of $8.0 million in secured notes of Aditxt due on September 30, 2024 (the September 2024 Secured Notes), (iii) an aggregate principal amount of $5.0 million in ten-year unsecured notes (the Unsecured Notes), and (iv) payment of $0.2 million in respect of net sales of PHEXXI in respect of the calendar quarter ended September 30, 2023.

On February 26, 2024, Aditxt and the Holders entered into an Assignment Agreement (the February Assignment Agreement), pursuant to which the Company consented to the assignment of all remaining amounts due under the Notes from Aditxt back to the Holders.

On February 29, 2024, as part of the Third Amendment, Aditxt agreed to have, as a condition of closing, that the outstanding balance, plus all accrued and unpaid interest thereon, in an amount not to exceed the Repurchase Price, shall have been paid in full. The A&R Merger Agreement, as amended, entered into on July 12, 2024, maintains the same condition to closing. As discussed above, the A&R Merger Agreement was amended on August 16, 2024, September 6, 2024, October 2, 2024, November 19, 2024, and March 22, 2025; none of the amendments updated this closing condition.

PHEXXI as a Contraceptive; Commercial Strategies

In September 2020, we commercially launched PHEXXI in the United States. Our sales force promotes PHEXXI directly to obstetrician/gynecologists and their affiliated health professionals, who collectively write the majority of prescriptions for contraceptive products. Our sales force comprises approximately 16 regional sales representatives, two business directors and an SVP of Commercial Operations, supported by a self-guided virtual

health care provider (HCP) learning platform. Additionally, we offer women direct access to PHEXXI via a telehealth platform. Using this platform, women can directly meet with an HCP to determine their eligibility for a PHEXXI prescription and, if eligible, have the prescription written by the HCP, then filled and mailed directly to them by a third-party pharmacy.

Our comprehensive commercial strategy for PHEXXI includes marketing and product awareness campaigns targeting women of reproductive potential in the U.S., including the approximately 23.3 million women who are not using hormonal contraception and the approximately 20.0 million women who are using a prescription contraceptive, some of whom, particularly oral birth control pill users, may be ready to move to an FDA-approved, non-invasive, non-systemic hormone-free contraceptive, as well as certain identified target HCP segments. In addition to marketing and product awareness campaigns, our commercial strategy includes payer outreach and execution of our consumer digital and media strategy.

Key growth drivers for 2025 include expanded use of PHEXXI in women who take oral birth control pills in conjunction with GLP-1 prescription medications like Ozempic, Mounjaro and Zepbound for weight loss. These drugs may make oral birth control pills less effective at certain points in the dosing schedule. Per the USPI, prescribers are instructed to "advise patients using oral contraceptives to switch to a non-oral contraceptive method or add a barrier method" to prevent unintended pregnancy during these times.

We continue working to increase the number of lives covered and to gain a preferred formulary position for PHEXXI.

Payer wins in 2024 include the removal of the Prior Authorization requirement for PHEXXI by the Washington State Health Care Authority effective January 1, 2024, and, as a result of the Company's successful renegotiation, a 7.4% reduction in the rebate paid by the Company to Medi-Cal on PHEXXI prescriptions dispensed to Medi-Cal members. The approval rate was over 80% for all of 2024.

Since the second quarter of 2022, we have been under contract with one of the largest pharmacy benefit managers (PBMs) in the nation, which added PHEXXI to its formulary with no restrictions for most women covered by the plan. The agreement was retroactive and took effect January 1, 2022 and is representative of approximately 46 million lives.

An additional 13.7 million lives are covered under our December 2020 contract award from the U.S. Department of Veterans Affairs.

We also participate in government programs, including the 340B and the Medicaid Drug Rebate Program. As a result of our participation in the Medicaid National Drug Rebate Program, the U.S. Medicaid population gained access to PHEXXI on January 1, 2021. As of May 2024, Medicaid provides health coverage to approximately 73.8 million members; nearly two-thirds of adult women enrolled in Medicaid are in their reproductive years (19-44). Additionally, we recently began participating in a 340B Group Purchasing Organization (GPO) that serves safety-net clinics throughout the U.S. This GPO has over 6,500 members, which expands our reach among safety-net providers.

Approximately 83% of commercial and Medicaid PHEXXI prescriptions are being approved by payers.

PHEXXI is classified in the databases and pricing compendia of Medi-Span and First Databank, two major drug information databases that payers can consult for pricing and product information, as the first and only "Vaginal pH Modulator."

Effective as of January 1, 2023, most insurers and PBMs must provide coverage, with no out-of-pocket costs (e.g. $0 copay) to the subscriber or dependent, for FDA-approved contraceptive products, like PHEXXI, prescribed by healthcare providers.

As a result, to comply with these Guidelines, payers are increasingly covering PHEXXI by:

- Adding PHEXXI to formulary (commercial insurers) or preferred drug list (Medicaid)
- Removing the requirement for a Prior Authorization letter from the HCP (commercial insurers)

– Moving PHEXXI to $0 copay (commercial insurers)

In 2022, Evofem developed and introduced a new contraceptive educational chart for patients and HCPs that details high-level information about birth control methods currently available to women in the U.S., including the vaginal pH modulator. This new contraceptive educational tool has been extremely well received and has had a positive impact with HCPs and patients alike.

SOLOSEC

In July 2024, we expanded our commercial portfolio by acquiring global rights to SOLOSEC® (secnidazole) 2g oral granules, a single-dose oral antimicrobial agent that provides a complete course of therapy with just one dose for the treatment of two common sexual health infections. SOLOSEC is FDA-approved for the treatment of:

1) Bacterial vaginosis (BV), a common vaginal infection, in females 12 years of age and older, and

2) *Trichomonas vaginalis*, a common sexually transmitted infection (STI), in people 12 years of age and older.

SOLOSEC has the same call point as PHEXXI, enabling us to leverage our commercial infrastructure and strong physician relationships. We re-launched the brand in November 2024.

Bacterial Vaginosis

Bacterial vaginosis (BV) affects an estimated 21 million women in the U.S., approximately 29% of the U.S. population, making it the most common vaginal condition in women ages 15-44. It results from an overgrowth of bacteria, which upsets the balance of the natural vaginal microbiome and can lead to symptoms including odor and discharge. Of interest, BV raises the pH of the vagina, making it a more friendly environment for trichomoniasis and other STIs; approximately 20% of BV patients also have trichomoniasis.

If left untreated, BV can have serious health consequences. Untreated or improperly treated BV is associated with increased risk of infection with STIs like HPV, herpes, trichomoniasis, chlamydia, gonorrhea and HIV, as well as transmission of STIs to a partner. Additional risks include developing pelvic inflammatory disease (PID), which can threaten a women's fertility, and complications with gynecological surgery.

Research has shown that as many as 50% of patients with BV do not adhere to a full course of metronidazole treatment (500mg BID x 7d) 14 doses. 58% of women who do not complete therapy will have a recurrence within one year. Noncompliance to a multiple-day metronidazole regimen is a contributing factor to persistent BV.

In clinical trials, SOLOSEC demonstrated clinically and statistically significant efficacy in the treatment of BV with just one dose; 68% of patients treated with SOLOSEC did not require any additional treatment for BV. Guidelines for the American College of Obstetricians and Gynecologists (ACOG) in 2020 and the U.S. Centers for Disease Control (CDC) in 2021 each include single dose SOLOSEC for the treatment of BV.

Trichomoniasis

Trichomoniasis (Trich) is the most common non-viral STI in the world. It is caused by a parasite called *Trichomonas vaginalis* and affects both women and men. All sexual partners of an infected person must be treated to prevent reinfection with the parasite. In 2018, there were an estimated 6.9 million new *T. vaginalis* infections in the U.S. According to the CDC, the U.S. prevalence of *T. vaginalis* is 2.1% among females and 0.5% among males, with the highest rates among Black females (9.6%) and Black males (3.6%). A study of STD clinic attendees in Birmingham, Alabama, identified a prevalence of 27% among women and 9.8% among men. Approximately 70% of women with trichomoniasis are also infected with the bacteria that cause BV.

In clinical trials, a single dose of SOLOSEC demonstrated a cure rate of 92.2% for Trich in women, while reported cure rates in males range from 91.7%-100%.

SOLOSEC's one-and-done dosing and the resulting high level of compliance is believed to be a significant differentiator. Non-compliance to a multi-day metronidazole regimen is a contributing factor to persistent Trich or BV; and ACOG and the CDC no longer recommend single dose metronidazole to treat Trich in women.

Financial Operations Overview

Net Product Sales

Our revenue recognition is based on unit shipments from our third-party logistics warehouse to our customers, which consist of wholesale distributors, retail pharmacies, telehealth companies, and a mail-order specialty pharmacy. We have recognized net product sales in the U.S. since the commercial launch of PHEXXI in September 2020; SOLOSEC net product sales were added to our revenue beginning in July 2024.

For the year ended December 31, 2024, there was an approximate 7% increase in net product sales as a result of an increase to the PHEXXI wholesale acquisition cost (WAC) in January 2024, more favorable PHEXXI payer coverage despite a single digit decrease in unit shipments to customers compared to the year ended December 31, 2023, and the addition of SOLOSEC net revenue in the current year. Gross revenues, as discussed in Note 3 – Revenue, were adjusted for variable consideration, including our patient support programs.

Cost of Goods Sold

Inventory costs include all purchased materials, direct labor and manufacturing overhead. In addition, we are obligated to pay quarterly royalty payments pursuant to our license agreement with Rush University, in amounts equal to a single-digit percentage of the gross amounts we receive on a quarterly basis, less certain deductions incurred in the quarter based on a sliding scale. We are also obligated to pay a minimum annual royalty amount of $0.1 million to the extent these earned royalties do not equal or exceed $0.1 million in a given year. Such royalty costs were $0.8 million and $0.7 million for the years ended December 31, 2024 and 2023, respectively, and were included in the costs of goods sold in the consolidated financial statements. No further royalties will be due to Rush University after the patent expiration.

We are also obligated to pay quarterly royalty under the SOLOSEC Asset Purchase Agreement dated July 14, 2024; this royalty is based on a percentage of SOLOSEC net sales, adjusted for co-pay program costs. There are no minimum quarterly or annual royalty amounts. Such royalty costs were immaterial for the year ended December 31, 2024.

Operating Expenses

Research and Development Expenses

Our research and development expenses primarily consist of costs associated with ongoing improvements related to our products. These expenses include:

- continuous improvements of manufacturing and analytical efficiency;
- ongoing product characterization and process optimization;
- alternative raw material evaluation to secure an uninterrupted supply chain and reduce cost of goods sold;
- employee-related expenses, including salaries, benefits, travel and noncash 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 expenses as incurred. The following table summarizes research and development expenses by product candidate (in thousands):

	Years Ended December 31,	
	2024	2023
Allocated third-party development expenses:		
EVO100 for prevention of chlamydia/gonorrhea - Phase 3 (EVOGUARD)	$ —	$ (92)
Total allocated third-party development expenses	—	(92)
Unallocated internal research and development expenses:		
Noncash stock-based compensation expenses	33	117
Payroll related expenses	741	1,330
Outside services costs	742	481
Other	329	1,103
Total unallocated internal research and development expenses	1,845	3,031
Total research and development expenses	$ 1,845	$ 2,939

As anticipated, research and development expenses continued to decrease in the year ended December 31, 2024 compared to the year ended December 31, 2023; we do not anticipate investing in clinical development for the foreseeable future. Specifically, the amounts related to noncash stock-based compensation expenses decreased by $0.1 million, or 72%, payroll related expenses decreased by $0.6 million, or 44%, outside services costs increased by $0.3 million, or 54%, and other costs decreased by $0.8 million, or 70%. Allocated third-party development expenses had a benefit of approximately $0.1 million in the prior year and no activity in the current year.

Selling and Marketing Expenses

Our selling and marketing expenses consist primarily of PHEXXI and SOLOSEC commercialization costs, the PHEXXI telehealth platform, training, salaries, benefits, travel, noncash stock-based compensation expense and other related costs for our employees and consultants.

In connection with our overall cost reduction strategy, our selling and marketing expenses continued to decrease in the year ended December 31, 2024 compared to the prior year. Key drivers were reductions in media and marketing activities for PHEXXI, including direct to consumer (DTC) and HCP advertising and termination of the sample program.

General and Administrative Expenses

Our general and administrative expenses consist primarily of salaries, benefits, travel, business development expenses, investor and public relations expenses, noncash stock-based compensation, and other related costs for our employees and consultants performing executive, administrative, finance, legal and human resource functions. Other general and administrative expenses include facility-related costs not otherwise included in research and development or selling and marketing, and professional fees for accounting, auditing, tax and legal fees, and other costs associated with obtaining and maintaining our patent portfolio.

Our general and administrative expenses decreased in the year ended December 31, 2024 compared to the year ended December 31, 2023 primarily due to a decreased use of professional and other outside services.

Other Income (Expense)

Other income (expense) consists primarily of interest expense and the fair value adjustments of financial instruments issued in various capital raise transactions, including loss on issuance of financial instruments, quarterly change in fair value adjustments, and gains or losses on debt extinguishment. The change in fair value of financial instruments was recognized as a result of mark-to-market adjustments for those financial instruments. Additionally, other income (expense) also includes a gain (loss) on debt modification or extinguishment in the current period and loss on issuance of financial instruments in each of the presented periods.

Critical Accounting Policies and Significant Judgments and Estimates

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles (GAAP) in the U.S. The preparation of consolidated financial statements requires us to make use of estimates, assumptions and judgments that affect the reported amounts of assets, expenses, and liabilities, as well as the disclosure of contingent liabilities on the date of the consolidated financial statements. 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 estimate used in the preparation of our consolidated financial statements, which, in turn, could materially change our results from those reported. Management evaluates its use of 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 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 – Summary of Significant Accounting Policies.

Revenue Recognition and Trade Accounts Receivable

The Company recognizes revenue from the sale of our products in accordance with ASC 606, *Revenue from Contracts with Customers* (ASC 606). The provisions of ASC 606 require the following steps to determine revenue recognition: (1) Identify the contract(s) with a customer; (2) Identify the performance obligations in the contract; (3) Determine the transaction price; (4) Allocate the transaction price to the performance obligations in the contract; (5) Recognize revenue when (or as) the entity satisfies a performance obligation.

In accordance with ASC 606, the Company recognizes revenue when its performance obligation is satisfied by transferring control of the product to a customer. In accordance with the Company's contracts with customers, control of the product is transferred upon the conveyance of title, which occurs when the product is sold to and received by a customer. The Company's customers consist of wholesale distributors, retail pharmacies, and a mail-order specialty pharmacy. Payment terms vary by customer, but typically range from 31 to 66 days and include prompt pay discounts. Trade accounts receivable due to the Company from contracts with its customers are stated separately in the consolidated balance sheets, net of various allowances as described in the Trade Accounts Receivable policy in Note 2 – Summary of Significant Accounting Policies.

The amount of revenue recognized is equal to the amount of consideration which is expected to be received from the sale of product to its customers. Revenue is only recognized when it is probable that a significant reversal will not occur in future periods. To determine the amount of revenue to recognize, the Company assesses both the likelihood and magnitude of any such potential reversal of revenue.

Our products are sold to customers at the wholesale acquisition cost. However, the Company records product revenue net of estimates for applicable variable consideration.

Revenue recognition is subject to uncertainty due to the variable consideration estimates that are required to be made by management. These estimates include chargebacks, rebates and patient support programs. Management must estimate and accrue for these amounts primarily by estimating the portion of product in the distribution supply channel at the reporting date that will be sold through to an entity or end user that will result in a variable consideration expense, which is recorded as a reduction of revenue. To accomplish this, management relies on historical sales data showing the amount of various end-user consumer types, inventory reports from the wholesale distributors and mail-order specialty pharmacy, and other relevant data reports. The recorded variable consideration is directly sensitive to the estimated inputs made by management that are used in the calculation. The total reserves for variable consideration was $7.2 million and $3.5 million, as of December 31, 2024 and 2023, respectively.

Fair Value of the Baker Notes

The owner of the Baker Notes became Future Pak, LLC under the July 2024 Assignment (as defined in Note 4 – Debt) in July 2024.

We elected the fair value option under ASC 825, *Financial Instruments*, for the Baker Notes issued pursuant to that certain Baker Bros. Purchase Agreement with the Baker Purchasers, and Baker Bros. Advisors LP, as designated agent, dated April 23, 2020, as they are qualified financial instruments and are, in whole, classified as liabilities. Under the fair value option, we recognized the hybrid debt instrument at fair value inclusive of embedded features.

From the third quarter of 2022 through the second quarter of 2023, the fair value of the Baker Notes issued, as described in Note 4 – Debt, and subsequent changes in fair value recorded at each reporting date, was determined by estimating the fair value of the Market Value of Invested Capital (MVIC) of the Company. This was estimated using forms of the cost and market approaches. In the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty and discount rates. The guideline public company method served as another valuation indicator. In this form of the market approach, comparable market revenue multiples were selected and applied to the Company's forward revenue forecast to ultimately derive a MVIC indication. If the resulting fair value from these approaches was not estimated as greater than the contractual payout, the fair value of the Baker Notes became only the Company MVIC available for distribution to this first lien note holder.

Starting in the third quarter of 2023, the fair value of the Baker Notes is determined using a Monte Carlo simulation-based model. The Monte Carlo simulation was used to take into account several embedded features and factors, including the exercise of the repurchase right, the Company's future revenues, meeting certain debt covenants, the maturity term of the note and dissolution. For the dissolution scenario, the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair value of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty (5.0%) and discount (15.0%) rates.

The fair value of the Baker Notes is subject to uncertainty due to the assumptions that are used in the Monte Carlo simulation-based model. These factors include but are not limited to the Company's future revenue, and the probability and timing of the exercise of the repurchase right. The fair value of the Baker Notes is sensitive to these estimated inputs made by management that are used in the calculation.

The fair value of the Baker Notes was $13.8 million and $13.5 million as of December 31, 2024 and 2023, respectively.

Fair Value of the SOLOSEC Asset Acquisition Intangible Asset and Contingent Liabilities

The fair value of the total SOLOSEC consideration, including cash paid and future sales-based payments, is determined using a Monte Carlo simulation model, which assumes the Company's revenue follows a geometric Brownian motion. Using specific revenue factors, including expected growth, risk adjustments, and revenue volatility, future revenues were simulated through the Earnout Term to assess whether sales-based payments would be triggered in each relevant period, as stipulated by the SOLOSEC Asset Purchase Agreement. The average output of the Monte Carlo simulations for each period provides the expected payment value, which is then discounted to its present value to derive the fair value of future sales-based payments and recorded as contingent liabilities. The discount rate is based on (i) the risk-free rate, plus (ii) a credit spread reflecting the Company's interest-bearing debt, (iii) an additional spread to account for credit migration as of the valuation date, and (iv) a further incremental spread to reflect that the contingent liabilities is subordinated obligations relative to the Company's other debt obligations.

The fair value of the SOLOSEC contingent liabilities is subject to uncertainty due to the assumptions made by management that are used in the Monte Carlo simulation-based model. These factors include the estimated future SOLOSEC net revenue, the risk-neutral revenue calculation and simulation assumptions, payment timing, and the discount rate.

The fair value of the SOLOSEC contingent liabilities will be updated at each reporting period using the methodology described above. Any changes to the fair value will be recorded as an adjustment to the carrying value of both the contingent liabilities and the SOLOSEC IP intangible asset as per ASC 323, *Investments – Equity Method*

and Joint Ventures (ASC 323). Periodic intangible amortization will also be updated based on the new fair value of the SOLOSEC IP.

The fair value of the SOLOSEC intangible asset and contingent liabilities were $10.2 million (before accumulated amortization) and $9.6 million, respectively as of December 31, 2024.

Fair Value of Stock Options, Purchase Rights, and Warrants

Upon issuance of financial instruments, they are initially measured at fair value and reviewed for the appropriate classification (liability or equity). Financial instruments determined to require liability accounting are subsequently re-measured with changes in fair value being recognized as a component of other income (expense), net in the consolidated statements of operations. Financial instruments are valued using an option pricing model (OPM), such as Black-Scholes, based on the applicable assumptions, which include the exercise price of the warrants, option, or purchase right, time to expiration, expected volatility of our peer group, risk-free interest rate, and expected dividends. The Company re-evaluates the classification of its financial instruments at each balance sheet to determine the proper balance sheet classification for them. The assumptions used in the OPM are considered level 3 assumptions and include, but are not limited to, the market value of invested capital, the Company's cumulative equity value as a proxy for the exercise price, the expected term the instruments will be held prior to exercise and a risk-free interest rate, and probability of change of control events.

Inventories

Inventories, consisting of purchased materials, direct labor and manufacturing overheads, are stated at the lower of cost or net realizable value. Cost is determined on a first-in, first-out basis. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. At each balance sheet date, the Company evaluates ending inventories for excess quantities, obsolescence, or shelf-life expiration. The evaluation includes an analysis of current and future strategic plans, anticipated future sales, the price projections of future demand, and the remaining shelf life of goods on hand. To the extent that the Company determines there is excess or obsolete inventory or quantities with a shelf life too near its expiration to reasonably be expected to be sold prior to their expiration, the Company adjusts the carrying value to estimated net realizable value in accordance with the first-in, first-out inventory costing method.

Results of Operations

Year Ended December 31, 2024 Compared to Year Ended December 31, 2023 (in thousands):

Net Product Sales

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Product sales, net	$ 19,363	$ 18,218	$ 1,145	6%

The increase in product sales, net, was primarily due to the impact of the PHEXXI price increase that took effect on January 1, 2024, lower returns leading to a better gross to net ratio, and sales of SOLOSEC commencing mid July 2024.

Cost of Goods Sold

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Cost of goods sold	$ 3,834	$ 6,512	$ (2,678)	(41)%

The decrease in cost of goods sold was primarily due to the units sold in the prior year having been re-packaged to reflect the extended shelf life approved by the FDA in June 2022; this added costs to re-worked units that were sold in the prior year, whereas the units sold in the current year did not need to be re-packaged. Finally, there was a $1.1 million inventory excess and obsolescence reserve recorded in the 2023 period that was not repeated in the current year.

Research and Development Expenses

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Research and development	$ 1,845	$ 2,939	$ (1,094)	(37)%

The decrease in research and development expenses was primarily due to a decrease of approximately $0.7 million in personnel costs and a decrease of approximately $0.9 million in clinical and facilities costs, which was partially offset by an increase in outside services costs of $0.5 million.

Selling and Marketing Expenses

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Selling and marketing	$ 9,176	$ 11,664	$ (2,488)	(21)%

The decrease in selling and marketing expenses was primarily due to a $1.1 million decrease in marketing and DTC promotion costs, including media agency fees, a $1.1 million decrease in personnel costs due to reduced headcount and lower noncash stock-based compensation, and a $0.7 million decrease in facilities costs. The decreases were partially offset by an increase of $0.5 million in outside services and other costs.

General and Administrative Expenses

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
General and administrative	$ 11,565	$ 14,950	$ (3,385)	(23)%

The decrease in general and administrative expenses was primarily due to a $3.6 million decrease in facilities and outside services costs and a $1.2 million decrease in professional services fees related to legal and finance as well as a decrease of $0.1 million in personnel costs partially offset by the $0.8 million contingent liability recognized in conjunction with the potential settlement with TherapeuticsMD and a $0.7 million impairment of construction in-process.

Total Other Income (Expense), Net

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Total other income (expense), net	$ (1,184)	$ 70,843	$ (72,027)	(102)%

Total other expense, net, for the year ended December 31, 2024 primarily included a $3.3 million loss on the issuance of financial instruments related to the anti-dilution adjustment for the purchase rights and $2.2 million interest expense related to the Adjuvant Note and $0.2 million interest expense related to Medicaid payments. The losses were partially offset by a $3.7 million gain on the change in fair value of financial instruments and a gain of $1.0 million related to the Baker Notes extinguishment.

Total other income, net, for the year ended December 31, 2023 primarily included a $75.3 million gain related to the Baker Fourth Amendment, which was treated as a debt extinguishment and $4.9 million in gain on the change in the fair value of financial instruments as a result of mark-to-market adjustments. The gains were partially offset by $6.8 million in loss on the issuance of financial instruments and $2.3 million of interest expense related to the Adjuvant Note.

Liquidity and Capital Resources

Overview

As of December 31, 2024, we had a working capital deficit of $66.8 million and an accumulated deficit of $897.7 million. We have financed our operations to date primarily through the issuance of preferred stock, common stock and warrants, cash received from private placement transactions, the issuance of convertible notes and, to a

lesser extent, product sales. As of December 31, 2024, we had approximately $0.7 million in cash and cash equivalents comprised entirely of restricted cash available for use as prescribed in the Adjuvant Notes (as defined in Note 4 – Debt). Our cash and cash equivalents include amounts held in checking accounts. Management believes that the Company's cash and cash equivalents as of December 31, 2024 are insufficient to fund operations for at least the next 12 months from the date on which this Annual Report on Form 10-K is filed with the SEC.

We have incurred losses and negative cash flows from operating activities since inception. In 2023, we focused on further improving and increasing PHEXXI access and delivered our third consecutive year of PHEXXI net sales growth. We have restructured many of our trade payables with extended terms and implemented measures to better align our cost structure with projected revenues.

In 2024, we focused on further improving and increasing PHEXXI access, acquired global rights to SOLOSEC, and delivered our fourth consecutive year of PHEXXI net sales growth. We also paid our outstanding balance, including interest and penalties, to the FDA for the fiscal years 2023, 2024, and 2025 Prescription Drug User Fee Act (PDUFA) invoices for PHEXXI and the 2025 PDUFA invoice for SOLOSEC.

In 2025, we will continue to focus on top-line growth and while maintaining a lean operating structure. We will continue to explore opportunities for organic growth, entry into new markets, and potential expansion of our product offerings beyond PHEXXI and SOLOSEC.

As of December 31, 2024, the Company's significant commitments include the Baker Notes, Adjuvant Notes, and SSNs as described in Note 4 – Debt and fleet leases, Rush University royalty, SOLOSEC contingent liability, and the potential settlement amount with TherapeuticsMD as described in Note 7 – Commitments and Contingencies. The purpose of these commitments is to further the commercialization of PHEXXI and SOLSOEC. Management's plans to meet the Company's cash flow needs in the next 12 months include generating revenue from the sale of PHEXXI and SOLOSEC, further restructuring of its current payables, and obtaining additional funding through means such as the issuance of its capital stock, non-dilutive financings, or through collaborations or partnerships with other companies, including license agreements for PHEXXI and/or SOLOSEC in the U.S. or foreign markets, or other potential business combinations.

If the Company is not able to obtain the required funding through a significant increase in revenue, equity or debt financings, license agreements for PHEXXI in the U.S. or foreign markets, or other means, is enjoined from selling under the PHEXXI mark, or is unable to obtain funding on terms favorable to the Company, there will be a material adverse effect on commercialization and development operations and the Company's ability to execute its 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 further reductions in spending, including spending in connection with its commercialization activities, extend payment terms with suppliers, liquidate assets where possible at a potentially lower amount than as recorded in the consolidated financial statements, suspend or curtail planned operations, or cease operations entirely. Any of these could materially and adversely affect the Company's liquidity, financial condition and business prospects, and the Company would not be able to continue as a going concern. The Company has concluded that these circumstances and the uncertainties associated with the Company's ability to obtain additional equity or debt financing on terms that are favorable to the Company, or at all, and otherwise succeed in its future operations raise substantial doubt about the Company's ability to continue as a going concern.

If we are unable to continue as a going concern, we may have to liquidate our assets and, in doing so, we may receive less than the value at which those assets are carried on our consolidated financial statements. Any of these developments would materially and adversely affect the price of our stock and the value of an investment in our stock. As a result, our consolidated financial statements include explanatory disclosures expressing substantial doubt about our ability to continue as a going concern.

The opinion of our independent registered public accounting firm on our audited consolidated financial statements as of and for the years ended December 31, 2024 and 2023 contains an explanatory paragraph regarding substantial doubt about our ability to continue as a going concern. Future reports on our consolidated financial statements may include an explanatory paragraph with respect to our ability to continue as a going concern. Our audited consolidated financial statements as of and for the years ended December 31, 2024 and 2023 included in this

Annual 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.

Debt and Equity Financings

As described in Note 4 – Debt, we entered into an insurance premium financing agreement with FIF, which resulted in a financing inflow of $0.4 million in the statement of cash flows in the year ended December 31, 2024. As described in Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit, during the year ended December 31, 2024, as part of the funding requirement by Aditxt pursuant to the A&R Merger Agreement, the Company issued a total of 4,000 Series F-1 Shares to Aditxt for an aggregate purchase price of $4.0 million plus the $1.0 million in reinstatement proceeds for a total of $5.0 million from Aditxt.

During the year ended December 31, 2023, we received gross proceeds before issuance costs, of approximately $5.6 million, in aggregate, from the sale and issuance of senior subordinated convertible notes and warrants, and $0.3 million from the exercise of common warrants.

Summary Statements of Cash Flows

The following table sets forth a summary of the net cash flow activity for the years ended December 31, 2024 and 2023 (in thousands):

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Net cash and restricted cash used in operating activities	$ (3,885)	$ (8,968)	$ 5,083	(57)%
Net cash and restricted cash used in investing activities	(569)	(4)	(565)	14,125%
Net cash and restricted provided by financing activities	4,615	4,776	(161)	(3)%
Net change in cash and restricted cash	$ 161	$ (4,196)	$ 4,357	(104)%

Cash Flows from Operating Activities. During the years ended December 31, 2024 and 2023, the primary use of cash, cash equivalents and restricted cash was to fund commercialization of PHEXXI and SOLOSEC and to support selling and marketing and general and administrative operations.

Cash Flows from Investing Activities. During the year ended December 31, 2024, the primary use of cash, cash equivalents and restricted cash was the acquisition of the SOLOSEC asset.

Cash Flows from Financing Activities. During the year ended December 31, 2024, the primary source of cash, cash equivalents, and restricted cash was from the $1.0 million received from Aditxt in order to reinstate the Merger Agreement as described above as well as the $4.0 million in Series F-1 Preferred Stock purchased by Aditxt, and the finance agreement with First Insurance Funding for $0.4 million. These inflows were offset by $0.8 million payments under the Baker Notes and short-term debt.

During the year ended December 31, 2023, the primary source of cash, cash equivalents and restricted cash was the issuance of senior subordinated convertible notes and warrants for proceeds of approximately $5.9 million, in aggregate, before debt issuance costs. Proceeds were offset, in part, by the $1.0 million upfront payment and $0.2 million quarterly cash payment required under the Baker Fourth Amendment.

Operating and Capital Expenditure Requirements

Our specific future operating and capital expense requirements are difficult to forecast. However, we can anticipate the general types of expenses and areas in which they might occur. In 2025, while we expect to maintain a lean operating structure at approximately the same level as 2024; should resources become available we may increase marketing spend to drive further sales growth.

Contractual Obligations and Commitments

Operating Leases

On December 31, 2024, operating lease ROU assets and lease liabilities were $0.1 million each, and were $0.1 million each on December 31, 2023. See Note 7 – Commitments and Contingencies for more detailed discussions on leases and financial statements information under ASC 842, *Leases.*

Other Contractual Commitments

As described in Note 7 – Commitments and Contingencies, in November 2019, the Company entered into a supply and manufacturing agreement with a third-party to manufacture PHEXXI, with potential to manufacture other product candidates, in accordance with all applicable current good manufacturing practice regulations. There were approximately $2.0 million in purchases under the supply and manufacturing agreement for the year ended December 31, 2024 and no such purchases during the year ended December 31, 2023.

As described in Note 7 – Commitments and Contingencies, the Company also has commitments related to the SOLOSEC asset acquisition including a commitment to purchase inventory from the seller through November 2026 at a pre-defined unit price. The Company is also obligated to pay contingent liabilities and quarterly royalties based on SOLOSEC net revenue over the Earnout Term as described in Note 7 – Commitments and Contingencies.

Intellectual Property Rights

As described in Note 7 – Commitments and Contingencies, royalty costs owed to Rush University pursuant to the Rush License Agreement were $0.8 million and $0.7 million for the years ended December 31, 2024 and 2023, respectively. As of December 31, 2024 and 2023, approximately $2.0 million and $1.1 million were included in accrued expenses in the consolidated balance sheets and will be paid via the agreed upon payment plan.

As described in Note 7 – Commitments and Contingencies, the Company is also obligated to pay a quarterly royalty in amounts equal to a certain percentage of the SOLOSEC net revenue, beginning July 14, 2024. There are no minimum quarterly or annual royalty payment amounts. Such royalty costs were immaterial for the year ended December 31, 2024 and none of the other milestones triggering payment of any contingent liabilities were triggered. As of December 31, 2024, an immaterial amount related to the SOLOSEC royalty was included in contingent liabilities in the consolidated balance sheet.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

As a "smaller reporting company" as defined in Rule 12(b) of the Exchange Act, we are not required to provide the information required by this item.

Item 8. Financial Statements and Supplementary Data.

The consolidated financial statements and the report of our independent registered public accounting firm required pursuant to this item are included in this Annual Report on Form 10-K beginning on page F-1.

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

None.

Item 9A. Controls and Procedures.

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

As of December 31, 2024 (the period covered by this Annual Report), the Company's management, with the participation of its principal executive officer and principal financial officer, has evaluated the effectiveness of its disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on such evaluation, the principal executive officer and principal financial officer have concluded that the Company's

disclosure controls and procedures were not effective as of December 31, 2024 due to the identified material weaknesses in internal control over financial reporting as discussed below.

Notwithstanding the conclusion by the principal executive officer and principal financial officer that the disclosure controls and procedures as of December 31, 2024 were not effective and the material weaknesses identified in internal controls over financial reporting described below, management believes that the consolidated financial statements and related financial information included in this Annual Report on Form 10-K fairly present in all material respects the Company's financial condition, results of operations and cash flows as of the dates presented, and for the periods ended on such dates, in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP).

Management's Annual Report on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act). Management, under the supervision and with the participation of the principal executive officer and principal financial officer, conducted an assessment of the effectiveness of internal control over financial reporting as of December 31, 2024, based on the framework and criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO framework). Based on this assessment, management concluded that, as of December 31, 2024, its internal control over financial reporting was not effective due to the existence of material weaknesses described below.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that a reasonable possibility exists that a material misstatement of the annual or interim financial statements would not be prevented or detected on a timely basis.

Management identified material weaknesses in the Company's internal control over financial reporting primarily related to limited finance and accounting staffing levels that are not commensurate with the Company's complexity and its financial accounting and reporting requirements. The Company continued to operate with a very lean finance and accounting department throughout 2024. Despite performing some remediation activities in 2023 and 2024, bringing new staff up to speed with key processes, including some very complicated financial instruments and transactions, caused the Company to lack the resources to fully monitor and operate internal controls of financial reporting.

Based on the above, the Company did not fully implement components of the COSO framework, including elements of the control environment, risk assessment, control activities, information and communication, and monitoring activities components.

Remediation Activities:

Management continues to evaluate the material weaknesses discussed above and is implementing its remediation plan. However, assurance as to when the remediation efforts will be complete cannot be provided and the material weaknesses cannot be considered remedied until the applicable controls have operated for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. Management cannot assure readers that the measures that have been taken to date, and are continuing to be implemented, will be sufficient to remediate the material weaknesses identified or to avoid potential future material weaknesses.

This annual report does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting because that requirement under Section 404 of the Sarbanes-Oxley Act of 2002 was permanently removed for smaller reporting company filers pursuant to the provisions of Section 989G(a) set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted into federal law in July 2010.

Changes in Internal Control over Financial Reporting

Except for the remediation activities described in the preceding paragraphs, there were no changes in our internal control over financial reporting that occurred during the year ended December 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations of Internal Controls

Management recognizes that a control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or error, if any, 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 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 policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The Board of Directors

Our Board currently consists of eight seats with three vacancies (two for Class II and one for Class III). Vacancies on the Board may be filled by potential candidates nominated by the Nominating and Corporate Governance Committee of the Board, who may seek out potential candidates that meet the criteria for selection as a Board nominee and have the specific qualities or skills being sought, and one or more of such candidates may be appointed as directors as appropriate and in accordance with the Company's organizational documents. The vacancies, if filled, will be filled until the end of the class term. Our Board is divided into three classes as set forth below, each serving staggered three-year terms until their respective successors are duly elected and qualified:

- Our Class I directors are Kim Kamdar, Ph.D., Colin Rutherford, and Lisa Rarick, M.D. and their terms expire at the next Annual Meeting of Stockholders;
- Our Class II director is Tony O'Brien and his term expires at the Annual Meeting of Stockholders in 2025; and
- Our Class III director is Saundra Pelletier and her term expires at the Annual Meeting of Stockholders in 2026.

There are no familial relationships among our current directors and executive officers.

The following table lists the names, ages as of March 14, 2025, and positions of the individuals who serve as our directors:

	Name and Principal Occupation	Age	Director Since	Board Committees	Other Current Public Directorships
	Class I Directors				
	Colin Rutherford | Independent Current member of the board of Spanish based Biopharma Hifas da Terra SA	66	2015	**A***	New River REIT, PLC
	Kim Kamdar, Ph.D. | Independent Managing Partner, Domain Associates, LLC	57	2011	**A, C, N***	Seraphina Therapeutics, Inc. Truvian Sciences
	Lisa Rarick, M.D. | Independent Board-certified Obstetrician/ Gynecologist and Regulatory Affairs Expert	65	2020	**N**	
	Class II Directors				
	Tony O'Brien | Independent Former Director General of Ireland's Health Service Executive	62	2018	**A, C***	Global Leadership and Governance Solutions Limited
	Class III Directors				
	Saundra Pelletier | Interim Chair of the Board of Directors President and Chief Executive Officer, Evofem Biosciences, Inc.	55	2013		Windtree Therapeutics, Inc.

A Audit Committee

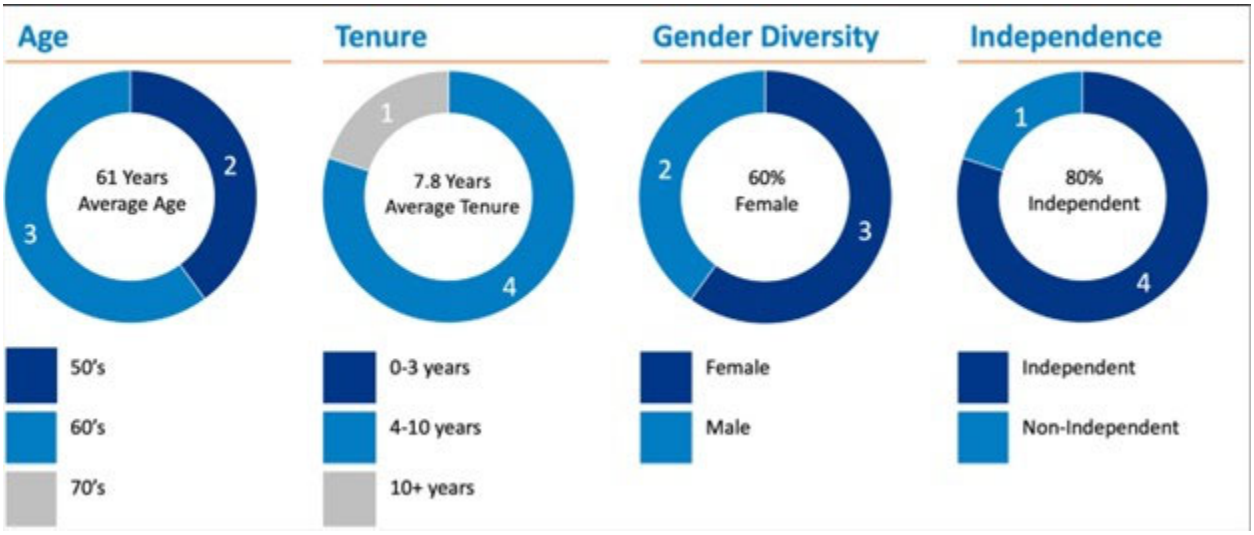
C Compensation Committee

N Nominating and Corporate Governance Committee

* Committee Chair

Board Demographics

The charts below represent certain demographics of the current composition of our directors.



We discuss in the Non-employee Directors section below the qualifications, attributes and skills that led our Board to conclude that each of our directors should serve as a director.

Executive Officers

The following table sets forth certain information regarding our executive officers and their respective ages as of March 14, 2025. All executive officers are at-will employees.

Saundra Pelletier

Chief Executive Officer, Evofem Biosciences, Inc.

Age: 55

Background

- Since joining the Company in 2015, Ms. Pelletier has been responsible for Evofem's rapid growth and evolution, including the Company's transition to the public market in January 2018 and multiple equity financing rounds that have raised in excess of $500 million.
- Under her leadership, the Company launched its first commercial product in September 2020. PHEXXI is the first and only hormone-free, on-demand, prescription vaginal gel approved in the U.S. for the prevention of pregnancy.
- Ms. Pelletier brings more than two decades of broad executive leadership experience to Evofem, including a strong track record driving multiple billion-dollar product launches, expanding commercial capabilities in ex-U.S. markets and advocating for women's health. Throughout her career, she has had oversight and accountability for Sales, Marketing, Operations, Medical Affairs, Regulatory Affairs, Manufacturing, Customer Service, Business Development, and Strategic Partnerships.
- Ms. Pelletier was previously the founding CEO of Woman Care Global (WCG), an international nonprofit organization focused on creating sustainable supply chains that delivered products to women in more than 100 developing countries. Under her leadership, WCG secured approximately $68M in committed funding from major foundations and USAID.
- Earlier in her career, Ms. Pelletier served as Corporate Vice President and Global Franchise Leader for G.D. Searle, where she managed a $250 million business unit focused on women's healthcare. She later moved to Women First Healthcare, where she served as Vice President of Pharmaceuticals and raised $40 million in capital.
- She is a Director of TRACON Pharmaceuticals, Inc., a clinical stage biopharmaceutical company focused on novel targeted therapeutics for cancer, where she serves as the chair of the Governance/Nomination Committee and is a member of the Audit Committee.
- Ms. Pelletier is a published author, skilled moderator, and coveted keynote speaker. She has appeared at TEDx San Diego, Harvard School of Public Health, Davos World Economic Forum, the Clinton Global Initiative, MAKERS Conference, Women Deliver, University of Virginia's Darden School of Business, University of Oregon's Lundquist School of Business and University of California, San Diego. She was named as a New Champion for Reproductive Health by the United Nations Foundation, awarded the Athena San Diego's Pinnacle Award for Life Sciences, named 2019 Businesswoman of the Year by the San Diego Business Journal, and named to Inc. Magazine's 2020 Female Founders 100 List.

Ivy Zhang

Chief Financial Officer

Age: 47

Background

- Ivy Zhang is a trusted leader who is dedicated to advancing Evofem Biosciences' mission of addressing the unmet sexual and reproductive health needs of women. She has more than 16 years of financial and accounting experience spanning diverse industries, including pharmaceuticals and medical devices, and leads the Company's finance organization and financial activities including financial planning and analysis, accounting, external audit, tax, controllership, and treasury functions.
- Ms. Zhang re-joined Evofem as Chief Financial Officer and Secretary in April 2023 from HUYABIO International, where she served as Vice President Controller.
- Previously Ms. Zhang held increasingly senior finance roles at Evofem from March 2018 until November 2022. She served as Director of SEC Reporting and SOX Compliance until her promotion to Controller in April 2020.
- Earlier in her career, she served in finance positions for approximately seven years at Ernst & Young LLP, and for more than two and a half years at SeaSpine Holdings Corporation (a public medical and therapeutic technology and device company).
- Ms. Zhang holds a Master's in Assurance from Virginia Tech and a Master's in Economics from the University of Victoria, Canada. She is a certified public accountant (CPA) in the state of California.

Non-Employee Directors

Tony O'Brien, 62

Independent

Director Since: January 2018

Committees:

- Audit
- Compensation (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe Mr. O'Brien's extensive experience as an executive and member of the boards of directors for health care and life sciences companies qualifies him to be a member of our Board.

CAREER HIGHLIGHTS

- Director General of Ireland's Health Service Executive (HSE), an organization responsible for the provision of health and personal social services for the residents of Ireland (2012 to 2018)
- Chief Operating Officer of the Department of Health's Special Delivery Unit and a member of the Department's Management Board (2011 to 2014)
- Director of Clinical Strategy and Programs in the HSE (2011 to 2012)
- Chief Executive Officer of the National Treatment Purchase Fund (2011 to 2013)
- Chief Advisor to the HSE on the implementation of the National Cancer Control Strategy (2006 to 2010)
- Project Director for the National Plan for Radiation Oncology (2005 to 2008)
- Chairman of the National Cancer Registry Board (2009 to 2012)
- Founding Chief Executive Officer of the National Cancer Screening Service (2007 to 2011)
- Director of BreastCheck, CervicalCheck (2002 to 2010)
- Associate and Interim Director of the National Cancer Control Programme (2007 to 2011)
- Chief Executive of the Irish Family Planning Association (1991 to 2002)
- Chief Executive of the UK Family Planning Association (1995 to 1996)
- Chartered Director of the Institute of Directors in Ireland
- Adjunct Assistant Professor in Health Strategy and Management at Trinity College Dublin

OTHER PROFESSIONAL EXPERIENCE AND COMMUNITY INVOLVEMENT

- Director and owner of Global Leadership and Governance Solutions Limited, a private limited company organized in the Republic of Ireland

EDUCATION

- M.Sc. in Management Practice from Trinity College, University of Dublin

Colin Rutherford, 66

Independent

Director Since: November 2015 (Private Evofem); January 2018 (Evofem Biosciences)

Committees:

- Audit (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe that Mr. Rutherford is qualified to serve as a member of our Board because of his prior experience as a member of Private Evofem's board of directors and his many years of finance and operations leadership experience in the health care and life sciences industries.

CAREER HIGHLIGHTS

- Former Chairman and CEO of LSE quoted European finance specialist Euro-Sales Plc (with 18 offices across Europe), sold to Royal Bank of Scotland Plc (2000 to 2002)
- Former Chairman of SGI Funds, a Guernsey-, Cayman- and Hong Kong-based diversified fund management group (2004 to 2009)
- Former Chairman and CEO of the LSE quoted UK fund management group, MAM Funds Plc (2008 to 2011)
- Former Member of the board and Audit Committee Chairman of Mitchells & Butlers Plc, the LSE's largest quoted hospitality group (2013 to 2021)
- Former Member of the board and Audit Committee Chairman of the MSE quoted Oil & Gas shipping logistics business, Renaissance Services SAOG, based in Muscat and Dubai (2007 to 2019)
- Former Chairman of European Health Care Group before its acquisition by two U.S.-based hedge funds (2012 to 2014)
- Current Member of the Board of Meallmore Health Care Group (2014 to Present)
- Current Member of the Board of Spanish based Biopharma Hifas da Terra SA, a leader in the field of mycotherapy-related oncology products (2018 to Present)
- Current Chairman of Brookgate Limited, a UK property development business backed by Goldman Sachs and Sixth Street (2010 to Present) Former visiting Professor at Edinburgh University's Business School

EDUCATION

- A member of the Scottish Institute of Chartered Accountants, he graduated in Accountancy and Finance from Heriot Watt University in 1980 and qualified with Deloitte (formerly Touche Ross) in 1984.
- Harvard Business School Alumni, having attended over a 10-year period and subsequently Chairing the HBS/YPO Presidents leadership seminar for 5 years.

Lisa Rarick, M.D., F.A.C.O.G., 65

Independent

Director Since: February 2020

Committees:

- Nominating and Corporate Governance

KEY EXPERIENCE AND QUALIFICATIONS

We believe that Dr. Rarick is qualified to serve as a member of our Board because of her extensive experience in health care/women's health matters as well as her vast prior experience with regulatory matters and the life sciences industry.

CAREER HIGHLIGHTS

- Board-certified obstetrician/gynecologist and regulatory affairs expert with 35 years' experience in women's health and 15 years' experience leading several offices within the U.S. Food and Drug Administration (FDA)
- Began her career at the FDA as a Medical Officer, responsible for the management of products indicated for a variety of reproductive health conditions, including oral, transdermal and vaginal contraceptives (1988)
- Director for the Division of Reproductive and Urologic Products (DRUP) at the FDA (1996)
- Held several management roles in the Center for Drug Evaluation and Research (CDER), including Deputy Director of the Office of Drug Evaluation 2 and Associate Director in the Office of the Center Director
- Focused on HIV prevention, pregnancy prevention, pre- and post-pregnancy care and menopausal therapy in her final year at the FDA in the Office of Women's Health
- Reproductive health and regulatory affairs consultant, helping numerous companies navigate the development of their products from early-stage development through FDA approval
- Member of the Scientific Advisory Committee for the National Institute of Child Health and Human Development (since 2004)
- Member of the board of directors for Alliance Partners 360 from (2017 to 2019)
- Family Planning clinical care provider (2020 to 2023)

EDUCATION

- B.S. and M.D. from the Loma Linda University School of Medicine
- Completed residency training in Obstetrics and Gynecology at Georgetown University

Kim Kamdar, Ph.D., 57

Independent

Director Since: April 2011

Committees:

- Audit
- Compensation Committee
- Nominating and Corporate Governance (Chair)

KEY EXPERIENCE AND QUALIFICATIONS

We believe Dr. Kamdar is qualified to serve on our Board based on her extensive experience working and serving on the boards of directors of life sciences companies and her experience working in the venture capital industry.

CAREER HIGHLIGHTS

- Managing Partner of Domain Associates, LLC, a life sciences venture capital firm (since 2005)
- Chair of the board of directors of Seraphina Therapeutics, Inc. and Truvian Sciences
- Member of the board of directors of several private companies including Alume, Epic Sciences, Epitel and Pleno Inc.
- Member of the board of directors of several public companies including NASDAQ: SERA and NASDAQ: OMIC
- Past investments include Ariosa (acquired by Roche), Corthera (acquired by Novartis), BiPar Sciences (acquired by Sanofi-Aventis) and Omniome (acquired by NASDAQ: PACB)
- Kauffman Fellow with MPM Capital (MPM) (2003 through 2004)
- Research director at Novartis, where she built and led a research team that focused on the biology, genetics and genomics of model organisms (1995 to 2003)
- Author of ten papers as well as the inventor of seven patents
- Advisory board member of Dr. Eric Topol's NIH supported Clinical and Translational Science Award for Scripps Medicine

EDUCATION

- B.A. from Northwestern University
- Ph.D. in Biochemistry and Genetics from Emory University

Audit Committee and Financial Expert

Audit Committee

Chair:	**Members:**	**Meetings in 2024:** 4
Colin Rutherford	Kim Kamdar, Ph.D. Tony O'Brien	

Our Audit Committee's role and responsibilities are set forth in the Audit Committee's written charter.

Principal Responsibilities:

- Reviews annual consolidated financial statements;
- Considers matters relating to accounting policy and internal controls;
- Reviews the scope of annual audits;
- Assists the Board in its oversight of Evofem's consolidated financial statements, including internal control over financial reporting;
- Reviews and discusses with senior management the guidelines and policies by which Evofem assesses and manages risk;
- Assists the Board in its oversight of the qualifications, independence, and performance of Evofem's independent registered public accounting firm, including responsibility for the appointment, compensation, retention, and oversight of the work of the firm;
- Assists the Board in its oversight of the performance of Evofem's internal audit function, including responsibility for the appointment, replacement, reassignment, or dismissal of, and being involved in the performance reviews of, Evofem's internal auditor; and
- Assists the Board in its oversight of Evofem's compliance with legal and regulatory requirements, including reviewing periodically with management any significant legal, compliance, and regulatory matters that have arisen or that may have a material impact on Evofem's business, consolidated financial statements, or compliance policies, Evofem's relations with regulators and governmental agencies, and any material reports or inquiries from regulators and government agencies.

All members of the Audit Committee satisfy the current independence standards promulgated by the SEC, OTCQB and Nasdaq, as such standards apply specifically to members of audit committees. The Board has determined that Mr. Rutherford is an "audit committee financial expert," as the SEC has defined that term in Item 407 of Regulation S-K. Please also see the report of the Audit Committee set forth elsewhere in this proxy statement.

A copy of the Audit Committee's written charter is publicly available on our website at www.evofem.com.

Code of Conduct and Ethics

We have adopted a Code of Business Conduct and Ethics that applies to our officers, directors and employees, which is available on our website at www.evofem.com and will be made available to stockholders without charge,

upon request, in writing to our Corporate Secretary, Evofem Biosciences, Inc., 7770 Regents Road, Suite 113-618, San Diego, California 92122-1967. The Code of Business Conduct and Ethics contains general guidelines for conducting the business of our company consistent with the highest standards of business ethics and is intended to qualify as a "code of ethics" within the meaning of Section 406 of the Sarbanes-Oxley Act of 2002 and Item 406 of Regulation S-K. In addition, disclosure regarding any amendments to, or waivers from, provisions of our Code of Business Conduct and Ethics that apply specifically to our directors, principal executive officer and principal financial officer will be included in a Current Report on Form 8-K within four business days following the date of the amendment or waiver, unless website posting or the issuance of a press release of such amendments or waivers is then permitted by the rules of the OTCQB.

Delinquent Section 16(a) Reports

Section 16(a) of the Exchange Act requires our directors and executive officers, and persons who own more than 10% of a registered class of our equity securities, to file with the SEC initial reports of ownership and reports of changes in ownership of our common stock and other equity securities.

To our knowledge, based solely upon a review of Forms 3, 4, and 5 filed with the SEC during the fiscal year ended December 31, 2024, we believe that our directors, executive officers, and greater than 10% beneficial owners have complied with all applicable filing requirements during the fiscal year ended December 31, 2024.

Item 11. Executive Compensation.

Summary Compensation Table

The following table summarizes information concerning the compensation awarded to, earned by, or paid for services rendered in all capacities by our named executive officers during the years ended December 31, 2024 and 2023:

Name and Principal Position	Year Ended December 31,	Salary	Retention	Unpaid Compensation[1]	All other Compensation[2]	Total
Saundra Pelletier	2024	$ 579,828	$ —	$ 579,828	$ 18,182[3]	$ 1,177,838
Chief Executive Officer	2023	$ 560,338[4]	$ 450,000[5]	$ 493,747	$ 16,370[6]	$ 1,520,455
Ivy Zhang	2024	$ 450,000	$ —	$ 243,750	$ 1,511	$ 695,261
Chief Financial Officer and Secretary	2023	$ 293,570	$ —	$ 94,439	$ 50,840[7]	$ 438,849
Justin J. File						
Former Chief Financial Officer	2023	$ 177,905[8]	$ —	$ —	$ 175,483[9]	$ 353,388
Katherine Atkinson						
Former Chief Commercial Officer	2023	$ 97,211[10]	$ —	$ —	$ 38,253	$ 135,464

(1) Consists of estimated compensation amounts that have been accrued, but not yet paid, in respect of the named executive officer's performance and the Company's performance during each respective fiscal year.
(2) All Other Compensation primarily includes premiums paid for group term life insurance, except for Ms. Pelletier, Ms. Zhang, and Mr. File, as discussed in notes (3) and (6), (7), and (9), respectively, below.
(3) In 2024, All Other Compensation for Ms. Pelletier includes (i) a $3,762 premium paid for group term life insurance and (ii) $14,420 in fringe benefits paid on behalf of Ms. Pelletier.
(4) Ms. Pelletier's annual base salary was reduced by 20% in February 2023 and another 20% in March 2023, resulting in a total reduction of 30% as compared to her 2022 salary. The Company ended a portion of the salary reduction in January 2024.
(5) A retention bonus, in amounts approved by the board per each applicable position, was paid to all remaining members of the executive team after the March 2023 RIF, in order to retain experienced staff to salvage the Company and prevent bankruptcy.
(6) In 2023, All Other Compensation for Ms. Pelletier includes (i) a $1,932 premium paid for group term life insurance and (ii) $14,438 in fringe benefits paid on behalf of Ms. Pelletier.
(7) In 2023, All Other Compensation for Ms. Zhang includes a hiring bonus of $50,000.
(8) Mr. File resigned from his position as Chief Financial Officer effective April 3, 2023.
(9) In 2023, All Other Compensation for Mr. File includes an agreed upon payment in conjunction with the end of his employment in addition to the group term life insurance premiums.
(10) Ms. Atkinson was the Chief Commercial Officer until that position was eliminated as part of the March 2023 RIF.

Employment, Severance and Separation Agreements

Current Executive Officers

Our current principal executive officer (Ms. Pelletier) was appointed to her office in January 2018 in connection with the Merger (as defined in the "Related Person Transactions" section below). The amounts reported for her in the Summary Compensation Table above include compensation paid to or earned by her pursuant to offer letters for her services provided as our principal executive officer pursuant to her offer letter and subsequent employment agreement described below.

Our current Chief Financial Officer (Ms. Zhang) was appointed to her office in April 2023.

Current Employment Agreements and Severance Obligations

Saundra Pelletier Employment Agreement

The Company and its Chief Executive Officer, Saundra Pelletier, have entered into a new employee agreement (Pelletier Agreement) on November 8, 2024 (Pelletier Effective Date). The Pelletier Agreement replaces and supersedes all previous employment agreements.

The term of the Pelletier Agreement shall commence as of the Pelletier Effective Date and continue thereafter, subject to earlier termination in accordance with the terms of the Pelletier Agreement. Pursuant to the terms of the Pelletier Agreement, Ms. Pelletier shall be entitled to:

- receive an annual base salary of $579,828 per annum (subject to annual review and adjustment) (Base Salary). The Board of Directors of the Company (Board) shall review the base salary on annual basis adjust it upward or downward at their sole discretion;

- receive an annual cash bonus paid out annually if targets are met with a target amount of one hundred percent (100%) of the Base Salary (Annual Performance Bonus) in the year in which the Annual Performance Bonus relates, subject to approval by the Board which may adjust to be greater or less than pre-stated Annual Performance Bonus;

- receive equity incentive compensation under the Company's equity incentive plan, subject to approval by the Board; and

- be eligible to participate in a number of Company-sponsored benefit plans that may be in effect from time to time.

Pursuant to the Pelletier Agreement, in the event that Ms. Pelletier is terminated for a reason other than for "Cause," (as defined in the Pelletier Agreement) "Good Reason," (as defined in the Pelletier Agreement) or for a Change of Control (as defined in the Pelletier Agreement), Ms. Pelletier, upon signing and returning an effective waiver and release of claims (the Release), shall be entitled to receive: (i) a lump sum payment in an amount equal to thirty-six (36) months in value of her then current Base Salary, less all customary and required taxes and relate deductions, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (ii) a lump sum payment equal to the then target Annual Performance Bonus amount multiplied by 1.0, after deduction of all amounts required to be deducted or withheld under applicable law, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (iii) upon the effective date of the Release, vesting of any unvested equity awards held by Ms. Pelletier shall be accelerated such that 100% of such awards shall become fully vested as of the date of such termination; (iv) that portion of Ms. Pelletier's Base Salary accrued prior to termination of Ms. Pelletier's employment with Company that has not yet been paid by the Company; (v) accrued but unused paid time off; (vi) reimbursement for any reasonable out-of-pocket expenses properly incurred by Ms. Pelletier on behalf of the Company prior to any such termination and not yet reimbursed; and (vii) continuation of group health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") at the Company's expense, until the earlier to occur of: (A) twelve (12) months following the termination date of Ms. Pelletier's employment, or (B) the date that Ms. Pelletier becomes eligible for medical benefits with another employer.

Ivy Zhang Employment Agreement

The Company and Chief Financial Officer, Ivy Zhang, have entered into a new employee agreement (Zhang Agreement) on November 8, 2024 (Zhang Effective Date). The term of the Zhang Agreement shall commence as of the Zhang Effective Date and continue thereafter, subject to earlier termination in accordance with the terms of the Zhang Agreement. Pursuant to the terms of the Zhang Agreement, Ms. Zhang will be entitled to receive:

- an annual base salary of $450,000 per annum (subject to annual review and adjustment) (CFO Base Salary). The Board shall review the base salary on annual basis adjust it upward or downward at their sole discretion;

- an annual cash bonus with the target amount equal to seventy-five percent (75%) of the Base Salary (the "CFO Annual Performance Bonus") in the year in which the CFO Annual Performance Bonus relates, subject to approval by the Board which may adjust to be greater or less than pre-stated CFO Annual Performance Bonus;

- equity incentive compensation under the Company's equity incentive plan, subject to approval by the Board; and

- eligibility to participate in a number of Company-sponsored benefit plans that may be in effect from time to time.

Pursuant to the Zhang Agreement, in the event that the Zhang Agreement is terminated for a reason other than for "Cause," (as defined in the Zhang Agreement) "Good Reason," (as defined in the Zhang Agreement) or for a Change of Control (as defined in the Zhang Agreement), Ms. Zhang, upon signing and returning an effective waiver and release of claims (the CFO Release), shall be entitled to receive: (i) a lump sum payment in an amount equal to twenty-four (24) months in value of her then current CFO Base Salary, less all customary and required taxes and related deductions, payable in the first payroll following the date on which the Release becomes effective and non-revocable; (ii) a lump sum payment equal to the then target CFO Annual Performance Bonus amount multiplied by 1.0, after deduction of all mounts required to be deducted or withheld under applicable law, payable in the first payroll following the date on which the CFO Release becomes effective and non-revocable; (iii) upon the effective date of the CFO Release, vesting of any unvested equity awards held by Ms. Zhang shall be accelerated such that 100% of such awards shall become fully vested as of the date of such termination; (iv) that portion of Ms. Zhang's CFO Base Salary accrued prior to termination of Ms. Zhang's employment with Company and that has not yet been paid; (v) accrued but unused paid time off; (vi) reimbursement for any reasonable out-of-pocket expenses properly incurred by Ms. Zhang on behalf of the Company prior to any such termination and not yet reimbursed; and (vii) continuation of group health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") at the Company's expense, until the earlier to occur of: (A) twelve (12) months following the termination date of Ms. Zhang's employment, or (B) the date that Ms. Zhang becomes eligible for medical benefits with another employer.

Severance Tax Matters

All payments made and benefits available to each executive officer in connection with his or her employment agreement will or were intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended, (the Code) in accordance with the terms of his or her employment agreement. In the event the benefit provided to an employee (i) constitutes "parachute payments" within the meaning of Section 280G of the Code, and (ii) would otherwise be subject to the excise tax imposed by Section 4999 of the Code, then such "Payments" will be reduced. The reduced amount will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the excise tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount results in the executive officer's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in payments or benefits constituting "parachute payments" is necessary to limit or avoid a certain employee's excise tax, the reduction shall occur at the election of such employee (provided, however, that such election shall be subject to our approval if made on or after the effective date of the event that triggers the Payment) and may reduce cash payments, cancel accelerated vesting of stock award, and/or reduce employee benefits in any order or combination that maximizes the amount of such reduced amount. In the event that acceleration of vesting of stock award

compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of such executive officer's stock awards unless the executive officer elects a different order for cancellation.

Compensation Overview

We are a "smaller reporting company" as such term is defined in Rule 405 of the Securities Act of 1933, as amended (the Securities Act), and Item 10 of Regulation S-K. Accordingly, and in accordance with relevant SEC rules and guidance, we have elected, with respect to the disclosures required by Item 402 (Executive Compensation) of Regulation S-K, to comply with the disclosure requirements applicable to smaller reporting companies. We are providing this "Compensation Overview" section in order to aid our stockholders' understanding of our compensation programs and policies for our executive officers as well as the Compensation Committee's role in the design and administration of these programs and policies in making specific compensation decisions for our executive officers, including our "named executive officers."

Compensation Program Administration and Process

Roles and Compensation-Setting Process

Our executive compensation program is administered by the Compensation Committee, with guidance and input from each of our Chief Executive Officer and our compensation consultant, Anderson Pay Advisors LLC (Anderson).

Historically, the Compensation Committee has made most of the significant adjustments to annual compensation for the next fiscal year, determined bonus and equity awards and established new performance objectives for the next fiscal year at one or more meetings held during the fourth quarter of the year. However, the Compensation Committee also considers matters related to individual compensation, such as compensation for new executive hires, adjustments to the compensation of existing executives, as well as high-level strategic issues, such as the efficacy of the Company's compensation strategy, potential modifications to that strategy and new trends, plans or approaches to compensation, at various meetings throughout the year.

Generally, the Compensation Committee's process comprises two related elements: (i) the determination of specific compensation packages for our executive officers, and (ii) the establishment of performance objectives for the next year. For executives other than the Chief Executive Officer, the Compensation Committee solicits and considers evaluations and recommendations submitted by the Chief Executive Officer for the Compensation Committee's review and approval. In the case of the Chief Executive Officer, the evaluation of her performance is conducted by the Compensation Committee in consultation with the Board, and the Compensation Committee recommends to the Board for approval any adjustments to her compensation as well as equity awards to be granted. Also, in each case, the Compensation Committee obtains and considers input from Anderson, including benchmarking data discussed below. Ms. Pelletier plays no role in determining her own salary, annual cash performance bonus or equity compensation.

Our Compensation Committee has the sole authority and responsibility to review and determine, or recommend to the full Board for determination, the compensation package of our Chief Executive Officer (Saundra Pelletier) and each of our other named executive officers (currently Ivy Zhang). Our Compensation Committee is composed entirely of independent directors who have never served as officers of the Company and operates under a written charter adopted and reviewed annually by our Board.

Role of Independent Compensation Consultant; Benchmarking

The Compensation Committee has the authority to directly retain the services of independent consultants and other experts to assist in fulfilling its responsibilities. The Compensation Committee has engaged Anderson to review our executive compensation programs and to assess our executive officers' base salaries, target and actual total cash bonuses, long-term incentives and total compensation from a competitive standpoint. Anderson also assists the Compensation Committee in benchmarking our director compensation program and practices against those of our peers. For such services, we paid Anderson an immaterial amount in 2023 and did not use their services in 2024. Anderson performs services solely on behalf of the Compensation Committee and has no relationship with the Company or management relating to compensation or other human resources related services except as it may relate to performing such services. The Compensation Committee has assessed the independence of Anderson pursuant to

SEC rules and the corporate governance rules of Nasdaq and concluded that no conflict of interest exists that would prevent Anderson from independently advising the Compensation Committee. Anderson also assisted the Compensation Committee in defining the appropriate group of peer companies for analysis of our executive compensation and practices and in benchmarking our executive compensation program against the peer group.

Roles of Management in Determining Executive Compensation

The Compensation Committee periodically meets with our Chief Executive Officer and/or other executive officers to obtain recommendations with respect to compensation programs for executives and other employees. Our Chief Executive Officer makes recommendations to the Compensation Committee on the base salaries, target cash bonuses and performance measures, and equity compensation for our executives and other key employees. The Compensation Committee considers, but is not bound to accept, management's recommendations with respect to executive compensation. Our Chief Executive Officer and certain other executives attend most of the Compensation Committee's meetings, but the Compensation Committee also holds private sessions outside the presence of members of management and non-independent directors. The Compensation Committee discusses our Chief Executive Officer's compensation package with her but makes decisions with respect to her compensation without her present. The Compensation Committee has delegated to management the authority to make certain decisions regarding compensation for employees other than executive officers. The Compensation Committee has not delegated any of its authority with respect to the compensation of the named executive officers.

Stockholder Engagement and Use of Stockholder Feedback

The Compensation Committee informally engages with the Company's stockholders to gain feedback on our stockholders' concerns and internal guidelines regarding executive compensation. The Compensation Committee then seeks to align those interests with the Company's compensation policies.

Use of Compensation Peer Group Data

Each year from 2018 through 2023, the Compensation Committee has engaged Anderson to provide compensation market data and recommendations to be used to establish compensation levels and plans for our executive officers for the following year.

For the 2023 performance cycle, the Compensation Committee engaged Anderson to conduct a competitive review of executive compensation as compared to our peer group. This review and analysis revealed that annual cash salary and cash bonuses fell short of the target goal of the 75th percentile of our peer group. Nevertheless, for 2022, after consideration of stock performance and based in part on direct feedback from our stockholders, the Compensation Committee determined to lower the target pay positioning for both cash and equity from the market 75th percentile to the market 50th percentile for on-target performance. There were no equity grants in 2023.

For 2024, our target goal for annual gross cash salary and potential cash bonus of our named executive officers was $1.9 million.

For 2025, our target goal for annual gross cash salary and potential cash bonus of our named executive officers is $2.0 million, a $0.1 million difference from the prior year.

Our Peer Group

In 2024, the Compensation Committee also worked with Anderson to review our peer group. Each year, the Compensation Committee reviews and approves our selected peer group. The committee considers several factors in development and refinement of the peer group. Key factors include:

- Industry (SIC): Pharmaceutical preparation (2834)
- Stage of business: Early-stage commercialization
- Market capitalization: Target range of under $500M
- Revenue: Target range less than $100M
- Headcount: Target range less than 250 employees
- Geography: National

The Compensation Committee will continue to welcome constructive feedback from stockholders, stockholder advisory groups and other interested parties in consideration of our processes and, in particular, our benchmark peers.

During 2024, our peer group consisted of the following 24 companies:

AcelRx Pharmaceuticals	Eiger BioPharmaceuticals Inc.	Omeros	scPharmaceuticals
Agile Therapeutics	Kala Pharmaceuticals	Otonomy	SCYNEXIS
Chimerix	La Jolla Pharmaceuticals	Paratek Pharmaceuticals	Sensen Bio
Concert Pharmaceuticals	Lexicon Pharmaceuticals	Puma Biotechnology, Inc.	Spectrum Pharmaceuticals
Cyma Bay Therapeutics	MEI Pharma	Reco Pharma	TherapeuticsMD
Eagle Pharmaceuticals	ObsEva	Rigel Pharmaceuticals	Trevena

We believe that our selected peer group provides useful information to help us establish competitive compensation practices and levels of compensation that allow us to attract, retain and motivate a talented executive team and, at the same time, aligns the interests of our executives with those of our stockholders. The executive employment market in our industry in the U.S. is very competitive because there are many high-growth life sciences companies in our region, many of which are larger and more established than we are. We believe our executive compensation must be competitive within such peer groups, yet fully aligned with our current stage of development and our responsibilities to stockholders.

Compensation Objectives and Philosophy

The objective of our executive compensation program is to attract, retain and motivate talented executives who are critical for our continued growth and success and to align the interests of these executives with those of our stockholders so that we can build long-term stockholder value. To achieve this objective, besides annual base salaries, our executive compensation program utilizes a combination of annual incentives through structured cash bonuses based on pre-defined goals as well as long-term incentives through equity-based compensation. In establishing overall executive compensation levels, our Compensation Committee considers a number of criteria, including (i) the applicable executive's scope of responsibilities, (ii) the strategic importance of the applicable executive's role, (iii) the Company's stage of development, (iv) relevant peer group data, (v) attainment of individual and overall company performance objectives, (vi) recruitment and/or retention concerns, and (vii) the results of the advisory vote of the stockholders on the "say-on-pay" proposal at the prior years' annual meeting of the stockholders. Our Compensation Committee believes that substantial portions of executive compensation should be linked to the overall performance of our Company, and that the contribution of individuals over the course of the relevant period to the goal of building a profitable business and stockholder value should also be considered in the determination of each executive's compensation.

Elements of Compensation

Our executive compensation program consists of the following forms of compensation:

- Base Salary
- Annual Performance Cash Bonus
- Long-term Equity Incentives
- Employee Benefit Program

Base Salary

Annual base salaries compensate our executive officers for fulfilling the requirements of their respective positions and provide them with a level of cash income predictability and stability with respect to a portion of their total compensation. We believe that the level of an executive officer's base salary should reflect the executive's performance, experience and breadth of responsibilities, our understanding of salaries for similar positions within our industry and peer group and any other factors relevant to that particular job.

Base salaries are typically negotiated at the outset of an executive's employment. Salary levels are considered annually as part of our performance review process, but also in cases including promotion or other changes in the job responsibilities of an executive officer. For named executive officers, initial base salaries generally are established in connection with negotiation of an offer of employment and an employment agreement. Increases in base salary have several elements. In addition to promotion and increased responsibilities, merit and Company-wide general increases are also taken into consideration. Salaries of our named executive officers for fiscal year 2023 and certain prior years are also reported in the Summary Compensation Table included under the heading "Summary Compensation Table" in this Annual Report.

The following table shows the base salary for each of our current named executive officers for 2023 and 2024 (in whole dollars):

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Name				
Saundra Pelletier[1]	$ 579,828	$ 568,458	$ 11,370	2.0%
Ivy Zhang[2]	$ 450,000	$ 410,000	$ 40,000	9.8%

(1) Ms. Pelletier's annual base salary was increased by 2% in 2024 in accordance with the Company's decision to give a small cost of living increase to all employees.
(2) Ms. Zhang was appointed Chief Financial Officer and Secretary on April 13, 2023.

Annual Performance Cash Bonuses

Each year, the Compensation Committee recommends, and the Board approves and establishes, the target cash incentive opportunity for each executive officer assuming full achievement of certain performance objectives that are also reviewed and approved by the Board. The following table shows the potential cash bonus incentive for each of our current named executive officers for fiscal 2024 and 2023 (each expressed as a percentage of annual base salary) and in actual dollar awarded:

Name and Principal Position	Year Ended December 31	Cash Incentive % of Annual Salary (Eligible)	Cash Incentive % of Annual Salary (Estimated)	Cash Incentive Bonus (Estimated)	% Change
Saundra Pelletier,	2024	100%	100%	$ 579,828	27%
Chief Executive Officer	2023	100%	76%	$ 455,173	
Ivy Zhang,	2024	75%[2]	54%	$ 243,750	158%
Chief Financial Officer and Secretary[1]	2023	50%	23%	$ 94,439	

(1) Ms. Zhang was appointed Chief Financial Officer and Secretary on April 13, 2023.
(2) This new rate was effective on November 8, 2024.

On a periodic basis, the Compensation Committee reviews the level of the Company's achievement against the applicable performance objectives. In reviewing the Company's level of achievement against the applicable performance objectives for fiscal 2024, Management expects that the incentive bonus payment will be equal to the possible target incentive bonus percentages as set forth in the table above.

As illustrated in the above table, the 2024 compensation program, consistent with prior years, was designed to reward achievement of the performance objectives that build stockholder value. When certain performance objectives are not achieved, the incentive bonus payouts will be reduced. In 2023, only some of these weighted performance objectives were achieved, resulting in an expected partial payout of the potential cash incentive bonus, only when and if approved by the Board.

The performance objectives established by the Compensation Committee for 2024 related to achieving certain level of net revenue, closing a strategic transaction (such as a license or partnership for PHEXXI or adding a product for co-promotion), and securing a targeted amount of capital. In 2024, all of these weighted performance

objectives were achieved, resulting in an expected full payout of the potential cash incentive bonus, only when and if approved by the Board.

For 2025, the Compensation Committee has approved the following performance objectives as those which must be achieved in order for the named executive officers to fully realize their potential annual cash bonus amounts:

- Close a strategic transaction;
- Achieve a certain targeted net revenue figure in 2025; and
- Secure a targeted amount of capital.

Following the determination of corporate achievement of the performance objectives, the Compensation Committee will also consider the performance of each named executive officer in arriving at the individual awards, if any, to be made, provided that no award will exceed the target percentage of annual base salary for annual bonus. The Compensation Committee believes this flexibility is an important tool to aid in the retention of key talent, reward significant achievement by individual executives, motivate executives and recognize management decision-making focused on generating long-term value for stockholders over short-term achievement of the corporate objectives. The potential total cash bonus amounts for fiscal 2024 and 2023 for our named executive officers are reported in the Summary Compensation Table included under the heading "Summary Compensation Table" in this Annual Report.

Discretionary Bonuses

From time to time, we have utilized discretionary retention or other bonus awards as a compensation tool to reward extraordinary performance by executives in a given year and to retain key executives. In addition, we believe that signing bonuses are consistent with our overall executive compensation philosophy to achieve our recruiting objectives, so we may award certain signing bonuses to new executives in the future.

Long-term Equity Incentive Awards

We have historically granted stock options and restricted stock to our employees within a competitive range of the market to complement cash salaries and cash incentives, incentivize new hires to achieve our corporate and strategic goals, and align executive compensation with the long-term interests of our stockholders and stock value. We historically provided stock option grants to our named executive officers upon their initial hiring, as negotiated in their employment agreements or offer letters. We have not granted any stock options or restricted stock to any employees since 2023. The Compensation Committee has the discretion to grant stock option awards and restricted stock awards to promote high performance and achievement of our corporate objectives by our executives at any time of the year. The Compensation Committee does not currently have a policy for the automatic awarding of equity awards to the named executive officers or our other employees, nor do we have any formal plan that requires us to award equity or equity-based compensation to any executive on a year-to-year basis. The timing of our typical equity awards is determined in advance. In general, we do not anticipate option grants on dates other than the scheduled meetings of the Compensation Committee. The grant date is established when the Compensation Committee approves the grant and all key terms have been determined.

In granting these awards, the Compensation Committee may establish any conditions or restrictions it deems appropriate in accordance with the Amended and Restated 2014 Plan or the 2018 Inducement Equity Incentive Plan, as the case may be. Our Chief Executive Officer typically provides recommendations to the Compensation Committee for equity grants to the executive officers, taking into account each executive's performance, achievements, and other criteria deemed relevant. The Compensation Committee reviews the proposed grants but reserves the right to reject or modify such recommendations. In addition, our Chief Executive Officer has limited discretionary authority to grant stock options under the Amended and Restated 2014 Plan to our non-executive employees, subject to certain volume limitations. The Amended and Restated 2014 Plan expired in September 2024 so no further equity awards can be granted under that plan.

We size equity grants based on market data that expresses the awards as a percent of common shares outstanding. This sizing approach is helpful to ensure that the dilutive effects of the grants are reasonable. The exercise price of the stock options will equal the closing price of our common stock published by OTCQB on the date of the grant and the term of the options will be 10 years from the date of the grant. The Compensation Committee has taken a two-tiered approach to vesting in order to align executive compensation with long-term stockholder value. The first

consists of longer term, time-based vesting for certain awards, and the second relies on performance-based vesting for certain awards that are tied to critical, more immediate goals fundamental to the Company's mission to achieve commercial success.

Executive Compensation Matters

The following table shows the outstanding equity awards held by our named executive officer as of December 31, 2024. Ms. Zhang does not hold any equity awards as of December 31, 2024.

Name	Number of Securities Underlying Unexercised Options Exerciseable	Number of Securities Underlying Unexercised Options Unexerciseable	Option Exercise Price	Grant Date	Option Expiration Date
Saundra Pelletier.....	20[(1)]	—	$ 86,925.00	9/28/2016	9/28/2026
	439	—	$ 13,668.75	3/12/2018	3/12/2028
	166	—	$ 3,937.50	7/31/2018	7/31/2028
	151	—	$ 6,468.75	11/28/2018	11/28/2028
	159	—	$ 9,131.25	2/5/2020	2/5/2030
	372	1	$ 6,093.75	2/3/2021	2/3/2031
	298	101	$ 917.50	2/18/2022	2/18/2032

(1) The share numbers and exercise prices reflected are those of options issued to the executive upon completion of the Merger in January 2018. These options were issued upon completion of the Merger in exchange for options to purchase an aggregate of 874 shares of Private Evofem common stock at an exercise price of $2,231.25 per share awarded to the executive by Private Evofem in 2016.

Employee Benefit and Equity Incentive Plans

Stock Compensation Plans

Summary of the Amended and Restated 2014 Plan

The Company initially adopted the 2007 Stock Plan (the 2007 Plan) in March 2007, under which 113 shares of common stock were reserved for issuance to employees, non-employee directors, and consultants of the Company. The Company ceased granting any additional awards under our 2007 Plan, and presently grants equity awards under the Amended and Restated 2014 Plan as described below.

On September 15, 2014, our Board adopted, and our stockholders approved, the 2014 Equity Incentive Plan, as amended and restated (the Amended and Restated 2014 Plan). The Amended and Restated 2014 Plan provides incentives that will assist us to attract, retain, and motivate employees, including officers, consultants, and directors. We may provide these incentives through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, and units and other cash-based or share-based awards. In addition, the Amended and Restated 2014 Plan contains a mechanism through which we may adopt a deferred compensation arrangement in the future.

A total of 88 shares of our common stock was initially authorized and reserved for issuance under the Amended and Restated 2014 Plan. The Amended and Restated 2014 Plan expired in late 2024; therefore, no shares of our common stock were reserved and available for issuance under the Amended and Restated 2014 Plan. Per the terms of the Amended and Restated 2014 Plan, this reserve will automatically increased on each January 1 through 2024, by an amount equal to the smaller of:

- 4% of the number of shares of common stock issued and outstanding on the immediately preceding December 31; or
- an amount determined by our Board.

Appropriate adjustments were made in the number of authorized shares and other numerical limits in the Amended and Restated 2014 Plan and in outstanding awards to prevent dilution or enlargement of participants' rights in the event of a stock split or other change in our capital structure. Shares subject to awards which expire or are

cancelled or forfeited again became available for issuance under the Amended and Restated 2014 Plan (until its expiration).

The Amended and Restated 2014 Plan is administered by the Compensation Committee of our Board. Pursuant to the provisions of the Amended and Restated 2014 Plan, the Compensation Committee determines, in its discretion, the persons to whom and the times at which awards are granted, the sizes of such awards and all of their terms and conditions. The Compensation Committee has the authority to construe and interpret the terms of the Amended and Restated 2014 Plan and awards granted under it. The Amended and Restated 2014 Plan provides, subject to certain limitations, for indemnification by us of any director, officer, or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the Amended and Restated 2014 Plan.

In the event of a change in control as described in the Amended and Restated 2014 Plan, the acquiring or successor entity may assume or continue all or any awards outstanding under the Amended and Restated 2014 Plan or substitute substantially equivalent awards. The Compensation Committee may provide for the acceleration of vesting of any or all outstanding awards upon such terms and to such extent as it determines, except that the vesting of all awards held by members of the Board who are not employees will automatically be accelerated in full upon a change in control. Any award held by a participant whose service has not terminated prior to a change in control that is not assumed, continued, or substituted for in connection with a change in control or are not exercised or settled prior to the change in control will terminate effective as of the time of the change in control. Notwithstanding the foregoing, except as otherwise provided in an award agreement governing any award, in the discretion of the Compensation Committee, any award that is not assumed, continued, or substituted for in connection with a change in control shall, subject to the provisions of applicable law, become fully vested and exercisable and/or settleable as of a date prior to, but conditioned upon, the consummation of the change in control. The Amended and Restated 2014 Plan also authorizes the Compensation Committee, in its discretion and without the consent of any participant, to cancel each or any outstanding award denominated in shares upon a change in control in exchange for a payment to the participant with respect to each vested share subject to the cancelled award (and each unvested share, if so determined by the Compensation Committee) of an amount equal to the excess of the fair market value of the consideration to be paid per share of common stock in the change in control transaction over the exercise price per share, if any, under the award. The vesting schedules of all outstanding options of the Company, excluding any shares issuable pursuant to the assumed equity incentive plan of Private Evofem, were fully accelerated in connection with the Merger and termination of employment or service arrangement with the Company.

The Amended and Restated 2014 Plan expired in September 2024.

Summary of the 2018 Inducement Equity Incentive Plan

On July 24, 2018, upon the recommendation of our Compensation Committee, the Board approved our 2018 Inducement Equity Incentive Plan and reserved 133 shares of our common stock to be used exclusively for grants of awards to individuals that were not previously employees or directors of the company, as an inducement to the individual's entry into employment with the company within the meaning of Rule 5635(c)(4) of the Nasdaq Listing Rules. On February 25, 2020, the Board approved an increase to the number of shares of our common stock reserved and available for issuance under the 2018 Inducement Equity Incentive Plan to 666 shares. The 2018 Inducement Equity Incentive Plan was adopted without stockholder approval pursuant to Rule 5635(c)(4). The 2018 Inducement Equity Incentive Plan provides for the grant of equity-based awards, including options, restricted and unrestricted stock awards, and other stock- based awards, and its terms are substantially similar to the Amended and Restated 2014 Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award exception. As of March 14, 2025, there were 51 shares of options outstanding and 609 shares available for grant under the 2018 Inducement Equity Incentive Plan.

Summary of the 2019 Employee Stock Purchase Plan

On May 7, 2019, the Board approved the 2019 ESPP, which was approved by stockholders at the 2019 annual meeting held on June 5, 2019 and which authorizes the issuance of up to 266 shares of common stock pursuant to purchase rights granted to employees. This authorized number of shares may be increased annually on the first day of each of the Company's fiscal years beginning in 2020 and ending on the first day of 2029, in an amount equal to the lesser of (i) 533 shares, (ii) two percent (2%) of the shares of common stock outstanding on the last day of the

immediately preceding fiscal year, or (iii) such lesser number of shares as is determined by the Board. The 2019 ESPP enables eligible full-time and part-time employees to purchase shares of the Company's common stock through payroll deductions of between 1% and 15% of eligible compensation during an offering period. A new offering period begins approximately every June 15 and December 15. At the last business day of each offering period, the accumulated contributions made during the offering period will be used to purchase shares. The purchase price is 85% of the lesser of the fair market value of the common stock on the first or the last business day of an offering period. The maximum number of shares of common stock that may be purchased by any participant during an offering period will be equal to $25,000 divided by the fair market value of the common stock on the first business day of an offering period.

In October 2022, the Board terminated the offering period ending December 15, 2022, refunded all employee contributions, and suspended future offering periods. Additionally, the authorized number of shares available for issuance under the 2019 ESPP was not increased on January 1, 2023. The Board may in future reinstitute the ESPP if and when our common stock resumes trading on a national stock exchange.

As of March 14, 2025, there were 937 shares of common stock purchased and 509 shares of our common stock reserved and available for issuance under the 2019 ESPP.

Private Evofem Equity Incentive Plan

The Private Evofem Equity Incentive Plan was assumed by the Company in connection with the Merger and shares of Private Evofem common stock issuable pursuant to options previously granted under the Private Evofem Equity Incentive Plan became options to purchase our common stock upon completion of the Merger. No new awards may be granted under the Private Evofem Equity Incentive Plan. As of March 14, 2025, a total of 66 shares of our common stock were reserved for issuance upon the exercise of outstanding options under the Private Evofem Equity Incentive Plan.

The Compensation Committee has resolved that, absent unusual circumstances, stock options be granted to new hires with a vesting term of four years, with 25% vesting at the first anniversary of the date of grant and the remaining amount vesting in 36 equal monthly installments thereafter. For existing employees, the Compensation Committee has resolved that, absent unusual circumstances, time-based vesting stock options be granted with a vesting term of four years, vesting in 48 equal monthly installments. For restricted stock generally, vesting is based on achievement of critical performance goals. Further, the Compensation Committee selects these performance goals with a view to aligning executives' performance with long-term stockholder value.

As mentioned above, for 2024, no performance based restricted stock grants have been considered.

Equity awards generally do not accelerate upon a change of control; however, under each of the Amended and Restated 2014 Plan and the 2018 Inducement Equity Incentive Plan, our Board has discretion to accelerate vesting upon a change of control. The Compensation Committee also has sole discretion with respect to the tax treatment for equity awards and may decide to (1) facilitate the sale of a sufficient number of the granted shares to cover taxes, (2) require that shares having a value equal to the tax burden be withheld by the Company with the Company paying the tax in cash to the relevant taxing authority, or (3) require employees to be responsible for their own taxes. The value of any shares used to cover taxes will be calculated based on the closing stock price of the shares on the date of vesting of the shares and will be paid in proportion to the vesting schedule of the shares.

Equity Incentive Compensation

Historically, we have generally granted stock options to our employees, including our named executive officers, in connection with their initial employment with us. We also have historically granted stock options on an annual basis as part of annual performance reviews of our employees. From time to time, we have also granted, restricted stock awards to our executive management team, including our named executive officers, and certain non-executive employees, which typically vest in accordance with the Company's achievement of certain performance goals in the year.

We believe that the performance-based vesting of restricted stock grants illustrates the alignment between overall executive compensation and building long-term stockholder value. No options, awards, or any other form of equity compensation were granted in 2024 or 2023.

Our Chief Executive Officer's Compensation

As set forth above, one of the key drivers in the Compensation Committee's determination of the compensation of our Chief Executive Officer is company performance.

The following table shows the total compensation (including estimated amounts accrued but not yet paid) of our Chief Executive Officer for each of 2024 and 2023, in each case, excluding the value of options (all of which are out-of-the money as of the date hereof).

	Years Ended December 31,		2024 vs. 2023	
	2024	2023	$ Change	% Change
Compensation Item				
Salary	$ 579,828	$ 560,338	$ 19,490	3%
Retention Paid	—	450,000	(450,000)	(100)%
Accrued Compensation (unpaid)	579,828	493,747	86,081	17%
All other Compensation	18,182	16,370	1,812	11%
Total	$ 1,177,838	$ 1,520,455	$ (342,617)	(23)%

Perquisites, Health, Welfare and Retirement Plans

We also provide group life insurance, health, vision and dental care insurance to all employees, including the executive officers. These benefits do not discriminate in scope, terms or operation in favor of the named executive officers. All such benefits terminate at the time each individual is no longer employed with the Company or as otherwise provided in the applicable employment agreement. All of our named executive officers are eligible to participate in all of our employee benefit plans, in each case on the same basis as other employees. We maintain a 401(k) defined contribution plan, which is our primary retirement benefit for employees, including executives. The Company makes a safe-harbor contribution of 3% of each employee's gross earnings, including executives, subject to Internal Revenue Service limitations. Although permitted under the plan, we have not matched employee contributions to the 401(k) plan. We do not provide our executive officers with any type of defined benefit retirement benefit or the opportunity to defer compensation pursuant to a non-qualified deferred compensation plan. We generally do not offer our named executive officers any material compensation in the form of perquisites, but any perquisites provided to our named executive officers and described in the footnote to the Summary Compensation Table included in the Summary Compensation Table included under the heading "Summary Compensation Table" in this Annual Report are offered to encourage the long-term retention of our executives.

Director Compensation

The following table sets forth the compensation (cash and equity) earned by our non-employee directors during the year ended December 31, 2024.

Name	Fees Earned or Paid in Cash[1]	Option Awards	Totals
Kim Kamdar, Ph.D.	$ 78,750	$ —	$ 78,750
Tony O'Brien	$ 75,000	$ —	$ 75,000
Lisa Rarick, M.D.	$ 55,000	$ —	$ 55,000
Colin Rutherford	$ 70,000	$ —	$ 70,000

(1) Amounts represent the fees earned in the current year. Earned fees have not been paid quarterly and the $0.5 million owed to the non-employee directors is a part of the accrued expenses line in the Consolidated Balance Sheet as of December 31, 2024.

The following table shows the outstanding equity awards held by our non-employee directors as of December 31, 2024.

Name	Number of Securities Underlying Unexercised Options Exerciseable	Number of Securities Underlying Unexercised Options Unexerciseable	Option Exercise Price	Grant Date	Option Expiration Date
Kim Kamdar, Ph.D.	47	—	$ 2,343.75	5/12/2021	5/12/2031
	48	—	$ 308.75	5/4/2022	5/4/2032
	6	—	$ 13,106.25	5/8/2018	5/8/2028
	13	—	$ 70,762.50	1/17/2018	1/17/2028
	26	—	$ 11,343.75	6/5/2019	6/5/2029
	26	—	$ 9,487.50	5/12/2020	5/12/2030
Tony O'Brien.....	47	—	$ 2,343.75	5/12/2021	5/12/2031
	48	—	$ 308.75	5/4/2022	5/4/2032
	13	—	$ 13,668.75	3/12/2018	3/12/2028
	6	—	$ 4,331.25	7/24/2018	7/24/2028
	26	—	$ 11,343.75	6/5/2019	6/5/2029
	26	—	$ 9,487.50	5/12/2020	5/12/2030
Lisa Rarick, M.D.	47	—	$ 2,343.75	5/12/2021	5/12/2031
	48	—	$ 308.75	5/4/2022	5/4/2032
	40	—	$ 10,968.75	2/25/2020	2/25/2030
	26	—	$ 9,487.50	5/12/2020	5/12/2030
Colin Rutherford.....	47	—	$ 2,343.75	5/12/2021	5/12/2031
	48	—	$ 308.75	5/4/2022	5/4/2032
	21	—	$ 13,668.75	3/12/2018	3/12/2028
	6	—	$ 13,106.25	5/8/2018	5/8/2028
	2	—	$ 3,937.50	7/31/2018	7/31/2028
	26	—	$ 11,343.75	6/5/2019	6/5/2029
	26	—	$ 9,487.50	5/12/2020	5/12/2030

Our Non-Employee Director Compensation Policy

In February 2022, our Compensation Committee amended the Non-Employee Director Compensation Policy, as described below, which took effect April 1, 2022.

- Each non-employee director will receive an annual cash retainer in the amount of $40,000 per year.
- The Chairperson of the Board will receive an additional annual cash retainer in the amount of $30,000 per year.
- The Chairperson of the Audit Committee will receive additional annual cash compensation in the amount of $20,000 per year for such chairperson's service on the Audit Committee. Each non-chairperson member of the Audit Committee will receive additional annual cash compensation in the amount of $10,000 per year for such member's service on the Audit Committee.
- The Chairperson of the Compensation Committee will receive additional annual cash compensation in the amount of $15,000 per year for such chairperson's service on the Compensation Committee. Each non-chairperson member of the Compensation Committee will receive additional annual cash compensation in the amount of $7,500 per year for such member's service on the Compensation Committee.
- The Chairperson of the Nominating and Corporate Governance Committee will receive additional annual cash compensation in the amount of $10,000 per year for such chairperson's service on the Nominating and Corporate Governance Committee. Each non-chairperson member of the Nominating and Corporate Governance Committee will receive additional annual cash compensation in the amount of $5,000 per year for such member's service on the Nominating and Corporate Governance Committee.
- Each non-employee director will receive a stock option grant with an initial grant equal to 48 shares of the Company's common stock upon a director's initial appointment or election to the Board, vesting quarterly over a three-year period and an annual stock option grant equal 48 shares of the Company's common stock on the date of each annual stockholder's meeting thereafter, fully vesting in one year from the date of grant.

The February 2022 amendment of the Non-Employee Director Compensation Policy, effective as of April 1, 2022, reduced the annual cash retainer for each non-employee director from $50,000 per year to $40,000 per year, the annual cash retainer for the chairperson of the Board from $40,000 to $30,000, and the annual cash compensation for the chairperson of the Nominating and Corporate Governance Committee from $11,250 per year to $10,000 per year.

Pay vs. Performance

The following table sets forth information concerning the compensation of our Named Executive Officers and our financial performance for the years ended December 31, 2024 and 2023:

Year	Summary Compensation Table Total for PEO[1]	Compensation Actually Paid to PEO[2]	Average Summary Compensation Table Total for Non-PEO NEOs[3]	Average Compensation Actually Paid to Non-PEO NEOs[2]	Value of Initial Fixed $100 Investment Based on Total Shareholder Return	Net Income (Loss) (in thousands)
(a)	(b)	(c)	(d)	(e)	(f)	(g)
2024	$ 1,177,838	$ 1,177,838	$ 695,261	$ 695,261	$ 0.12[4]	$ (8,860)
2023[5]	$ 1,520,455	$ 1,525,001	$ 309,234	$ 311,857	$ 0.80[6]	$ 52,979

Year	PEO	Non-PEO NEOs
2024	Saundra Pelletier	Ivy Zhang
2023	Saundra Pelletier	Ivy Zhang, Jay File[5], Katherine Atkinson[5]

(1) PEO: Principal Executive Officer. For both 2024 and 2023, Saundra Pelletier was our PEO.
(2) See table below for amounts deducted or added to calculate executive compensation actually paid, inclusive of an accrual for the estimated bonus not yet paid.
(3) NEO: Named Executive Officer.
(4) The closing price of shares of our common stock on December 31, 2024 was $0.0099.
(5) The Non-PEO NEOs for 2023 includes Katherine Atkinson and Jay File as they were each employed for a short time in the year.
(6) The closing price of shares of our common stock on December 31, 2023 was $0.064.

The amounts reported in the "Compensation Actually Paid to PEO" and "Average Compensation Actually Paid to Non-PEO NEOs" columns do not reflect the actual compensation paid to or realized by our CEO or our non-CEO NEOs during each applicable year. The calculation of compensation actually paid for purposes of this table includes point-in-time fair values of stock awards and these values will fluctuate based on our stock price, various accounting valuation assumptions and projected performance related to our performance awards. See the Summary Compensation Table for certain other compensation of our CEO and our non-CEO NEOs for each applicable fiscal year.

Compensation actually paid to our NEOs represents the "Total" compensation reported in the Summary Compensation Table for the applicable fiscal year, as adjusted as follows:

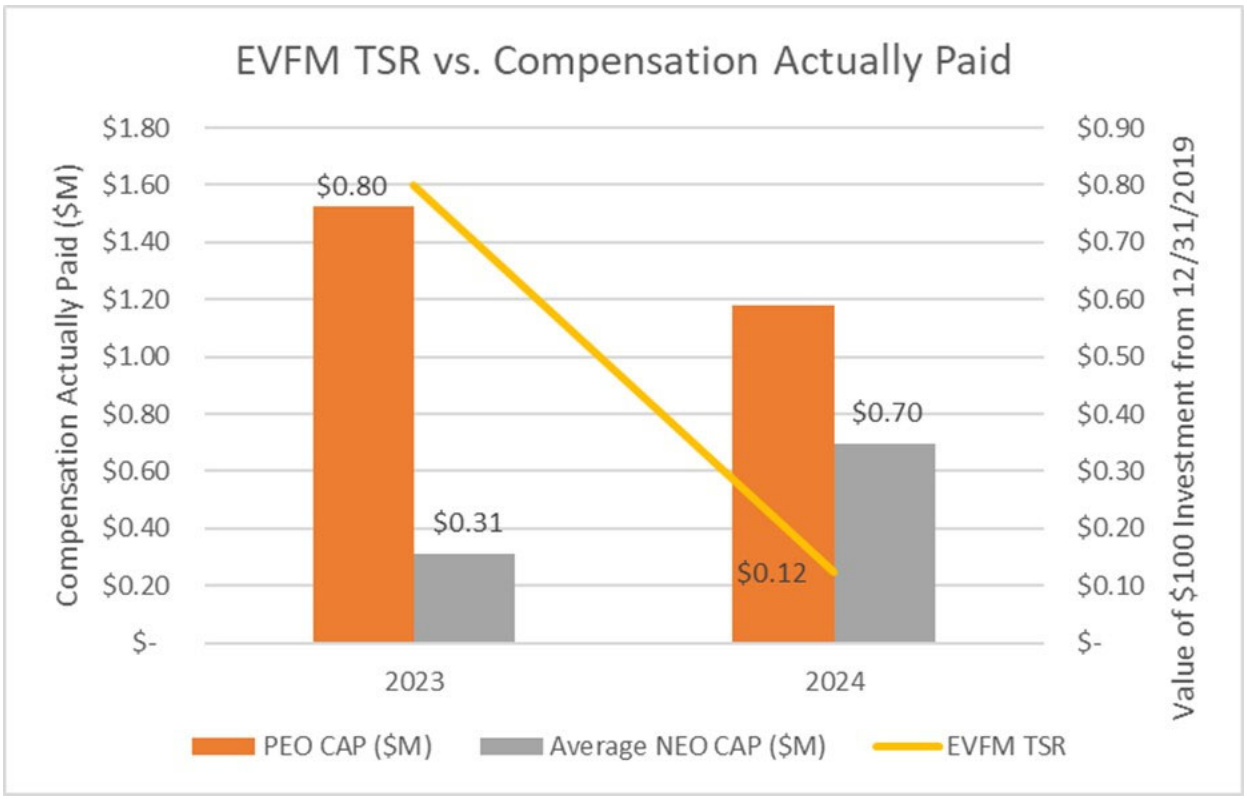
	2024		2023	
Adjustments	PEO	Average Non-PEO NEOs	PEO	Average Non-PEO NEOs
Deduction for Amounts Reported under the "Stock Awards" and "Option Awards" Columns in the Summary Compensation Table for applicable FY	$ —	$ —	$ —	$ —
Increase based on ASC 718 Fair Value of Awards Granted during Applicable FY that Remain Unvested as of Applicable FY End, Determined as of Applicable FY End	—	—	—	—
Increase based on ASC 718 Fair Value of Awards Granted during Applicable FY that Vested during Applicable FY, determined as of Vesting Date	—	—	—	—
Increase/deduction for Awards Granted during Prior FY that were Outstanding and Unvested as of Applicable FY End, determined based on change in ASC 718 Fair Value from Prior FY End to Applicable FY End	—	—	(406)	—
Increase/deduction for Awards Granted during Prior FY that Vested During Applicable FY, determined based on change in ASC 718 Fair Value from Prior FY End to Vesting Date	—	—	4,546	2,623
Total Adjustments	$ —	$ —	$ 4,140	$ 2,623

Fair value or change in fair value, as applicable, of equity awards in the "Compensation Actually Paid" columns was determined by reference to a Black Scholes value as of the applicable year-end or vesting date(s), determined based on the same methodology as used to determine grant date fair value but using the closing stock price on the applicable revaluation date as the current market price and with an expected life set equal to the remaining life of the award in the case of underwater stock options and, in the case of in the money options, an expected life equal to the original ratio of expected life relative to the ten year contractual life multiplied times the remaining life as of the applicable revaluation date, and in all cases based on volatility and risk free rates determined as of the revaluation date based on the expected life period and based on an expected dividend rate of 0%. For additional information on the assumptions used to calculate the valuation of the awards, see the Notes to the Consolidated Financial Statements in this Annual Report and for prior fiscal years.

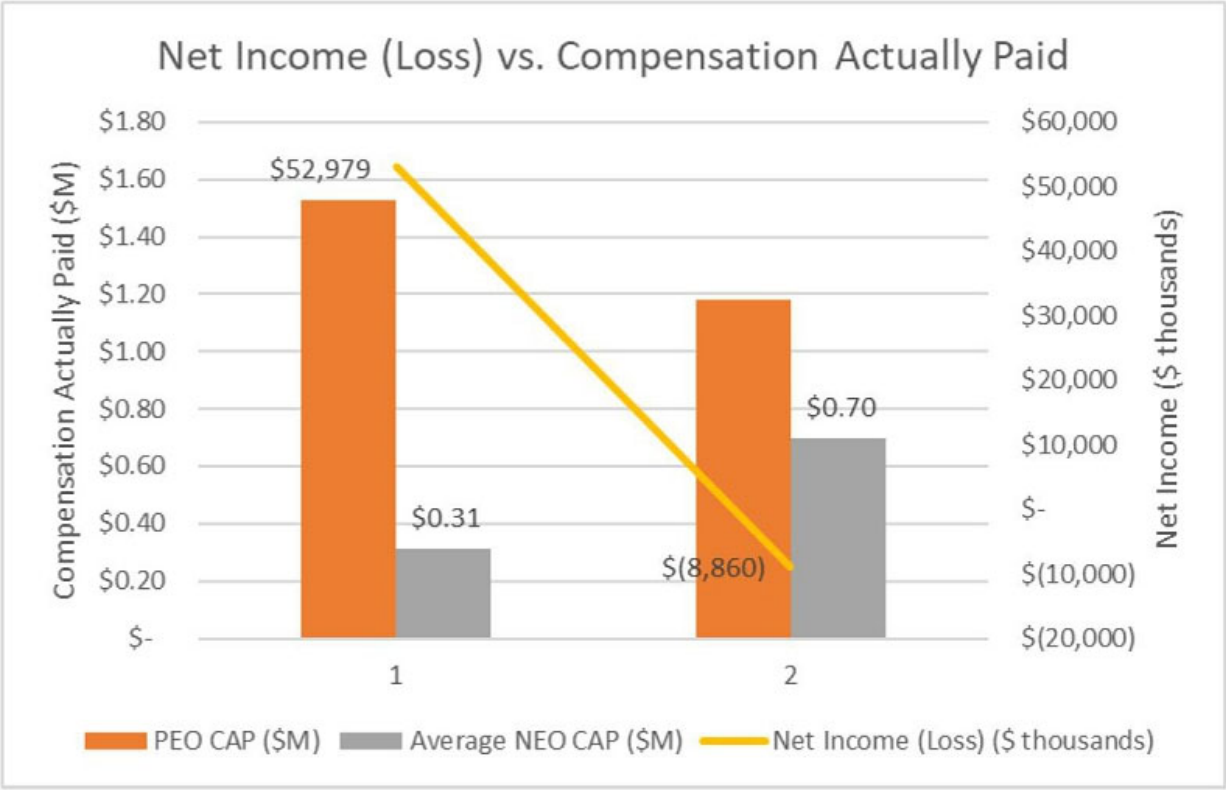
Relationship Between Financial Performance Measures

The graph below compares the compensation actually paid to our PEO and the average of the compensation actually paid to our remaining NEOs, with (i) our cumulative Total Shareholder Return (TSR), and (ii) our net income (loss) for the fiscal years ended December 31, 2024 and 2023. TSR amounts reported in the Pay Versus Performance table above and the graph below assume an initial fixed investment of $100 on December 31, 2023, and that all dividends, if any, were reinvested.

EVFM TSR vs. Compensation Actually Paid



Net Income (Loss) vs. Compensation Actually Paid



Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following table sets forth certain information concerning the ownership of our common stock as of March 14, 2025, by (i) those persons who are known to us to be the beneficial owner(s) of more than five percent of our common stock, (ii) each of our directors and named executive officers and (iii) all of our directors and named executive officers as a group.

As of March 14, 2025, 113,356,354 shares of common stock, 2,110 shares of Series E-1 Shares and 26,280 shares of Series F-1 Shares were issued and outstanding.

The number of shares beneficially owned by each entity, person, director or executive officer is determined in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. In the cases of holders who are not directors, director nominees, and named executive officers, Schedules 13G or 13D filed with the SEC (and, consequently, ownership reflected here) often reflect holdings as of a date prior to March 14, 2025. Under such rules, beneficial ownership generally includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days after March 14, 2025, through the exercise of stock options, warrants or other rights. Unless otherwise indicated in the footnotes to this table, we believe that each of the stockholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned. Unless otherwise noted, the address of the persons in the table below is that of the Company.

Name of Beneficial Owner	Shares Beneficially Owned	Percent of Shares Beneficially Owned
Directors and Named Executive Officers		
Kim Kamdar, Ph.D.[(1)]	170	*
Tony O'Brien[(2)]	173	*
Lisa Rarick, M.D.[(3)]	167	*
Colin Rutherford[(4)]	180	*
Saundra Pelletier[(5)]	2,994	*
Ivy Zhang	—	*
Directors and executive officers as a group (6 persons)[(6)]	3,684	*
Holders of Greater than 5% of the class (Series E-1 Convertible Preferred Shares)		
Keystone Capital Partners, LLC[(7)]	644	31%
Mercer Street Global Opportunity Fund, LLC[(8)]	586	28%
Seven Knots, LLC[(9)]	176	8%
Walleye Opportunities Master Fund[(10)]	704	33%
Holders of Greater than 5% of the class as a group (4 persons)	2,110	100%
Holders of Greater than 5% of the class (Series F-1 Convertible Preferred Shares)		
Aditxt, Inc.[(11)]	26,280	100%

* Includes beneficial ownership of less than 1% of the outstanding shares of Evofem's common stock.

(1) Consists of 170 shares of common stock that may be acquired by Dr. Kamdar pursuant to the exercise of stock options within 60 days of March 14, 2025.

(2) Consists of (i) 4 shares of common stock held by Mr. O'Brien, and (ii) 169 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 14, 2025.

(3) Consists of (i) 5 shares of common stock held by Dr. Rarick, and (ii) 162 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 14, 2025.

(4) Consists of 180 shares of common stock that may be acquired by Mr. Rutherford pursuant to the exercise of stock options within 60 days of March 14, 2025.

(5) Consists of (i) 1,493 shares of common stock held by Ms. Pelletier, and (ii) 1,501 shares of common stock that may be acquired pursuant to the exercise of stock options within 60 days of March 14, 2025.

(6) Consists of (i) 1,502 shares of common stock held by our current executive officers and directors, and (ii) 2,182 shares of common stock that may be acquired by our current executive officers and directors pursuant to the exercise of stock options within 60 days after March 14, 2025.

(7) Consists of 644 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 16.7% of the then issued and outstanding common shares entitled to vote in shareholder actions. Keystone Capital Partners LLC also holds SSNs that could be converted into 46,703,662 shares of common stock, purchase rights that would result in the issuance of 554,903,598 shares of common stock upon exercise, and warrants to purchase up to 268,300 shares of common stock within 60 days of March 14, 2025. However, while the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99% as outlined in the Series E-1 Certificate of Designation, Keystone Capital Partners LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase their maximum beneficial ownership percentage to 9.99%. According to our books and records, the address of Keystone Capital Partners, LLC is 139 Fulton Street, Suite 412, New York, NY, 10038. Keystone Capital Partners, LLC is managed by RANZ Group LLC. Fredric Zaino, the Managing Member of RANZ Group LLC, may be deemed to have investment discretion and voting power over the shares held by Keystone Capital Partners LLC. RANZ Group LLC and Mr. Zaino each disclaim any beneficial ownership of these shares.

(8) Consists of 586 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 15.2% of the then issued and outstanding common shares entitled to vote in shareholder actions. Mercer Street Capital Partners LLC also holds SSNs that could be converted into 57,216,774 shares of common, stock purchase rights that would result in the issuance of 277,154,852 shares of common stock upon exercise, and warrants to purchase up to 774,452 shares of common stock within 60 days of March 14, 2025. However, while the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99% as outlined in the Series E-1 Certificate of Designation, Mercer Street Capital Partners LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase their maximum beneficial ownership percentage to 9.99%. According to our books and records, the address of Mercer Street Global Opportunity Fund, LLC is 1111 Brickell Ave., Suite 2920, Miami, FL, 33131. Mercer Street Global Opportunity Fund, LLC is managed by Mercer Street Capital Partners LLC, which is managed by Jonathan Juchno. Mercer Street Capital Partners LLC and Mr. Juchno may be deemed to have investment discretion and voting power over the shares held by Mercer Street Global Opportunity Fund, LLC. Mercer Street Capital Partners LLC and Mr. Juchno each disclaim any beneficial ownership of these shares.

(9) Consists of 176 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 4.6% of the then issued and outstanding common shares entitled to vote in shareholder actions. Seven Knots, LLC also holds SSNs that could be converted into 21,367,394 shares of common stock, purchase rights that would result in the issuance of 219,925,088 shares of common stock upon exercise, and warrants to purchase up to 192,308 shares of common stock within 60 days of March 14, 2025. However, while the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99% as outlined in the Series E-1 Certificate of Designation, Seven Knots, LLC has provided the Company notice (and the Company has waived the 61 day notice waiting period) to increase their maximum beneficial ownership percentage to 8.00%. According to our books and records, the address of Seven Knots, LLC is 7 Rose Avenue, Great Neck, NY, 11021. Marissa Welner, the Manager of Seven Knots, LLC, holds voting and dispositive power over the shares held by this stockholder. Ms. Welner disclaims any beneficial ownership of these shares.

(10) Consists of 704 shares of Series E-1 Convertible Preferred Shares, with voting rights equal to 18.2% of the then issued and outstanding common shares entitled to vote in shareholder actions. Walleye Opportunities Master Fund, Ltd also holds SSNs that could be converted into 164,884,688 shares of common stock and warrants to purchase up to 5,893,435 shares of common stock within 60 days of March 14, 2025. However, the voting power of each Series E-1 Convertible Preferred Shares holder is limited by the maximum beneficial ownership percentage of 4.99% as outlined in the Series E-1 Certificate of Designation. According to our books and records, the address of Walleye Opportunities

Master Fund, Ltd. is c/o Walleye Capital, LLC 2800 Niagara Lane North, Plymouth, MN, 55447. Walleye Capital LLC is the investment manager of Walleye Opportunities Master Fund Ltd and may be deemed to beneficially own the shares owned by the Walleye Opportunities Master Fund Ltd. Rory Callahan is a Portfolio Manager of Walleye Capital LLC and may be deemed to have voting and dispositive power over the shares owned by the Walleye Opportunities Master Fund Ltd. Walleye Capital LLC and Rory Callahan each disclaim any beneficial ownership of these shares.

(11) Consists of 26,280 shares of Series F-1 Shares, with no voting rights. According to our books and records, the address of Aditxt, Inc. is 2569 Wyandotte Street, Suite 101, Mountain View, CA 94043. Amro Albanna is the Chief Executive Officer of Aditxt, Inc.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Our Audit Committee is responsible for reviewing and approving all transactions in which we are a participant and in which any parties related to us, including our executive officers, directors, beneficial owners of more than 5% of our securities, immediate family members of the foregoing persons, and any other persons whom our Board determines may be considered related parties, has or will have a direct or indirect material interest. If advanced approval is not feasible, the Audit Committee has the authority to ratify a related party transaction at the next Audit Committee meeting. For purposes of our Audit Committee charter, a material interest is deemed to be any consideration received by such a party in excess of the lesser of $0.1 million per year or 1% of the average of our total assets for the last two completed fiscal years.

In reviewing and approving such transactions, the Audit Committee shall obtain, or shall direct our management to obtain on its behalf, all information that our committee believes to be relevant and important to a review of the transaction prior to its approval. Following receipt of the necessary information, a discussion shall be held of the relevant factors if deemed to be necessary by our committee prior to approval. If a discussion is not deemed to be necessary, approval may be given by written consent of our committee. This approval authority may also be delegated to the Chairperson of the Audit Committee in respect of any transaction in which the expected amount is less than $0.5 million.

The Audit Committee or its chairperson, as the case may be, shall approve only those related party transactions that are determined to be in, or not inconsistent with, the best interests of us and our stockholders, taking into account all available facts and circumstances as our committee or the Chairperson determines in good faith to be necessary. These facts and circumstances will typically include, but not be limited to, the material terms of the transaction, the nature of the related party's interest in the transaction, the significance of the transaction to the related party and the nature of our relationship with the related party, the significance of the transaction to us, and whether the transaction would be likely to impair (or create an appearance of impairing) the judgment of a director or executive officer to act in our best interest. No member of the Audit Committee may participate in any review, consideration, or approval of any related party transaction with respect to which the member or any of his or her immediate family members is the related party, except that such member of the Audit Committee will be required to provide all material information concerning the related party transaction to the Audit Committee.

Except as otherwise set forth below relating to the F-1 Shares issued to Aditxt, during the years ended December 31, 2024 and 2023 and to-date in 2025 there were no transactions to which we will be a party, nor are there any currently proposed transactions to which we will be a party, in which:

- the amounts involved exceeded or will exceed the lesser of $0.1 million per year or 1% of the average of our total assets for the last two completed fiscal years; and
- any of our directors, nominees for director, executive officers or holders of more than 5% of our outstanding capital stock, or any immediate family member of, or person sharing the household with, any of these individuals or entities, had or will have a direct or indirect material interest.

Preferred Stock

Effective December 15, 2021, the Company amended and restated its certificate of incorporation, under which the Company is currently authorized to issue up to 5,000,000 shares of preferred stock, $0.0001 par value per share.

Series D Non-Convertible Preferred Stock

On December 16, 2022, the Company filed a Certificate of Designation of Series D Non-Convertible Preferred Stock, par value $0.0001 per share (the Series D Preferred Shares). An aggregate of 70 shares was authorized. They are not convertible into shares of common stock, have limited voting rights equal to 1% of the total voting power of the then-outstanding shares of common stock entitled to vote per share, are not entitled to dividends, and were subsequently redeemed by us, once our shareholders approved a reverse split, as described in the Certificate of Designation. All 70 shares of the Series D Preferred were subsequently issued in connection with the December 2022 Securities Purchase Agreement as discussed in Note 4 - Debt. Since the Series D Preferred Shares can only be settled in cash, they were recorded as a liability within accrued expenses in the consolidated balance sheets. The amount related to the liability is *de minimus*. All 70 shares of the Series D Preferred were redeemed in July 2023.

Series E-1 Convertible Preferred Stock

On August 7, 2023, the Company filed a Certificate of Designation of Series E-1 Convertible Preferred Stock (Certificate of Designation), par value $0.0001 per share (the Series E-1 Shares). An aggregate of 2,300 shares was authorized. The Series E-1 Shares are convertible into shares of common stock at a conversion price of $0.40 per share and are both counted toward quorum on the basis of and have voting rights equal to the number of shares of common stock into which the Series E-1 Shares are then convertible. The Series E-1 Shares are senior to all common stock with respect to preferences as to dividends, distributions and payments upon a dissolution event. Dividends are payable in shares of common stock and may, at the Company's election, be capitalized and added to the principal monthly. Also on August 7, 2023, certain investors party to the December 2022 Notes and the February 2023 Notes exchanged $1.8 million total in principal and accrued interest under the outstanding convertible promissory notes for 1,800 shares of Series E-1 Shares. Per the Series E-1 Convertible Preferred Stock Certificate of Designation, the conversion rate can also be adjusted in several future circumstances, such as on certain dates after the exchange date and upon the issuance of additional convertible securities with a lower conversion rate or in the instance of a Triggering Event. As such, the conversion price as of December 31, 2024 was $0.0154 per share and there were 2,068 Series E-1 Shares issued and outstanding.

Series F-1 Convertible Preferred Stock

On December 11, 2023, the Company filed a Certificate of Designation of Series F-1 Convertible Preferred Stock (F-1 Certificate of Designation), par value $0.0001 per share (the Series F-1 Shares). An aggregate of 95,000 shares was authorized. The Series F-1 Shares are convertible into shares of common stock at a conversion price of $0.0635 per share, as updated per the F-1 Certificate of Designation, and do not have the right to vote on any matters presented to the holders of the Company's common stock. The Series F-1 Shares are senior to all common stock and subordinate to the Series E-1 Shares with respect to preferences as to distributions and payments upon a dissolution event. In the event of a liquidation event, the Series F-1 Shares are entitled to receive an amount per share equal to the Black Scholes Value as of the liquidation event plus the greater of 125% of the conversion amount (as defined in the F-1 Certificate of Designation) and the amount the holder of the Series F-1 Shares would receive if the shares were converted into common stock immediately prior to the liquidation event. If the funds available for liquidation are insufficient to pay the full amount due to the holders of the Series F-1 Shares, each holder will receive a percentage payout. The Series F-1 Shares are not entitled to dividends. The Series F-1 Shares also have a provision that allows them to be converted to common stock at a conversion rate equal to the Alternate Conversion Price (as defined in the F-1 Certificate of Designation) times the number of shares subject to conversion times the 25% redemption premium in the event of a Triggering Event (as defined in the F-1 Certificate of Designation) such as in a liquidation event. The Series F-1 Shares are mandatorily redeemable in the event of bankruptcy. In June 2024, the Required Holders, as defined in the F-1 Certificate of Designation, approved an amended and restated certificate of designation (the Amended F-1 Certificate of Designation) to the Company's certificate of designation designating the rights, preferences and limitations of the Company's Series F-1 Shares. The Amended F-1 Certificate of Designation provides for the removal of the conversion price adjustment provisions previously included and changed the conversion price to $0.0154.

As discussed in Note 4 - Debt, on December 21, 2023, the Company issued a total of 22,280 Series F-1 Shares to certain investors, including 613 shares exchanged for warrants to purchase up to 9,972,074 shares of the Company's common stock and 21,667 shares to exchange a partial value of the outstanding purchase rights. The holders of the Series F-1 Shares immediately exchanged their Series F-1 Shares into Aditxt's Series A-1 preferred

stock and, as a result, Aditxt currently holds all outstanding Series F-1 Shares. The Series F-1 Shares are to be cancelled upon the consummation of the Merger.

During the year ended December 31, 2024, as part of the funding requirement by Aditxt pursuant to the A&R Merger Agreement, the Company issued a total of 4,000 Series F-1 Shares to Aditxt for an aggregate purchase price of $4.0 million. These shares were recorded at fair value with the variance between the immaterial fair value and the $4.0 million cash received being recorded as additional paid-in-capital in the consolidated balance sheet as of December 31, 2024.

Aditxt Merger Agreement

On December 11, 2023, the Company entered into an Agreement and Plan of Merger, as amended (the Merger Agreement) with Aditxt, Inc., a Delaware corporation (Aditxt), Adicure, Inc., a Delaware corporation, and a wholly-owned Subsidiary of Aditxt (Merger Sub), pursuant to which, and on the terms and subject to the conditions thereof, Merger Sub will merge with and into the Company, with the Company surviving as a wholly owned subsidiary of Aditxt.

Item 14. Principal Accounting Fees and Services.

Independent Registered Public Accounting Firm's Fees

The following table shows the fees billed by BPM for the audit of our annual consolidated financial statements for the last two fiscal years.

	Years Ended December 31,	
	2024	2023
Audit Fees[1]	$ 688,980	$ 565,681
Audit Related Fees	—	—
Tax Fees[2]	—	—
All Other Fees	—	—
Total	$ 688,980	$ 565,681

(1) Audit Fees represent fees and out-of-pocket expenses, whether or not yet invoiced, for professional services provided in connection with the audit of the Company's consolidated financial statements, the review of the Company's quarterly consolidated financial statements, and audit services provided in connection with other regulatory filings.

(2) Tax fees represent fees and out-of-pocket expenses for professional services for tax compliance, tax advice or tax return preparations.

Pre-Approval Policies and Procedures

The Audit Committee annually reviews and pre-approves certain audit and non-audit services that may be provided by our independent registered public accounting firm and establishes and pre-approves the aggregate fee level for these services. Any proposed services that would cause us to exceed the pre-approved aggregate fee amount must be pre-approved by the Audit Committee. All audit services for 2023 and 2024 were pre-approved by the Audit Committee.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) Documents filed as part of this Annual Report

1. Financial Statements.

Report of Independent Registered Public Accounting Firm (PCAOB ID No. 207)	F- 1
Consolidated Balance Sheets	F- 4
Consolidated Statements of Operations	F- 5
Consolidated Statements of Comprehensive Operations	F- 6
Consolidated Statements of Convertible and Redeemable Preferred Stock and Stockholders' Deficit	F- 7
Consolidated Statements of Cash Flows	F- 9
Notes to Consolidated Financial Statements	F- 10

The Reports of Independent Registered Public Accounting Firms, the consolidated financial statements and the notes to the consolidated financial statements listed above are set forth beginning on page F-1, immediately following the signature pages of this Annual Report.

2. Financial Statement Schedules.

All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

3. Exhibits Required to Be Filed by Item 601 of Regulation S-K.

A list of exhibits is set forth on the following page and is incorporated herein by reference.

EXHIBIT INDEX

Exhibit No.	Exhibit Title	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
2.1	Definitive agreement by and between the Company and Aditxt, Inc.		8-K	001-36754	12/12/2023
2.2	First Amendment to the Merger Agreement, dated January 8, 2024		8-K	001-36754	1/11/2024
2.3	Second Amendment to the Merger Agreement, dated January 20, 2024		8-K	001-36754	1/31/2024
2.4	Third Amendment to the Merger Agreement, dated February 29, 2024		8-K	001-36754	3/6/2024
2.5	Reinstatement and Fourth Amendment to Merger Agreement dated May 2, 2024		8-K	001-36754	5/2/2024
2.6	Amended and Restated Plan of Merger, by and between the Company, Aditxt, Inc. and Adifem, Inc.		8-K	001-36754	7/18/2024
2.7	First Amendment to the Amended and Restated Agreement and Plan of Merger, by and between the Company, Aditxt, Inc., and Adifem, Inc., dated August 16, 2024		8-K	001-36754	8/20/2024
2.8	Second Amendment to the Amended and Restated Agreement and Plan of Merger, by and between the Company, Aditxt, Inc., and Adifem, Inc., dated September 6, 2024		8-K	001-36754	9/6/2024
2.9	Third Amendment to the Amended and Restated Agreement and Plan of Merger, by and among the Company, Aditxt, Inc. and Adifem, Inc., dated October 2, 2024		8-K	001-36754	10/3/2024
2.10	Fourth Amendment to the Amended and Restated Agreement and Plan of Merger, by and among the Company, Aditxt, Inc. and Adifem, Inc., dated November 19, 2024		8-K	001-36754	11/25/2024
2.11	Fifth Amendment to the Amended and Restated Agreement and Plan of Merger by and among the Company, Aditxt, Inc. and Adifem, Inc., dated March 22, 2025	X			
3.1	Amended and Restated Bylaws of the Registrant.		8-K	001-36754	1/17/2018
3.2	Certificate of Designation of the Series A Preferred Stock of the Company.		8-K	001-36754	3/25/2020
3.3	Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock.		8-K	001-36754	10/12/2021
3.4	Certificate of Designation of Preferences, Rights and Limitations of Series C Convertible Preferred Stock		8-K	001-36754	3/24/2022
3.5	Certificate of Amendment to the Amended and Restated Certificate of Incorporation		8-K	001-36754	5/5/2022
3.6	Amended and Restated Certificate of Incorporation		10-Q	001-36754	5/10/2022
3.7	Certificate of Designation of Series D Preferred Shares		8-K	001-36754	12/21/2022
3.8	Certificate of Amendment to the Amended and Restated Certificate of Incorporation		8-K	001-36754	5/17/2023
3.9	Amended and Restated Bylaws of the Registrant.		8-K	001-36754	7/17/2023
3.1	Certificate of Designation of Series E-1 Preferred Stock.		8-K	001-36754	8/10/2023
3.11	Amendment to the amended and Restated Certificate of Incorporation of Evofem Biosciences, Inc		8-K	001-36754	9/15/2023
3.12	Certificate of Designation of Series F-1 Preferred Stock		8-K	001-36754	12/12/2023
3.13	Amended and Restated certificate of Designation of Series F-1 Convertible Preferred Stock		8-K	001-36754	6/26/2024
4.1	Form of Stock Certificate.		10-K	001-36754	2/26/2018
4.2	Form of Pre-Funded Warrant.		S-1	333-224958	5/16/2018
4.3	Form of Reload Warrant.		8-K	001-36754	2/11/2019
4.4	Form of Warrant.		8-K	001-36754	4/11/2019
4.5	Form of Note.		8-K	001-36754	4/27/2020
4.6	Form of Warrant.		8-K	001-36754	4/27/2020
4.7	Form of Warrant to Purchase Common Stock.		8-K	001-36754	5/19/2021

4.8	Form of Warrant.	8-K	001-36754	1/13/2022
4.9	Form of Senior Subordinated Note.	8-K	001-36754	1/13/2022
4.10	Form of Warrant.	8-K	001-36754	3/1/2022
4.11	Form of Senior Subordinated Note.	8-K	001-36754	3/1/2022
4.12	Description of Evofem's securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934.	10-K	001-36754	3/10/2022
4.13	Form of Senior Subordinated Note.	8-K	001-36754	5/5/2022
4.14	Form of Warrant.	8-K	001-36754	5/5/2022
4.15	Form of Pre-Funded Warrant	8-K	001-36754	5/23/2022
4.16	Form of Warrant	8-K	001-36754	5/23/2022
4.17	Form of Senior Secured Convertible Note	8-K	001-36754	12/21/2022
4.18	Form of Warrant	8-K	001-36754	12/21/2022
4.19	Form of Senior Subordinated Convertible Note.	8-K	001-36754	2/23/2023
4.20	Form of Warrant.	8-K	001-36754	2/23/2023
4.21	Form of Registration Rights Agreement.	8-K	001-36754	2/23/2023
4.22	Form of Senior Subordinated Convertible Note.	8-K	001-36754	3/14/2023
4.23	Form of Warrant.	8-K	001-36754	3/14/2023
4.24	Form of Registration Rights Agreement.	8-K	001-36754	3/14/2023
4.25	Form of Senior Subordinated Convertible Note.	8-K	001-36754	3/24/2023
4.26	Form of Warrant.	8-K	001-36754	3/24/2023
4.27	Form of Registration Rights Agreement.	8-K	001-36754	3/24/2023
4.28	Form of Senior Subordinated Convertible Note.	8-K	001-36754	4/10/2023
4.29	Form of Warrant.	8-K	001-36754	4/10/2023
4.30	Form of Registration Rights Agreement.	8-K	001-36754	4/10/2023
4.31	Form of Senior Subordinated Convertible Note.	8-K	001-36754	7/10/2023
4.32	Form of Warrant.	8-K	001-36754	7/10/2023
4.33	Form of Registration Rights Agreement.	8-K	001-36754	7/10/2023
4.34	Form of Registration Rights Agreement.	8-K	001-36754	8/10/2023
4.35	Form of Senior Subordinated Convertible Note.	8-K	001-36754	8/10/2023
4.36	Form of Warrant.	8-K	001-36754	8/10/2023
4.37	Form of Senior Subordinated Convertible Note.	8-K	001-36754	10/3/2023
4.38	Form of Warrant.	8-K	001-36754	10/3/2023
4.39	Form of Registration Rights Agreement.	8-K	001-36754	10/3/2023
4.40	Form of Senior Subordinated Convertible Note.	8-K	001-36754	12/7/2023
9.1	Form of Support Agreement, by and between the Company and the Investor, dated as of October 28, and October 30, 2024.	8-K	001-36754	10/31/2024
10.1	2014 Employee Stock Purchase Plan.	S-1/A	333-199449	11/10/2014
10.2	Form of Stock Option Agreement under Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.3	Form of Restricted Stock Units Agreement under the Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.4	Form of Restricted Stock Agreement under the Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.5	Form of Notice of Grant of Restricted Stock Units under the Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.6	Form of Notice of Grant of Restricted Stock under the Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.7	Form of Notice of Grant of Stock Option under the Amended and Restated 2014 Equity Incentive Plan.	S-1/A	333-199449	11/10/2014
10.8	Form of Indemnification Agreement, by and between the Registrant and each of its directors and executive officers.	S-1	333-199449	10/17/2017
10.9	Form of Stock Option Agreement under 2007 Stock Plan.	S-1	333-199449	10/17/2017
10.10	Form of Registration Rights Agreement.	8-K	001-36754	10/17/2017
10.11	Evofem Biosciences Operations, Inc. Amended and Restated 2012 Equity Incentive Plan.	S-4	333-221592	11/15/2017
10.12	Form of Notice of Option Grant and Option Agreement under the Evofem Biosciences Operations, Inc. Amended and Restated 2012 Equity Incentive Plan.	S-4	333-221592	11/15/2017
10.13	Form of Notice of Grant of Restricted Stock Award under the Evofem Biosciences Operations, Inc. Amended and Restated 2012 Equity Incentive Plan.	S-4	333-221592	11/15/2017

10.14	Amended and Restated License Agreement, by and between Rush University Medical Center and Evofem, Inc. dated as of March 27, 2014.	S-4	333-221592	11/15/2017
10.15	Executive Employment Agreement, dated as of July 2, 2018, by and between the Registrant and Saundra Pelletier.	8-K	001-36754	7/3/2018
10.16	Form of Notice of Grant of Stock Option under the 2018 Inducement Equity Incentive Plan.	10-Q	001-36754	8/2/2018
10.17	Evofem Biosciences, Inc. 2019 Employee Stock Purchase Plan.	8-K	001-36754	6/5/2019
10.18	Lease, entered into October 3, 2019, by and between the Registrant and Kilroy Realty, L.P.	10-Q	001-36754	11/7/2019
10.19	Supply and Manufacturing Agreement, dated November 4, 2019, by and between the Registrant and DPT Laboratories, Ltd.	10-K	001-36754	3/12/2020
10.20	Securities Purchase and Security Agreement, dated as of April 23, 2020, by and among Evofem Biosciences, Inc., its wholly-owned domestic subsidiaries as guarantors, certain affiliates of Baker Bros. Advisors LP, as purchasers, and Baker Bros. Advisors LP, as designated agent.	8-K	001-36754	4/27/2020
10.21	Intellectual Property Security Agreement, dated as of April 23, 2020, by and among Evofem Biosciences, Inc., Evofem, Inc. and Baker Bros. Advisors LP, as collateral agent.	8-K	001-36754	4/27/2020
10.22	Form of Registration Rights Agreement.	8-K	001-36754	4/27/2020
10.23	First Amendment to Office Lease, dated as of April 14, 2020, by and between the Registrant and Kilroy Realty, L.P.	10-Q	001-36754	5/6/2020
10.24	Securities Purchase Agreement, dated as of October 14, 2020, by and among Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P., as purchasers.	8-K	001-36754	10/15/2020
10.25	Form of Convertible Promissory Note.	8-K	001-36754	10/15/2020
10.26	Registration Rights Agreement, dated as of October 14, 2020, by and among Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P., as investors.	8-K	001-36754	10/15/2020
10.27	Letter Agreement, dated as of October 14, 2020, by and among Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P.	8-K	001-36754	10/15/2020
10.28	Amendment No. 1 to Amended and Restated License Agreement, by and between Rush University Medical Center and Evofem, Inc., dated September 29, 2020	10-Q	001-36754	11/9/2020
10.29	Evofem Biosciences, Inc. Amended and Restated 2014 Equity Incentive Plan.	10-K	001-36754	3/4/2021
10.30	Evofem Biosciences, Inc. Incentive Recoupment Policy	10-K	001-36754	3/4/2021
10.31	First Amendment to Securities Purchase and Security Agreement, dated as of November 20, 2021, by and among Evofem Biosciences, Inc., certain affiliates of Baker Bros. Advisors LP, as purchasers, and Baker Bros. Advisors LP, as designated agent.	8-K	001-36754	11/22/2021
10.32	Securities Purchase Agreement, dated as of January 13, 2022, by and amount Evofem Biosciences, Inc. and each investor listed therein.	8-K	001-36754	1/13/2022
10.33	Amended and Restated Non-Employee Director Compensation Policy (to be effective April 1, 2022).	10-K	001-36754	3/10/2022
10.34	Amended and Restated Non-Employee Director Compensation Policy (currently in effect).	10-K	001-36754	3/10/2022
10.35	Second Amendment to Securities Purchase and Security Agreement, dated as of April 23, 2020, by and among Evofem Biosciences, Inc., certain affiliates of Baker Bros.	8-K	001-36754	3/21/2022

	Advisors LP, as purchasers, and Baker Bros. Advisors LP, as designated agent.			
10.36	Form of Exchange Agreement	8-K	001-36754	3/24/2022
10.37	First Amendment to Securities Purchase Agreement, dated as of October 14, 2020, by and among Evofem Biosciences, Inc. Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund, DE LP.	8-K	001-36754	4/7/2022
10.38	Form of Amendment and Exchange Agreement	8-K	001-36754	5/5/2022
10.39	Forbearance Agreement, dated as of September 15, 2022, by and among Evofem Biosciences, Inc. and certain institutional investors.	8-K	001-36754	9/16/2022
10.40	Forbearance Agreement, dated as of September 15, 2022, by and among Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, LP, and Adjuvant Global Health Technology Fund, DE, LP.	8-K	001-36754	9/16/2022
10.41	Subordination Agreement, dated as of September 15, 2022, by and among Global Health Technology Fund, LP, Adjuvant Global Health Technology Fund, DE, LP, and certain institutional investors and their designated agent.	8-K	001-36754	9/16/2022
10.42	Form of Investor Exchange Agreement.	8-K	001-36754	9/16/2022
10.43	Form of Adjuvant Exchange Agreement.	8-K	001-36754	9/16/2022
10.44	Form of Right.	8-K	001-36754	9/16/2022
10.45	Third Amendment to Securities Purchase and Security Agreement, dated as of September 15, 2022, by and among Evofem Biosciences, Inc., certain institutional investor and their designated agent.	8-K	001-36754	9/16/2022
10.46	Second Amendment to Securities Purchase Agreement, dated as of September 15, 2022, by and among Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, LP, and Adjuvant Global Health Technology Fund, DE, LP.	8-K	001-36754	9/16/2022
10.47	Form of Securities Purchase Agreement	8-K	001-36754	12/21/2022
10.48	Form of Registration Rights Agreement	8-K	001-36754	12/21/2022
10.49	First Amendment to Forbearance Agreement	8-K	001-36754	12/21/2022
10.50^^	Fourth Amendment to Securities Purchase and Security Agreement	8-K	001-36754	9/11/2023
10.51	Asset Purchase Agreement, by and between the Company and Lupin Inc.	8-K	001-36754	7/18/2024
10.52	License Agreement, by and between the Company and Pharma 1 Drug Store, L.L.C.	8-K	001-36754	7/23/2024
10.53	Securities Purchase Agreement, by and between the Company and Aditxt, Inc., dated as of July 12, 2024.	8-K	001-36754	7/23/2024
10.54	Registration Rights Agreement, by and between the Company and Aditxt, Inc., dated as of July 12, 2024.	8-K	001-36754	7/23/2024
10.55	Securities Purchase Agreement, by and between the Company and Aditxt, Inc., dated as of August 9, 2024.	10-Q	001-36754	8/14/2024
10.56	Registration Rights Agreement, by and between the Company and Aditxt, Inc., dated as of August 9, 2024.	10-Q	001-36754	8/14/2024
10.57	Securities Purchase Agreement, by and between the Company and Aditxt, Inc., dated as of September 20, 2024.	10-Q	001-36754	9/25/2024
10.58	Registration Rights Agreement, by and between the Company and Aditxt, Inc., dated as of September, 2024.	10-Q	001-36754	9/25/2024
10.59	Securities Purchase Agreement, by and between the Company and Aditxt, Inc., dated as of October 2, 2024.	8-K	001-36754	10/3/2024
10.60	Registration Rights Agreement, by and between the Company and Aditxt, Inc., dated as of October 2, 2024.	8-K	001-36754	10/3/2024
10.61	Securities Purchase Agreement, by and between the Company and Aditxt, Inc., dated as of October 28, 2024.	8-K	001-36754	10/28/2024
10.62	Registration Rights Agreement, by and between the Company and Aditxt, Inc., dated as of October 28, 2024.	8-K	001-36754	10/28/2024
10.63	Form of Support Agreement, by and between the Company and the Investor, dated as of October 28, and October 30, 2024.	8-K	001-36754	10/31/2024

10.64	Amended Employment Agreement, by and between the Company and Ivy Zhang, dated as of November 8, 2024.		10-Q	001-36754	11/14/2024
10.65	Amended Employment Agreement, by and between the Company and Saundra Pelletier, dated as of November 8, 2024.		10-Q	001-36754	11/14/2024
19.1*	Insider trading policies and procedures	X			
19.2*	Incentive compensation recoupment policy	X			
21.1*	List of Subsidiaries	X			
23.1*	Consent of BPM, LLP	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†	Inline XBRL Instance Document	X			
101.SCH†	Inline XBRL Taxonomy Extension Schema Document	X			
101.CAL†	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.DEF†	Inline XBRL Definition Linkbase Document	X			
101.LAB†	Inline XBRL Taxonomy Extension Labels Linkbase Document	X			
101.PRE†	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	X			

Δ Management Compensation Plan or arrangement.

† Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment pursuant to Rule 406 under the Securities Act of 1933, as amended.

^ The schedules and exhibits to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

^^ Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule upon request by the SEC.

* Furnished herewith. This certification is being furnished solely to accompany this Annual 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.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report to be signed on its behalf by the undersigned hereunto duly authorized.

EVOFEM BIOSCIENCES, INC.

March 24, 2025

By: */s/ Saundra Pelletier*
Name: Saundra Pelletier
Title: *President, Chief Executive Officer and Interim Chairperson of the Board*

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Saundra Pelletier Saundra Pelletier	President, Chief Executive Officer and Interim Chairperson of the Board (*Principal Executive Officer*)	March 24, 2025
/s/ Ivy Zhang Ivy Zhang	Chief Financial Officer and Secretary (*Principal Financial Officer and Principal Accounting Officer)*	March 24, 2025
/s/ Kim P. Kamdar, Ph.D. Kim P. Kamdar, Ph.D.	Director	March 24, 2025
/s/ Tony O'Brien Tony O'Brien	Director	March 24, 2025
/s/ Colin Rutherford Colin Rutherford	Director	March 24, 2025
/s/ Lisa Rarick Lisa Rarick	Director	March 24, 2025

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Evofem Biosciences, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Evofem Biosciences, Inc. and Subsidiaries (the "Company") as of December 31, 2024 and 2023, and the related consolidated statements of operations, comprehensive operations, convertible and redeemable preferred stock and stockholders' deficit, and cash flows for each of the two years in the periods ended December 31, 2024, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2024 and 2023, and the results of its operations and its cash flows for each of the two years in the periods ended December 31, 2024, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations, negative cash flows from operations since inception, and has a net capital deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Critical Audit Matter Description

As described in Note 4 – Debt, in April 2020, the Company entered into a Securities Purchase and Security Agreement with certain affiliates of Baker Bros. Advisors LP ("Baker"), pursuant to which the Company agreed to issue and sell senior secured promissory notes (the "Baker Notes") in an aggregate principal amount of up to $25.0 million. The Baker Notes were subsequently assigned to Aditxt, Inc. in December 2023, assigned back to Baker in February 2024, and then assigned to Future Pak LLC on July 23, 2024, and remain outstanding as of December 31, 2024. The fair value of the Baker Notes was determined by estimating the fair value of the Market Value of Invested Capital ("MVIC") of the Company from the third quarter of 2022 through the second quarter of 2023. Starting in the third quarter of 2023, the fair value of the Baker Notes is determined using a Monte Carlo simulation-based model.

As described in Note 4 – Debt, the Company entered into eight Securities Purchase Agreements (SPAs) between December 2022 and September 2023 with certain investors. Each of the agreements is materially similar, includes both term notes (collectively, SSNs) and detachable common stock warrants, and contains certain conversion and contingent redemption features. The fair value of the SSNs was determined by estimating the fair value of the MVIC of the Company from the third quarter of 2022 through December 31, 2024.

As described in Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit, in 2023, the Company signed an agreement with the holders of Purchase Rights upon which the total aggregate value of the Purchase Rights is fixed at $24.7 million, to be paid in a variable number of shares based on the current exercise price. The Purchase Rights are recorded as derivative liabilities in the consolidated balance sheets and are valued using an option pricing model (OPM), similar to a Black-Scholes Methodology. The assumptions used in the OPM are considered level 3 assumptions and include, but are not limited to, the MVIC, the cumulative equity value of the Company as a proxy for the exercise price.

The MVIC was estimated using forms of the cost and market approaches. In the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair value of the Company's intellectual property. The Monte Carlo simulation was used to take into account several embedded features and factors, including the exercise of the repurchase right, the Company's future revenues, meeting certain debt covenants, the maturity term of the note and dissolution. For the dissolution scenario, the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair value of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method, which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty and discount rates. The guideline public company method served as another valuation indicator. In this form of the market approach, comparable market revenue multiples were elected and applied to the Company's forward revenue forecast to ultimately derive a MVIC indication. As of December 31, 2024, the Company recorded the fair values of the Baker Notes, SSNs and Purchase Rights at $13.8 million, $1.2 million and $1.4 million, respectively.

We identified the Company's estimates of the fair values for the Baker Notes, SSNs and Purchase Rights as a critical audit matter, as valuation of these instruments is highly interrelated and due to the significant estimates and assumptions made by management related to forecasts of future revenue, probability of scenarios used in the Monte Carlo simulation, and the selection of the royalty and discount rates to determine the fair value of the Company's intellectual property. This required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists, when performing audit procedures to evaluate the reasonableness of management's forecasts of future revenue, probability of scenarios used in the Monte Carlo simulation, and the selection of the royalty and discount rates for the intellectual property.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to the Company's determination of the fair values of the Baker Notes, SSNs and Purchase Rights, included the following, among others:

- We evaluated management's ability to accurately forecast future revenue by comparing actual revenues to management's historical forecasts.

- We evaluated the reasonableness of management's forecasts of future revenue by comparing the forecasts to (1) historical results, (2) internal communications to management and the Board of Directors, and (3) the overall estimated market size.

- With the assistance of fair value specialists, we evaluated the reasonableness of the probability of scenarios used in the Monte Carlo simulation and the royalty and discount rates by (1) testing the underlying source information and mathematical accuracy of the calculations, (2) developing a range of independent estimates and comparing those to the probability scenarios and discount rates selected by management, and (3) understanding the facts and circumstances around the selected probability weightings for each scenario and selected royalty and discount rates.

We have served as the Company's auditor since 2023.

/s/ BPM, LLP
Sacramento, California
March 23, 2025

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value and share data)

	As of	
	December 31, 2024	**December 31, 2023**
Assets		
Current assets:		
Cash and cash equivalents	$ —	$ —
Restricted cash	741	580
Trade accounts receivable, net	9,832	5,738
Inventories	1,577	1,697
Prepaid and other current assets	1,459	1,195
Total current assets	13,609	9,210
Property and equipment, net	458	1,203
Operating lease right-of-use assets	89	106
Intangible asset, net (Note 7)	9,597	—
Other noncurrent assets	36	35
Total assets	$ 23,789	$ 10,554
Liabilities, convertible and redeemable preferred stock and stockholders' deficit		
Current liabilities:		
Accounts payable	$ 16,172	$ 17,020
Notes – carried at fair value (Note 4)	14,974	14,731
Convertible notes – Adjuvant (Note 4)	30,769	28,537
Short term debt	135	—
Accrued expenses	5,509	4,227
Accrued compensation	3,494	2,609
Operating lease liabilities – current	82	97
Derivative liabilities	1,359	1,926
Contingent liabilities – current (Note 7)	592	—
Other current liabilities	7,362	3,316
Total current liabilities	80,448	72,463
Operating lease liabilities – noncurrent	7	8
Contingent liabilities – noncurrent (Note 7)	9,809	—
Total liabilities	90,264	72,471
Commitments and contingencies (Note 7)	—	—
Convertible and redeemable preferred stock, $0.0001 par value, senior to common stock		
Series E-1 and F-1 convertible and redeemable preferred stock, 2,300 and 95,000 shares authorized; 2,068 and 1,874 shares of E-1 issued and outstanding as of December 31, 2024 and 2023, respectively; 26,280 and 22,280 shares of F-1 issued and outstanding at December 31, 2024 and 2023, respectively	4,782	4,593
Stockholders' deficit:		
Preferred stock, $0.0001 par value; 5,000,000 shares authorized; no shares issued and outstanding as of December 31, 2024 and 2023, respectively	—	—
Common Stock, $0.0001 par value; 3,000,000,000 shares authorized; 113,356,354 and 20,007,799 shares issued and outstanding as of and December 31, 2024 and 2023, respectively	11	2
Additional paid-in capital	829,026	823,036
Accumulated other comprehensive loss	(2,630)	(849)
Accumulated deficit	(897,664)	(888,699)
Total stockholders' deficit	(71,257)	(66,510)
Total liabilities, convertible and redeemable preferred stock and stockholders' deficit	$ 23,789	$ 10,554

See accompanying notes to the consolidated financial statements.

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share data)

	Years Ended December 31,	
	2024	2023
Product sales, net	$ 19,363	$ 18,218
Operating Expenses:		
Cost of goods sold	3,834	6,512
Amortization of intangible asset	619	—
Research and development	1,845	2,939
Selling and marketing	9,176	11,664
General and administrative	11,565	14,950
Total operating expenses	27,039	36,065
Loss from operations	(7,676)	(17,847)
Other income (expense):		
Interest income	16	31
Other expense, net	(2,575)	(2,628)
Loss on issuance of financial instruments	(3,300)	(6,776)
Gain on debt extinguishment, net	977	75,337
Change in fair value of financial instruments	3,698	4,879
Total other income (expense), net	(1,184)	70,843
Income (loss) before income tax	(8,860)	52,996
Income tax expense	—	(17)
Net income (loss)	(8,860)	52,979
Convertible preferred stock deemed dividends	(105)	(2,984)
Net income (loss) attributable to common stockholders	$ (8,965)	$ 49,995
Net income (loss) per share attributable to common stockholders:		
Basic (Note 2)	$ (0.12)	$ 10.36
Diluted (Note 2)	$ (0.12)	$ 0.05
Weighted-average shares used to compute net income (loss) per share attributable to common shareholders:		
Basic	75,195,615	4,826,763
Diluted	75,195,615	984,038,574

See accompanying notes to the consolidated financial statements.

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE OPERATIONS
(In thousands, except share and per share data)

	Years Ended December 31,	
	2024	2023
Net income (loss)	$ (8,860)	$ 52,979
Other comprehensive income (loss):		
Change in fair value of financial instruments attributed to credit risk change (Note 4)	(1,924)	22,814
Reclassification adjustment related to debt extinguishment	143	(73,187)
Comprehensive income (loss)	$ (10,641)	$ 2,606

See accompanying notes to consolidated financial statements.

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CONVERTIBLE AND REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(In thousands, except share data)

	Series E-1 Convertible and Redeemable Preferred Stock		Series F-1 Convertible and Redeemable Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance as of December 31, 2022	—	$ —	—	$ —	984,786	$ —	$ 817,367	$ 49,527	$ (938,694)	$ (71,800)
Issuance of common stock upon cash exercise of warrants	—	—	—	—	1,760,544	—	284	—	—	284
Issuance of common stock upon noncash exercise of Purchase Rights (Note 4)	—	—	—	—	16,534,856	2	424	—	—	426
Issuance of SSNs (Note 4)	—	—	—	—	—	—	5,420	—	—	5,420
Issuance of common stock upon conversion of note	—	—	—	—	730,997	—	—	—	—	—
Issuance of convertible and redeemable preferred stock upon exchange of notes with existing equity holders	1,800	1,800	—	—	—	—	(1,797)	(3)	—	(1,800)
Issuance of convertible and redeemable preferred stock upon exchange of partial purchase rights value and warrants (Note 8)	—	—	22,280	2,719	—	—	(13)	—	(2,748)	(2,761)
Adjustment related to reverse stock split (fractional shares)	—	—	—	—	(3,384)	—	—	—	—	—
Change in fair value of financial instruments attributed to credit risk change (Note 4)	—	—	—	—	—	—	—	22,814	—	22,814
Adjustment related to downround feature for financial instrument	—	—	—	—	—	—	162	—	(162)	—
Stock-based compensation	—	—	—	—	—	—	1,189	—	—	1,189
Reverse of AOCI upon Baker's 4th Amendment	—	—	—	—	—	—	—	(73,187)	—	(73,187)
Series E-1 Shares dividends	74	74	—	—	—	—	—	—	(74)	(74)
Net income	—	—	—	—	—	—	—	—	52,979	52,979
Balance as of December 31, 2023	**1,874**	**$ 1,874**	**22,280**	**$ 2,719**	**20,007,799**	**$ 2**	**$ 823,036**	**$ (849)**	**$ (888,699)**	**$ (66,510)**

See accompanying notes to the consolidated financial statements.

	Series E-1 Convertible and Redeemable Preferred Stock		Series F-1 Convertible and Redeemable Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount				
Balance as of December 31, 2023	1,874	$ 1,874	22,280	$ 2,719	20,007,799	$ 2	$ 823,036	$ (849)	$ (888,699)	$ (66,510)
Issuance of common stock upon noncash exercise of warrants	—	—	—	—	246,153	—	15	—	—	15
Issuance of common stock upon noncash exercise of purchase rights	—	—	—	—	69,875,000	7	162	—	—	169
Issuance of common stock upon conversion of notes	—	—	—	—	23,227,402	2	50	—	—	52
Extinguishment of Baker Notes (Note 4)	—	—	—	—	—	—	—	143	—	143
Stock – based compensation	—	—	—	—	—	—	847	—	—	847
Change in fair value of financial instruments attributed to credit risk change (Note 4)	—	—	—	—	—	—	—	(1,924)	—	(1,924)
Series E-1 Shares dividends	194	105	—	—	—	—	—	—	(105)	(105)
Issuance of Series F – 1 Shares to Aditxt, including reinstatement proceeds – Related Party	—	—	4,000	84	—	—	4,916	—	—	4,916
Net loss	—	—	—	—	—	—	—	—	(8,860)	(8,860)
Balance as of December 31, 2024	**2,068**	**$ 1,979**	**26,280**	**$ 2,803**	**113,356,354**	**$ 11**	**$ 829,026**	**$ (2,630)**	**$ (897,664)**	**$ (71,257)**

See accompanying notes to the consolidated financial statements.

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Years ended December 31,	
	2024	**2023**
Cash flows from operating activities:		
Net income (loss)	$ (8,860)	$ 52,979
Adjustments to reconcile net income (loss) to net cash, cash equivalents and restricted cash used in operating activities:		
Loss on issuance of financial instruments	3,300	6,776
Gain on debt extinguishment	(977)	(75,337)
Change in fair value of financial instruments	(3,698)	(4,879)
Inventory write-down for excess & obsolescence	63	1,576
Loss on contingent liability	840	—
Stock-based compensation	847	1,189
Depreciation	30	477
Amortization of intangible asset	619	—
Noncash interest expense	2,243	2,270
Noncash right-of-use asset amortization	107	1,304
Net gain on lease termination	—	(466)
Net loss on disposal or impairment of property and equipment	734	2,511
Gain on accounts payable settlements	—	(2,096)
Changes in operating assets and liabilities:		
Trade accounts receivable	(4,094)	(4,612)
Inventories	57	2,106
Prepaid and other assets	(265)	3,661
Accounts payable	(910)	4,090
Accrued expenses and other liabilities	5,300	527
Accrued compensation	885	434
Operating lease liabilities	(106)	(1,478)
Net cash and restricted cash used in operating activities	(3,885)	(8,968)
Cash flows from investing activities:		
Payments related to asset acquisition	(555)	—
Purchases of property and equipment	(14)	(4)
Net cash and restricted cash used in investing activities	(569)	(4)
Cash flows from financing activities:		
Proceeds from issuance of common stock – exercise of warrants	—	290
Borrowings under short term debt	397	5,640
Proceeds from issuance of Series F-1 Shares to Aditxt, including reinstatement proceeds – Related Party	5,000	—
Payments under short term debt and Notes – carried at fair value	(782)	(1,154)
Net cash and restricted cash provided by financing activities	4,615	4,776
Net change in cash, cash equivalents and restricted cash	161	(4,196)
Cash, cash equivalents and restricted cash, beginning of period	580	4,776
Cash, cash equivalents and restricted cash, end of period	$ 741	$ 580
Supplemental cash flow information:		
Cash paid for interest	159	338
Cash paid for taxes	8	4
Supplemental disclosure of noncash investing and financing activities:		
Exchange of convertible notes to Series E-1 Shares	—	1,800
Exchange of warrants and partial purchase rights value to Series F-1 Shares	—	2,761
Issuance of common stock upon exercise of purchase rights	169	426
Series E-1 Shares deemed dividends	105	74
Right-of-use assets obtained for lease liabilities (fleet lease renewals)	90	—
Issuance of common stock upon conversion of notes	52	—
Issuance of common stock upon exercise of warrants	15	—
Purchases of property and equipment included in accounts payable and accrued expenses	84	—
Incurrence of contingent liabilities	13,743	—

See accompanying notes to the consolidated financial statements.

EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business and Basis of Presentation

Description of Business

Evofem is a San Diego-based, commercial-stage biopharmaceutical company committed to commercializing innovative products to address unmet needs in women's sexual and reproductive health.

The Company's first commercial product, PHEXXI® (lactic acid, citric acid, and potassium bitartrate) vaginal gel (PHEXXI), was approved by the U.S. Food and Drug Administration (FDA) on May 22, 2020. It is the first and only FDA-approved, hormone-free, woman-controlled, on-demand prescription contraceptive gel. The Company commercially launched PHEXXI in September 2020 and has grown net sales in each successive year.

On July 14, 2024, the Company acquired global rights to SOLOSEC® and relaunched the brand in November 2024. SOLOSEC is an FDA-approved single-dose oral antimicrobial agent provides a complete course of therapy for the treatment of two common sexual health infections – bacterial vaginosis (BV) and trichomoniasis. This acquisition aligns with and advances the Company's mission to commercialize innovative and differentiated products for women's sexual and reproductive health. The Transferred Assets, as defined in the SOLOSEC Asset Purchase Agreement, included all registered intellectual property related to SOLOSEC (SOLOSEC IP) as well as assorted SOLOSEC related documentation and contracts. The Company accounted for this acquisition as an asset acquisition, pursuant to which the Company recorded contingent liabilities for the fair value of future sales-based payments and an intangible asset for the fair value of the SOLOSEC IP plus certain transaction costs; see Note 6 – Fair Value of Financial Instruments and Note 7 – Commitments and Contingencies for more detailed information about the asset acquisition accounting and fair value methodology.

On December 11, 2023, the Company entered into an Agreement and Plan of Merger, as amended, (the Merger Agreement) with Aditxt, Inc., a Delaware corporation (Aditxt) and Adifem, Inc. (f/k/a Adicure, Inc.), a Delaware corporation and a wholly-owned Subsidiary of Aditxt (Merger Sub), respectively, (collectively, the Parties), pursuant to which, and on the terms and subject to the conditions thereof, the Merger Sub is expected to merge with and into the Company, with the Company surviving as a wholly owned subsidiary of Aditxt (the Merger). The Parties entered into an amended and restated Merger Agreement (the A&R Merger Agreement) in July 2024 and subsequently amended the A&R Merger Agreement in August, September, October, and November 2024.

Basis of Presentation and Principles of Consolidation

The Company prepared the consolidated financial statements in accordance with U.S. GAAP and the rules and regulations of the Securities and Exchange Commission (SEC) related to annual reports on Form 10-K. 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.

Risks, Uncertainties and Going Concern

Any disruptions in the commercialization of PHEXXI or SOLOSEC and/or their supply chains could have a material adverse effect on the Company's business, results of operations and financial condition.

The consolidated 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 does 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.

The Company's principal operations are related to the commercialization of PHEXXI and since July 2024, SOLOSEC. Additional activities have included raising capital, identifying alternative manufacturing to lower PHEXXI cost of goods sold (COGS), seeking ex-U.S. licensing partners to add non-dilutive capital to the balance sheet, seeking product in-licensing/acquisition opportunities to expand and diversify the U.S. revenue stream, and establishing and maintaining a corporate infrastructure to support a commercial product. The Company has incurred

operating losses and negative cash flows from operating activities since inception. As of December 31, 2024, the Company had a working capital deficit of $66.8 million and an accumulated deficit of $897.7 million.

Since October 3, 2022, the Company's common stock has traded on the OTC Venture Market (the OTCQB) of the OTC Markets Group, Inc. (the OTC Markets), a centralized electronic quotation service for over-the-counter securities, under the symbol "EVFM." The OTCQB imposes, among other requirements, a minimum $0.01 per share bid price requirement (the Bid Price Requirement) for continued inclusion on the OTCQB. The closing bid price for the Company's common stock must remain at or above $0.01 per share to comply with the Bid Price Requirement for continued listing. On January 6, 2025, the Company received a written notice (the OTC Markets Notice) from the OTC Markets notifying the Company that, because the closing bid price for the Company's common stock was below $0.01 per share for 30 consecutive calendar days, the Company is not currently in compliance with the minimum bid price requirement for continued listing on the OTCQB, as set forth in the OTCQB listing standards, section 2.3 (the Minimum Bid Price Requirement). The OTC Markets Notice has no immediate effect on the listing of the Company's common stock on OTCQB, and, therefore, the Company's listing remains fully effective. In accordance with OTCQB Listing Standards, Section 4.1 the Company has a compliance period of 90 calendar days, or until April 6, 2025, to regain compliance with the Minimum Bid Price Requirement. Compliance may be achieved if the Company's closing bid price is equal to or greater than $0.01 for ten consecutive trading days at any time during the 90-day compliance period, in which case OTC Markets will notify the Company of its compliance and the matter will be closed. If the Company does not regain compliance with the Minimum Bid Price Requirement by April 6, 2025, OTC Markets will provide written notification to the Company that its common stock will be removed from OTCQB and will begin trading on the OTC Pink Current. The Company intends to continue actively monitoring the closing bid price for the Company's common stock between now and April 6, 2025, and will consider available options to resolve the deficiency and regain compliance with the Minimum Bid Price Requirement, however there can be no assurance that the Company will regain compliance. As of March 14, 2025, the closing bid price was $0.008.

Management's plans to meet its cash flow needs in the next 12 months include generating recurring product revenue from PHEXXI and SOLOSEC, restructuring its current payables, and obtaining additional funding through means such as the issuance of preferred stock to Aditxt as was done under the A&R Merger Agreement, as amended, non-dilutive financings, or through collaborations or partnerships with other companies, including license agreements for PHEXXI and/or SOLOSEC in the U.S. or foreign markets, or other potential business combinations.

The Company anticipates it will continue to incur net losses for the foreseeable future. According to management estimates, liquidity resources as of December 31, 2024 were not sufficient to maintain the Company's cash flow needs for the twelve months from the date of issuance of these consolidated financial statements.

If the Company is not able to obtain the required funding through a significant increase in revenue, equity or debt financings, license agreements for PHEXXI and/or SOLOSEC, or other means, or is unable to obtain funding on terms favorable to the Company, or if there is another event of default affecting the notes payable, or if the Company is enjoined from using the PHEXXI mark, there will be a material adverse effect on commercialization operations and the Company's ability to execute its 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 further reductions in spending, including spending in connection with its commercialization activities, extend payment terms with suppliers, liquidate assets where possible at a potentially lower amount than as recorded in the consolidated financial statements, suspend or curtail planned operations, or cease operations entirely. Any of these could materially and adversely affect the Company's liquidity, financial condition and business prospects, and the Company would not be able to continue as a going concern. The Company has concluded that these circumstances and the uncertainties associated with the Company's ability to obtain additional equity or debt financing on terms that are favorable to the Company, or at all, and otherwise succeed in its future operations raise substantial doubt about the Company's ability to continue as a going concern.

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.

Significant estimates affecting amounts reported or disclosed in the consolidated financial statements include, but are not limited to: the assumptions used in measuring the revenue gross-to-net variable consideration items; the trade accounts receivable credit loss reserve estimate; the assumptions used in estimating the fair value of convertible notes, purchase rights, Series F-1 Shares issued, and warrants issued; asset acquisition intangible asset, and contingent liabilities; the useful lives of property and equipment; the recoverability of long-lived assets; the assumptions used in estimating the fair value of stock-based compensation expense; the valuation of inventory; and the valuation of deferred tax assets. These assumptions are more fully described in Note 2 – Summary of Significant Accounting Policies, Note 3 – Revenue, Note 4 – Debt, Note 6 – Fair Value of Financial Instruments, Note 7 – Commitments and Contingencies, Note 9 – Stock-based Compensation, and Note 11 – Income Taxes. 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, 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 (CODM), the Chief Executive Officer of the Company, in making decisions regarding resource allocation and assessing performance. The Company views its operations and manages its business in one operating segment. The Company's CODM assesses performance and decides how to allocate resources for the Company's one operating segment based on consolidated net loss that is reported on the consolidated statements of operations. The Company has also evaluated the significant segment expenses incurred by the single segment that are regularly provided to the CODM. The significant segment expenses regularly provided to the CODM are consistent with those reported on the consolidated statements of operations and include cost of goods sold, research and development, selling and marketing, and general and administrative. The CODM uses these expense categories, along with product sales, net information, to make key operating decisions such as: the strategic direction of the Company, pursuing and/or approving product acquisitions, decisions about key personnel, and approving annual operating budgets. The Company manages assets on a consolidated basis as reported on the consolidated balance sheets.

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, time deposit and investment accounts are maintained in federally insured financial institutions and are subject to federally insured limits or limits set by Securities Investor Protection Corporation. 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 on amounts in excess of federally insured limits due to the financial position of the depository institutions in which these deposits are held.

The Company is also subject to credit risk related to its trade accounts receivable from product sales. Its customers are located in the U.S. and consist of wholesale distributors, retail pharmacies, and mail-order specialty pharmacies. The Company extends credit to its customers in the normal course of business after evaluating their overall financial condition and evaluates the collectability of its accounts receivable by periodically reviewing the age of the receivables, the financial condition of its customers, and its past collection experience. Historically, the Company has not experienced any credit losses.

Products are distributed primarily through three major distributors and mail-order pharmacies, who receive service fees calculated as a percentage of the gross sales, and a fee-per-unit shipped, respectively. These entities are not obligated to purchase any set number of units and distribute products on demand as orders are received.

For the years ended December 31, 2024, and 2023, the Company's three largest customers combined made up approximately 81% and 84% of its gross product sales, respectively. As of December 31, 2024 and 2023, the

Company's three largest customers combined made up 89% and 87% of its trade accounts receivable balance, respectively.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents consist of readily available cash in checking accounts and money market funds. Restricted cash consists of cash held in monthly time deposit accounts and letters of credit as described in Note 7 – Commitments and Contingencies. During the year ended December 31, 2023, the Company's letters of credit of $0.3 million for its fleet leases were released. Upon receipt of a notice of default from its landlord on March 20, 2023, for failing to pay March 2023 rent timely resulting in a breach under the office lease agreement, the Company's letter of credit in the amount of $0.8 million in restricted cash was recovered by the landlord.

Additionally, the remaining funds of the $25.0 million received from the issuance of Adjuvant Notes (as defined below) in the fourth quarter of 2020 are classified as restricted cash since the Company is contractually obligated to use these funds for specific purposes.

For the years ended December 31, 2024 and 2023, the Company's cash, cash equivalents, and restricted cash reported within the consolidated statements of cash flows include restricted cash only.

Trade Accounts Receivable and Allowance

Trade accounts receivable are amounts owed to the Company by its customers for products that have been delivered. The trade accounts receivable are recorded at the invoice amount, less prompt pay and other discounts, chargebacks and an allowance for credit losses, if any. The allowance for credit losses is the Company's estimate of losses over the life of the receivables. The Company determines the allowance for credit losses based on its historical payment information by customer and the analysis of the trade accounts receivable balance by customer segment. When the collectability of an invoice is no longer probable, the Company will create a reserve for that specific receivable. If a receivable is determined to be uncollectible, it is charged against the general credit loss reserve or the reserve for the specific receivable, if one exists. No allowance was deemed necessary at December 31, 2024 or 2023.

Intangible Assets

Finite lived intangible assets, including the SOLOSEC IP acquired as part of the SOLOSEC asset acquisition as described further in Note 6 – Fair Value of Financial Instruments and Note 7 – Commitments and Contingencies, are amortized on a straight-line basis over their estimated useful lives. Intangible assets are typically only recognized when an asset is acquired as part of a business combination or asset acquisition. In the case of a business combination, the initial value is based on the fair value of the asset as determined by a third-party valuation. In the case of intangible assets acquired through an asset acquisition, the initial value includes the fair value of the consideration paid plus any direct acquisition related expenses allocated to the acquired intangible assets based on their relative fair values. For intangible assets acquired in an asset acquisition with contingent liabilities as part of the consideration, the Company will adjust the carrying value of the intangible assets as part of the quarterly adjustment to bring the contingent consideration to fair value. Additionally, the Company reviews the carrying amount of its amortizing intangible assets for possible impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. When testing for impairment, the Company compares the undiscounted cash flows of the asset or asset group to its carrying value. If the estimated undiscounted cash flows exceed the carrying value, no impairment is recorded. If the undiscounted cash flows do not exceed the carrying value, an impairment is recorded to bring the carrying value of the asset down to its fair value.

Fair Value of Financial Instruments

The Company defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities that are required to be recorded at fair value, the Company considers the principal or most advantageous market in which to transact and the market-based risk. The Company applies fair value accounting for all assets and liabilities that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis.

The valuation of assets and liabilities are subject to fair value measurements using a three-tiered approach. Fair value measurement is classified and disclosed by the Company in one of the following three categories:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices for similar assets and liabilities in active markets, quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability;

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e. supported by little or no market activity).

The carrying amounts reported in the consolidated balance sheets for cash and cash equivalents, restricted cash, accounts payable, accrued expenses and accrued compensation approximate their fair values due to their short-term nature.

The Company believes that the Adjuvant Notes bear interest at a rate that approximates prevailing market rates for instruments with similar characteristics. The Company estimates the fair value of other instruments carried at fair value utilizing a specialist using a Monte Carlo methodology as described in Note 6 – Fair Value of Financial Instruments. Based on the assumptions used to value these instruments at fair value, these instruments are categorized as Level 3 in the fair value hierarchy.

Inventories

Inventories, consisting of purchased materials, direct labor and manufacturing overheads, are stated at the lower of cost, or net realizable value. Cost is determined on a first-in, first-out basis. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. At each balance sheet date, the Company evaluates ending inventories for excess quantities, obsolescence, or shelf-life expiration. The evaluation includes an analysis of the Company's current and future strategic plans, anticipated future sales, the price projections of future demand, and the remaining shelf life of goods on hand. To the extent that management determines there are excess or obsolete inventory or quantities with a shelf life that is too near its expiration for the Company to reasonably expect that it can sell those products prior to their expiration, the Company adjusts the carrying value to estimated net realizable value in accordance with the first-in, first-out inventory costing method.

Inventories consist of the following (in thousands) for the period indicated:

	December 31,	
	2024	2023
Raw materials[(1)]	$ 350	$ 520
Work in process	982	386
Finished goods[(1)]	245	791
Total	$ 1,577	$ 1,697

(1) The raw materials and finished goods balances included a combined estimated reserve on obsolescence and excess inventory which might not be sold prior to expiration of $0.3 million as of both December 31, 2024 and 2023, based upon assumptions about future manufacturing needs and gross sales of PHEXXI. Inventory associated with the additional write-down of $1.3 million recorded during the year ended December 31, 2023, was disposed and is no longer in the inventory balance as of December 31, 2023. There was a write-down of less than $0.1 million in 2024.

Property and Equipment

Property and equipment generally consist of manufacturing and research equipment, computer equipment and software and office furniture. Property and equipment are recorded at cost and depreciated over the estimated useful lives of the assets (generally three to five years) using the straight-line method. Leasehold improvements are stated at cost and are amortized on a straight-line basis over the lesser of the remaining term of the related lease or the

estimated useful lives of the assets. Repairs and maintenance costs are charged to expense as incurred and improvements and betterments are capitalized. When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the consolidated balance sheets and any resulting gain or loss is reflected in the consolidated statements of operations in the period realized.

Impairment of Long-lived Assets

The Company reviews property and equipment for impairment on an annual basis and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. An impairment loss would be recognized when estimated future undiscounted cash flows relating to the asset or asset group are less than its carrying amount. An impairment loss is measured as the amount by which the carrying amount of an asset or asset group exceeds its fair value. The Company recognized an impairment of approximately $0.7 million related to equipment that was recorded as construction in-process during the year ended December 31, 2024 and such amount was immaterial in the year ended December 31, 2023.

Clinical Trial Accruals

As part of the process of preparing the consolidated financial statements, the Company is required to estimate expenses resulting from obligations under contracts with vendors, clinical research organizations (CROs), consultants and under clinical site agreements relating to conducting 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.

The Company's 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. The Company accounts 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. Management determines 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, the Company adjusts the clinical expense recognition if actual results differ from its estimates. The Company makes estimates of accrued expenses as of each balance sheet date based on the facts and circumstances known at that time. The Company's clinical trial accruals are partially dependent upon accurate reporting by CROs and other third-party vendors. The Company's 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 period.

Fair Value of Warrants

Upon the issuance of warrants, they are initially measured at fair value and reviewed for the appropriate classification (liability or equity). Warrants determined to require liability accounting are subsequently re-measured with changes in fair value being recognized as a component of other income (expense), net in the consolidated statements of operations. Warrants are valued using an option pricing model based on the applicable assumptions, which include the exercise price of the warrants, time to expiration, expected volatility of our peer group, risk-free interest rate, and expected dividends. The Company re-evaluates the classification of its warrants at each balance sheet date to determine the proper balance sheet classification for each warrant. The assumptions used in the Option Pricing Model (OPM) are considered level 3 assumptions and include, but are not limited to, the market value of invested capital, our cumulative equity value as a proxy for the exercise price, the expected term the purchase rights will be held prior to exercise and a risk-free interest rate, and probability of change of control events.

Leases

The Company determines if an arrangement is a lease or implicitly contains a lease as well as if the lease is classified as an operating or finance lease in accordance with ASC 842, *Leases* (ASC 842), at inception based on the lease definition. Operating leases are included in operating lease ROU assets and operating lease liabilities in the Company's consolidated balance sheets. ROU assets represent the Company's right to use an underlying asset for the lease term. Lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU

assets and lease liabilities are recognized at commencement date or the adoption date for existing leases based on the present value of lease payments over the lease term using an estimated discount rate.

For leases which do not provide an implicit rate, the Company uses an incremental borrowing rate based on the information available at commencement date or the adoption date in determining the present value of lease payments over a similar term. In determining the estimated incremental borrowing rate, the Company considers a rate obtained from its primary banker for discussion purposes of a potential collateralized loan with a term similar to the lease term; the Company's historical borrowing capability in the market; and the Company's costs incurred for underwriting discounts and financing costs in its previous equity financings. For leases which have an implicit rate, the Company uses the rate implicit in the lease to determine the present value of the lease payments. The ROU assets also include any lease payments made and exclude lease incentives. For operating leases, lease expense is recognized on a straight-line basis over the lease term. Lease and non-lease components within a contract are generally accounted for separately. Short-term leases of 12 months or less, if any, are expensed as incurred which approximates the straight-line basis due to the short-term nature of the leases.

Operating lease ROU assets and lease liabilities were $0.1 million each on both December 31, 2024 and 2023. See Note 7 – Commitments and Contingencies for more detailed discussions on leases and financial statements information under ASC 842.

Revenue

The Company recognizes revenue from the sale of PHEXXI and SOLOSEC in accordance with ASC 606, *Revenue from Contracts with Customers* (ASC 606). The provisions of ASC 606 require the following steps to determine revenue recognition: (1) identify the contract(s) with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

An estimate for variable consideration is made with each sale and is recorded in conjunction with the revenue being recognized. To calculate the variable consideration, the Company uses the expected value method and the amount is recorded either as a reduction to accounts receivable or as a current liability based on the nature of the allowance and the terms of the related arrangements.

Research and Development

Research and development expenses include costs associated with the Company's research and development activities, including, but not limited to, payroll and personnel-related expenses, stock-based compensation expense, materials, laboratory supplies, clinical studies, and outside services. Research and development costs are expensed as incurred, except when accounting for nonrefundable advance payments for goods or services not yet received. These payments, if any, are capitalized at the time of payment and expensed as the related goods are delivered or the services are performed.

Advertising

Costs for producing advertising are expensed when incurred. Costs for communicating advertising, such as television commercial airtime and print media space, are recorded as prepaid expenses and then expensed when the advertisement occurs. Advertising costs were immaterial in both of the presented periods.

Patent Expenses

The Company expenses all costs incurred relating to patent applications, including, but not limited to, direct application fees and the legal and consulting expenses related to making such applications. Such costs are included in general and administrative expenses in the consolidated statements of operations.

Stock-based Compensation

Stock-based compensation expense for stock options issued to employees, non-employee directors and consultants is measured based on estimating the fair value of each stock option on the date of grant using the Black-Scholes (BSM) option-pricing model.

The following table summarizes the Company's stock-based awards expensing policies for employees and non-employees:

	Employees and Nonemployee Consultants
Service only condition	Straight-line based on the grant date fair value
Performance criterion is probable of being met:	
Service criterion is complete	Recognize the grant date fair value of the award(s) once the performance criterion is considered probable of occurrence
Service criterion is not complete	Expense using an accelerated multiple-option approach[(1)] over the remaining requisite service period
Performance criterion is not probable of being met:	No expense is recognized until the performance criterion is considered probable at which point expense is recognized using an accelerated multiple-option approach

(1) The accelerated multiple-option approach results in compensation expense being recognized for each separately vesting tranche of the award as though the award was in substance multiple awards and, therefore, results in accelerated expense recognition during the earlier vesting periods.

Fair Value of Stock Options

The fair value of stock options is determined using the BSM option-pricing model based on the applicable assumptions, which includes the exercise price of options, time to expiration, expected volatility of our peer group, risk-free interest rate and expected dividend. The Company records forfeitures when they occur. The Company did not issue any stock options in either period presented.

Performance-based Awards

For performance-based RSAs (i) the fair value of the award is determined on the grant date, (ii) the Company assesses 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. If the performance-based RSAs are modified, the Company applies the share-based payment modification accounting in accordance with ASC 718, *Compensation-Stock Compensation* (ASC 718). The Company did not issue any performance-based awards in either period presented.

Income Taxes

The accounting guidance for uncertainty in income taxes prescribes a recognition threshold and measurement attribute criteria for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities based on the technical merits of the position.

The Company uses the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial reporting and the tax reporting basis of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. The Company provides a valuation allowance against net deferred tax assets unless, based upon the available evidence, it is more likely than not that the deferred tax assets will be realized. When the Company establishes or reduces the valuation allowance against its deferred tax assets, its provision for income taxes will increase or decrease, respectively, in the period such determination is made.

Net Income (Loss) per Share

Basic net income (loss) per share attributable to common stockholders is calculated by dividing the net income (loss) by the weighted-average number of common shares outstanding during the period, without consideration for potentially dilutive securities. The net income (loss) available to common stockholders is adjusted for amounts in

accumulated deficit related to the deemed dividends triggered for certain financial instruments. Such adjustment was $0.1 million and $3.0 million in the years ended December 31, 2024 and 2023, respectively. Diluted net loss per share is computed by dividing the net loss 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 the year ended December 31, 2024. Potentially dilutive securities excluded from the calculation of diluted net loss per share are summarized in the table below. Common shares were calculated for the convertible preferred stock and the convertible debt using the if-converted method.

	Year ended December 31,	
	2024	2023
Options to purchase common stock	3,372	3,747
Warrants to purchase common stock	20,807,539	21,053,694
Series E-1 Shares	134,326,229	30,472,989
Series F-1 Shares	1,706,493,507	370,731,708
Purchase rights to purchase common stock	1,519,148,899	385,312,084
Convertible debt	2,623,461,038	616,497,236
Total[(1)]	6,004,240,584	1,424,071,458

(1) The potentially dilutive securities in the table above include all potentially dilutive securities that are not included in the diluted EPS as per U.S. GAAP, whereas the total common stock reserved for future issuance in Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit includes the shares that must legally be reserved based on the applicable instruments' agreements.

The following table sets forth the computation of net income attributable to common shareholders, weighted average common shares outstanding for diluted net income per share, and diluted net income per share attributable to common shareholders for the year ended December 31, 2023 (in thousands, except share and per share amounts).

	Year ended December 31,
	2023
Numerator:	
Net income attributable to common stockholders	$ 49,995
Adjustments:	
Change in fair value of purchase rights	1,253
Noncash interest expense on convertible debt, net of tax	1,432
Net income attributable to common stockholders	$ 52,680
Denominator:	
Weighted average shares used to compute net income attributable to common stockholder, basic	4,826,763
Add:	
Pro forma adjustments to reflect assumed conversion of convertible debt	549,963,204
Pro forma adjustments to reflect assumed exercise of outstanding warrants and purchase rights	405,803,188
Pro forma adjustments to reflect the assumed conversion of Series E-1 Convertible Preferred Shares	12,272,683
Pro forma adjustments to reflect the assumed conversion of Series F-1 Convertible Preferred Shares	11,172,736
Weighted average shares used to compute net loss attributable to common stockholder, diluted	984,038,574
Net income per share attributable to common stockholders, diluted	$ 0.05

Recently Adopted Accounting Pronouncements

In November 2023, the FASB issued ASU No. 2023-07, *Improvements to Reportable Segment Disclosures*, designed to improve financial reporting by requiring disclosure of incremental segment information to enable investors to develop more decision-useful financial analyses. ASU No. 2023-07 was effective for the Company beginning with the annual filing for the period ended December 31, 2024 and required retroactive application to comparison periods presented. For Companies that have only one reportable segment (such as the Company), all the requirements of ASU No. 2023-07 will be required to be disclosed regarding the one reportable segment. The Company adopted ASU No. 2023-07 by adding the required disclosures in this Annual Report.

No other significant new standards were adopted during the year ended December 31, 2024.

Recently Issued Accounting Pronouncements — Not Yet Adopted

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board or other standards setting bodies that are adopted as of the specified effective date.

In October 2023, the FASB issued ASU No. 2023-06, *Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative*, designed to clarify or improve disclosure and presentation requirements on a variety of topics and align the requirements in the FASB Accounting Standards Codification (ASC) with the SEC regulations. This guidance is effective for the Company no later than June 30, 2027. The Company is still evaluating the impacts of ASU No. 2023-06.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes: Improvements to Income Tax Disclosures* addressing income tax disclosures, requiring entities to annually disclose specific categories in the rate reconciliation and provide additional information for certain reconciling items and categories. ASU No. 2023-09 will be effective for the Company beginning with the annual filing for the period ended December 31, 2025 and early adoption is allowed. The Company is currently evaluating the impacts of ASU No. 2023-09.

In November 2024, the FASB issued ASU No. 2024-04, *Debt - Debt with Conversion and Other Options (Subtopic 470-20): Induced Conversions of Convertible Debt Instruments*, designed to clarify the requirements for accounting for the settlement of a debt as an induced conversion versus as an extinguishment. This guidance is effective for the Company no later than January 1, 2026. The Company is still evaluating the impacts of ASU No. 2024-04.

The Company does not believe the impact of any other recently issued standards and any issued but not yet effective standards will have a material impact on its consolidated financial statements upon adoption.

3. Revenue

The Company recognizes revenue from the sale of PHEXXI and SOLOSEC in accordance with ASC 606, *Revenue from Contracts with Customers* (ASC 606). The provisions of ASC 606 require the following steps to determine revenue recognition: (1) identify the contract(s) with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

In accordance with ASC 606, the Company recognizes revenue when its performance obligation is satisfied by transferring control of the product to a customer. In accordance with the Company's contracts with customers, control of the product is transferred upon the conveyance of title, which occurs when the product is sold to and received by a customer. The Company's customers are located in the U.S. and consist of wholesale distributors, retail pharmacies, and mail-order specialty pharmacies. Payment terms typically range from 31 to 66 days, include prompt pay discounts, and vary by customer. Trade accounts receivable due to the Company from contracts with its customers are stated separately in the consolidated balance sheets, net of various allowances as described in the Trade Accounts Receivable policy in Note 2 – Summary of Significant Accounting Policies.

The amount of revenue recognized by the Company is equal to the amount of consideration that is expected to be received from the sale of product to its customers. Revenue is only recognized when the performance obligation

is satisfied. To determine whether a significant reversal will occur in future periods, the Company assesses both the likelihood and magnitude of any such potential reversal of revenue.

PHEXXI is sold to customers at the WAC, or in some cases at a discount to WAC. However, the Company records product revenue net of reserves for applicable variable consideration. These types of variable consideration reduce revenue and include the following:

- Distribution services fees
- Prompt pay and other discounts
- Product returns
- Chargebacks
- Rebates
- Patient support programs, including our co-pay programs

An estimate for variable consideration is made with each sale and is recorded in conjunction with the revenue being recognized. To calculate the variable consideration, the Company uses the expected value method and the estimated amounts are recorded as a reduction to accounts receivable or as a current liability based on the nature of the allowance and the terms of the related arrangements. An estimated amount of variable consideration may differ from the actual amount. At each balance sheet date, these provisions are analyzed and adjustments are made if necessary. Any adjustments made to these provisions would also affect net product revenue and earnings.

In accordance with ASC 606, the Company must make significant judgments to determine the estimate for certain variable consideration. For example, the Company must estimate the percentage of end-users that will obtain the product through public insurance such as Medicaid or through private commercial insurance. To determine these estimates, the Company relies on historical sales data showing the amount of various end-user consumer types, inventory reports from the wholesale distributors and mail-order specialty pharmacy, and other relevant data reports.

The specific considerations that the Company uses in estimating these amounts related to variable consideration are as follows:

Distribution services fees – The Company pays distribution service fees to its wholesale distributors and mail-order specialty pharmacies. These fees are a contractually fixed percentage of WAC and are calculated at the time of sale based on the purchase amount. The Company considers these fees to be separate from the customer's purchase of the product and, therefore, they are recorded in other current liabilities on the consolidated balance sheets.

Prompt pay and other discounts – The Company incentivizes its customers to pay their invoices on time through prompt pay discounts. These discounts are an industry standard practice, and the Company offers a prompt pay discount to each wholesale distributor and retail pharmacy customer. The specific prompt pay terms vary by customer and are contractually fixed. Prompt pay discounts are typically taken by the Company's customers, so an estimate of the discount is recorded at the time of sale based on the purchase amount. Prompt pay discount estimates are recorded as contra trade accounts receivable on the consolidated balance sheets.

The Company may also give other discounts to its customers to incentivize purchases and promote customer loyalty. The terms of such discounts may vary by customer. These discounts reduce gross product revenue at the time the revenue is recognized.

Product returns – Customers have the right to return product that is within six months or less of the labeled expiration date or that is past the expiration date by no more than twelve months. PHEXXI was commercially launched in September 2020 with a 30-month shelf life. The shelf life increased to 48 months in June 2022. SOLOSEC has a shelf life of 60 months. The Company uses historical sales and return data to estimate future product returns. Product return estimates are recorded as other current liabilities on the consolidated balance sheets.

Chargebacks – Certain government entities and covered entities (e.g., Veterans Administration, 340B covered entities, group purchasing organizations) are able to purchase products at a price discounted below WAC. The difference between the government or covered entity purchase price and the wholesale distributor purchase price of WAC will be charged back to the Company. The Company estimates the amount of each chargeback channel based on the expected number of claims in each channel and related chargeback that is associated with the revenue being

recognized for product that remains in the distribution channel at the end of each reporting period. Estimated chargebacks are recorded as contra trade accounts receivable on the consolidated balance sheets.

Rebates – The Company is subject to mandatory discount obligations under the Medicaid and Tricare programs. The rebate amounts for these programs are determined by statutory requirements or contractual arrangements. Rebates are owed after the product has been dispensed to an end user and the Company has been invoiced. Rebates for Medicaid and Tricare are invoiced in arrears. The Company also has a commercial rebate program whereby certain customers receive a rebate as contractually arranged. The Company estimates the amount of rebates based on the expected number of claims and related cost that is associated with the revenue being recognized for product that remains in the distribution channel at the end of each reporting period. Rebate estimates are recorded as other current liabilities on the consolidated balance sheets.

Patient support programs – The Company voluntarily offers a co-pay program to provide financial assistance to patients meeting certain eligibility requirements. The Company estimates the amount of financial assistance for these programs based on the expected number of claims and related cost associated with the revenue being recognized for product that remains in the distribution channel at the end of each reporting period. Patient support programs estimates are recorded as other current liabilities on the consolidated balance sheets.

The variable considerations discussed above were recorded in the consolidated balance sheets and consisted of $0.3 million in contra trade accounts receivable as of both December 31, 2024 and 2023 and $7.2 million and $3.2 million in other current liabilities as of December 31, 2024 and 2023, respectively.

4. Debt

Baker Notes (temporarily owned by Aditxt from December 11, 2023 through February 26, 2024 and owned by Future Pak, LLC since July 23, 2024)

On April 23, 2020, the Company entered into a Securities Purchase and Security Agreement (the Baker Bros. Purchase Agreement) with certain affiliates of Baker Bros. Advisors LP, as purchasers (the Baker Purchasers), and Baker Bros. Advisors LP, as designated agent, pursuant to which the Company agreed to issue and sell to the Baker Purchasers (i) convertible senior secured promissory notes (the Baker Notes) in an aggregate principal amount of up to $25.0 million and (ii) warrants to purchase shares of common stock (the Baker Warrants) in a private placement, which closed in two closings (April 24, 2020, the Baker Initial Closing, and June 9, 2020, the Baker Second Closing) As a result of the two closings, the Company issued and sold Baker Notes with an aggregate principal amount of $25.0 million and Baker Warrants exercisable for 2,731 shares of common stock. Upon the completion of the underwritten public offering in June 2020, the exercise price of the Baker Warrants was $4,575 per share. The Baker Warrants have a five-year term with a cashless exercise provision and are immediately exercisable at any time from their respective issuance date.

The Baker Notes have a five-year term, with no pre-payment ability during the first three years. Interest on the unpaid principal balance of the Baker Notes (the Baker Outstanding Balance) accrues at 10.0% per annum, with interest accrued during the first year from the two respective closing dates recognized as payment-in-kind. The effective interest rate for the periods was 10.0%. Accrued interest beyond the first year of the respective closing dates is to be paid in arrears on a quarterly basis in cash or recognized as payment-in-kind, at the direction of the Baker Purchasers. As discussed below, with the amendment to the Baker Bros. Purchase Agreement, interest payments were paid in-kind. Interest pertaining to the Baker Notes for the year ended December 31, 2024 was approximately $10.5 million, which was added to the outstanding principal balance. Interest pertaining to the Baker Notes for the year ended December 31, 2023 was approximately $8.7 million, which was added to the outstanding principal balance. The Company accounts for the Baker Notes under the fair value method as described below and, therefore, the interest associated with the Baker Notes is included in the fair value determination.

The Baker Notes were callable by the Company on 10 days' written notice beginning on the third anniversary of the initial closing date of April 24, 2020 at a call price equal to 100% of the Baker Outstanding Balance plus accrued and unpaid interest if the Company's common stock as measured using a 30-day volume weighted average price (VWAP) was greater than the benchmark price of $9,356.25 as stated in the Baker Bros. Purchase Agreement, or 110% of the Baker Outstanding Balance plus accrued and unpaid interest if the VWAP was less than such benchmark price. The Baker Purchasers also had the option to require the Company to repurchase all or any portion of the Baker

Notes in cash upon the occurrence of certain events. In a repurchase event, as defined in the Baker Bros. Purchase Agreement, the repurchase price will equal 110% of the Baker Outstanding Balance plus accrued and unpaid interest. In the event of default or the Company's change of control, the repurchase price would equal to the sum of (x) three times of the Baker Outstanding Balance plus (y) the aggregate value of future interest that would have accrued. The Baker Notes were convertible at any time at the option of the Baker Purchasers at the conversion price of $4,575 per share prior to the First and Second Baker Amendments (as defined below).

On November 20, 2021, the Company entered into the first amendment to the Baker Bros. Purchase Agreement (the First Baker Amendment), in which each Baker Purchaser had the right to convert all or any portion of the Baker Notes into common stock at a conversion price equal to the lesser of (a) $4,575 and (b) 115% of the lowest price per share of common stock (or, as applicable with respect to any equity securities convertible into common stock, 115% of the applicable conversion price) sold in one or more equity financings until the Company has met a qualified financing threshold defined as one or more equity financings resulting in aggregate gross proceeds to the Company of at least $50 million (the Financing Threshold).

The First Baker Amendment extended, effective upon the Company's achievement of the Financing Threshold, the affirmative covenant to achieve $100.0 million in cumulative net sales of PHEXXI by June 30, 2022 to June 30, 2023. Additionally per the First Baker Amendment, if the Company were to issue warrants to purchase capital stock of the Company (or other similar consideration) in any equity financing that closed on or prior to the date on which the Company met the Financing Threshold, the Company was required to issue to the Baker Purchasers an equivalent coverage of warrants (or other similar consideration) on the same terms as if the Baker Purchasers had participated in the financing in an amount equal to the then outstanding principal of Baker Notes held by the Baker Purchasers. In satisfaction of this requirement and in connection with the closing of the May 2022 Public Offering, the Company issued warrants to purchase 582,886 shares of the Company's common stock at an exercise price of $93.75 per share to the Baker Purchasers (the June 2022 Baker Warrants). As required by the terms of the First Baker Amendment, the June 2022 Baker Warrants have substantially the same terms as the warrants issued in the May 2022 Public Offering. Refer to Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit for further information. The exercise price of the initial Baker Warrants and the June 2022 Baker Warrants was reset multiple times as a result of various Notes issuances in accordance with the agreement. The exercise price was $0.0154 per share as of December 31, 2024.

On March 21, 2022, the Company entered into the second amendment to the Baker Bros. Purchase Agreement (the Second Baker Amendment), which granted each Baker Purchaser the right to convert all or any portion of the Baker Notes into common stock at a conversion price equal to the lesser of (a) $725.81 or (b) 100% of the lowest price per share of common stock (or as applicable with respect to any equity securities convertible into common stock, 100% of the applicable conversion price) sold in any equity financing until the Company (i) met the qualified financing threshold by June 30, 2022, defined as a single underwritten financing resulting in aggregate gross proceeds to the Company of at least $20 million (Qualified Financing Threshold) and (ii) disclosed top-line results from the *EVOGUARD* clinical trial (the Clinical Trial Milestone) on or before October 31, 2022. The Second Baker Amendment also provided that the exercise price of the Baker Warrants will equal the conversion price of the Baker Notes. The Company met the Qualified Financing Threshold upon the closing of the May 2022 Public Offering, and as of September 30, 2022, the conversion price and exercise price of the Baker Warrants was reset to $93.75. The Company achieved the Clinical Trial Milestone in October 2022. Also, with the achievement of the Qualified Financing Threshold and the Clinical Trial Milestone, the affirmative covenant to achieve $100.0 million in cumulative net sales of PHEXXI was extended to June 30, 2023, which was subsequently waived via the Baker Fourth Amendment as discussed below.

On September 15, 2022, the Company entered into the third amendment to the Baker Bros. Purchase Agreement (the Third Baker Amendment), pursuant to which the conversion price was amended to $26.25, subject to adjustment for certain dilutive Company equity issuance adjustments for a two-year period; an interest make-whole payment due in certain circumstances was removed; and certain change of control and liquidation payment amounts were reduced from three times the outstanding amounts of the Baker Notes to two times the outstanding amounts. In addition, the Third Baker Amendment provided that the Company may make future interest payments to the Baker Purchasers in kind or in cash, at the Company's option. On the same day, the Company also entered into a Secured Creditor Forbearance Agreement with the Baker Purchasers (Forbearance Agreement), according to which the Baker Purchasers agreed to forebear the defaults that existed at that time.

On December 19, 2022, the Company entered into the First Amendment to the Forbearance Agreement (the Amendment) effective as of December 15, 2022 to amend certain provisions of the Forbearance Agreement dated September 15, 2022. The Amendment revised the Forbearance Agreement to (i) amend the Fifth Recital Clause to clarify that the Purchasers consent to any additional indebtedness *pari passu*, but not senior to that of the Purchasers, in an amount not to exceed $5.0 million, and (ii) strike and entirely replace Section 4 to clarify the terms of the Purchasers' consent to Interim Financing (as defined therein). No other revisions were made to the Forbearance Agreement.

On March 7, 2023, Baker Bros. Advisors, LP (the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Baker Bros. Purchase Agreement. The Notice of Default claimed that the Company failed to maintain the "Required Reserve Amount" as required by the Third Baker Amendment. The Designated Agent, at the direction of the Baker Purchasers, accelerated repayment of the outstanding balance payable. As a result, approximately $92.7 million, representing two times the sum of the outstanding balance and all accrued and unpaid interest thereon and all other amounts due under the Baker Bros. Purchase Agreement and other documents, was due and payable within three business days of receipt of the Notice of Default. In addition, the Company did not meet the $100.0 million cumulative net sales threshold by June 30, 2023 and as such was in default as of that date. As discussed below, all existing defaults were cured upon the signing of the Fourth Baker Amendment.

On September 8, 2023, the Company entered into the Fourth Amendment to the Baker Bros. Purchase Agreement (the Fourth Baker Amendment) with the Baker Purchasers. The Fourth Amendment amends certain provisions within the Baker Bros. Purchase Agreement including:

(i) the rescission of the Notice of Default delivered to the Company on March 7, 2023 and waiver of the Events of Default named therein;

(ii) the waiver of any and all other Events of Default existing as of the Fourth Amendment date;

(iii) the removal of the conversion feature into shares of Company common stock, including the removal of any requirement to reserve shares of common stock for conversion of the Baker Notes as well as any registration rights related thereto;

(iv) the clarification that for the sole purpose of enabling ex-U.S. license agreements for such assets, any Patents, Trademarks or Copyrights acquired after the Effective Date shall be excluded from the definition of Collateral; and,

(v) the removal of the requirement for the Company to achieve $100 million in cumulative net PHEXXI sales in the specified timeframe.

The outstanding balance of the Baker Notes will continue to accrue interest at 10% per annum and, in the event of a default in the agreement or a failure to pay the Repurchase Price (as defined below) on or before September 8, 2028 (the Maturity Date), the Baker Purchasers may collect on the full principal amount then outstanding.

The Company paid the required $1.0 million upfront payment in September 2023 and is required to make quarterly cash payments based upon a percentage of the Company's global net product revenue. The cash payments will be determined based upon the quarterly global net revenue of PHEXXI according to the table below.

Quarterly global net revenue	Quarterly cash payment
≤ $5.0 million	3% of such global net revenues
>$5.0 million and ≤ $7.0 million	3% on net revenue ≤ $5.0 million; 4% on the net revenue over $5.0 million
Greater than $7.0 million	3% on the net revenue ≤ $5.0 million; 4% on the net revenue over $5.0 million and up to $7.0 million; 5% on net revenue over $7.0 million

The cash payments were payable beginning in the fourth quarter of 2023 and have been timely paid.

Regardless of the percentage paid, the quarterly cash payment amounts, along with the $1.0 million upfront payment, will be deducted from the Repurchase Price as Applicable Reductions. Quarterly cash payments that will be treated as Applicable Reductions paid to date as of December 31, 2024 amount to $0.7 million.

The Fourth Amendment also granted the Company the ability to repurchase the principal amount and accrued and unpaid interest of the Baker Notes for up to a five-year period for the one-time Repurchase Price designated below:

Date of Notes' Repurchase	Repurchase Price
On or prior to September 8, 2024	$14,000,000 (less Applicable Reductions)
September 9, 2024-September 8, 2025	$16,750,000 (less Applicable Reductions)
September 9, 2025-September 8, 2026	$19,500,000 (less Applicable Reductions)
September 9, 2026-September 8, 2027	$22,250,000 (less Applicable Reductions)
September 9, 2027-September 8, 2028	$25,000,000 (less Applicable Reductions)

The Company evaluated whether any of the Embedded Features required bifurcation as a separate component. The Company elected the fair value option (FVO) under ASC 825, *Financial Instruments* (ASC 825), as the Baker Notes are qualified financial instruments and are, in whole, classified as liabilities. Under the FVO, the Company recognized the debt instrument at fair value, inclusive of the Embedded Features, with changes in fair value related to changes in the Company's credit risk being recognized as a component of accumulated other comprehensive loss in the consolidated balance sheets. All other changes in fair value were recognized in the consolidated statements of operations.

Due to the execution of the Fourth Baker Amendment, the Company reviewed the Baker Notes in accordance with ASC 470, *Debt* (ASC 470). Because the Baker Notes were recorded under the FVO, the Fourth Amendment was outside the scope of ASC 470-60 and as such did not qualify as a troubled debt restructuring (TDR). The Baker Notes were evaluated in accordance with ASC 470 and were determined to have failed certain qualitative factors to qualify as a modification and, therefore, were accounted for as an extinguishment. The Company removed the fair value of the old Baker Notes of $15.6 million and the related accumulated other comprehensive income of $73.2 million as of the date of extinguishment and recorded the fair value of the new Baker Notes, as measured on the date of the Baker Fourth Amendment as $12.5 million, and recognized a gain of approximately $75.3 million within the consolidated statements of operations, in the gain on debt extinguishment line item, upon extinguishment in the year ended December 31, 2023. The gain included recognizing $73.2 million that had previously been a component of other comprehensive income as part of the prior quarterly revaluations using the valuation methods discussed in Note 6 – Fair Value of Financial Instruments.

As part of the consideration for the Merger, on December 11, 2023, the Baker Purchasers signed an agreement to assign the Baker Notes to Aditxt (the December Assignment Agreement). Upon execution of the December Assignment Agreement, Aditxt assumed all terms under the Baker Notes, with Aditxt becoming the new senior secured debtholder of the Company, governed by the requirements under the Fourth Baker Amendment. The Baker Notes were re-assigned back to the Baker Purchasers on February 26, 2024 (the February Assignment Agreement).

Due to the execution of the February Assignment Agreement, the Company reviewed the Baker Notes in accordance with ASC 470. The Baker Notes, having been effectively terminated, were extinguished on February 26, 2024, resulting in removing the fair value of the old Baker Notes of $13.5 million. The newly re-assigned Baker Notes were subsequently recorded at fair value using the valuation methods discussed in Note 6 – Fair Value of Financial Instruments.

On July 23, 2024, the Company consented to the transfer of ownership of the Baker Notes from Baker Brothers Life Sciences, 667, L.P., and Baker Bros. Advisors, LP, each a Delaware limited partnership (collectively, Baker) to Future Pak, LLC (the Assignee) (the July 2024 Assignment). The terms of the Baker Notes were not changed in connection with the assignment from Baker to the Assignee. Due to the July 2024 Assignment, the Company reviewed the Baker Notes in accordance with ASC 470. The Baker Notes, having been effectively terminated, were extinguished on July 23, 2024, resulting in removing the fair value of the old Baker Notes of $12.3 million and the related accumulated other comprehensive income of $0.1 million as of the date of the extinguishment. The Company also recognized a loss of approximately $1.0 million within the consolidated statements of operations, in the gain on debt extinguishment line item for the year ended December 31, 2024. The newly re-assigned Baker Notes were

subsequently recorded at fair value using the valuation methods discussed in Note 6 – Fair Value of Financial Instruments.

The Company did not repurchase the Baker Notes prior to September 8, 2024 for a repurchase price of $14.0 million less applicable reductions. As of December 31, 2024, the Baker Notes are recorded at fair value in the consolidated balance sheet as short-term Notes – carried at fair value with a total fair value of $13.8 million, and the total outstanding balance including principal and accrued interest is $109.5 million. As of December 31, 2023, the Baker Notes were recorded at fair value in the consolidated balance sheet as short-term convertible notes payable with a total balance of $13.5 million, and the total outstanding balance including principal and accrued interest is $99.5 million. During the years ended December 31, 2024 and 2023, the Company paid a total of $0.5 million and $0.2 million, respectively, in required cash payments as described above.

On September 27, 2024, the Assignee, as agent for the Purchasers (in such capacity, the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the September 2024 Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, as amended, by and among the Company, Designated Agent, as certain guarantors and the purchasers (each a Purchaser and collectively Purchasers). The September 2024 Notice of Default claims that by entering into arrangements to repay certain existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the SPA.

According to the Notice of Default, the Designated Agent has accelerated repayment of the outstanding principal balance owed by the Company under the Securities Purchase Agreement. If all Purchasers exercise the Section 5.7 Option (as defined below), the repurchase price would be equal to the total outstanding balance, including principal and accrued interest. Pursuant to Section 5.7(b) of the SPA, upon the occurrence of an Event of Default, each Purchaser may elect, at its option, to require the Company to repurchase the Note held by such Purchaser (or any portion thereof) at a repurchase price equal to two times the sum of the outstanding principal balance and all accrued and unpaid interest thereon, due within three business days after such Purchaser delivers a notice of such election (the Section 5.7 Option).

On October 27, 2024, the Designated Agent sent an amended and supplemented notice to the Initial Notice of Default (the Amended Notice of Default) which adds new claims of default based on the Company's current repayment agreements of existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the Baker Bros. Purchase Agreement, as amended. Furthermore, the Amended Notice stated that, because the events of default described in the Amended Notice of Default are not the certain prior events of default listed in the Forbearance Agreement (Specified Defaults), the Designated Agent and the holders of the senior secured promissory notes described in the SPA thereby provided notice to the Company that the Forbearance Agreement is terminated as of October 27, 2024.

On November 8, 2024, the Designated Agent sent an amended and supplemented notice to the Notices (the Third Amended Notice of Default) which adds new claims of default based on (i) the Company's failure to maintain a cash position of $1.0 million or greater, as required under Section 5(b) of the Forbearance Agreement (ii) the Company's failure to deliver financial and operating reports in accordance with the timeline required under the Section 8.1(n) of the Baker Stock Purchase Agreement, and (iii) to clarify the outstanding balance under the notes of the Baker Stock Purchase Agreement plus all accrued and unpaid interest thereon, in the sum of approximately is $107.0 million as opposed to the Repurchase Price as defined in the Fourth Amendment.

The Company strongly disagrees with the Designated Agent's claim that an Event of Default has occurred. The Company intends to vigorously contest any attempt by the Designated Agent and the Purchasers to exercise their default rights and remedies under the SPA.

Adjuvant Notes

On October 14, 2020, the Company entered into a Securities Purchase Agreement (the Adjuvant Purchase Agreement) with Adjuvant Global Health Technology Fund, L.P., and Adjuvant Global Health Technology Fund DE, L.P. (together, the Adjuvant Purchasers), pursuant to which the Company sold unsecured convertible promissory notes (the Adjuvant Notes) in aggregate principal amount of $25.0 million.

The Adjuvant Notes have a five-year term, and in connection with certain Company change of control transactions, the Adjuvant Notes may be prepaid at the option of the Company or will become payable on the date of the consummation of a change of control transaction at the option of the Adjuvant Purchasers. The Adjuvant Notes have interest accruing at 7.5% per annum on a quarterly basis in arrears to the outstanding balance of the Adjuvant Notes and are recognized as payment-in-kind. The effective interest rate for the year ended December 31, 2024 was 7.5%.

Interest expense for the Adjuvant Notes consist of the following, and is included in short-term convertible notes payable on the consolidated balance sheets as of December 31, 2024 and 2023 and in other expense, net on the consolidated statements of operations for the years ended December 31, 2024 and 2023 (in thousands):

	Years Ended December 31,	
	2024	2023
Coupon interest	$ 2,203	$ 2,046
Amortization of issuance costs	28	224
Total	$ 2,231	$ 2,270

The Adjuvant Notes are convertible, subject to customary 4.99% and 19.99% beneficial ownership limitations, into shares of the Company's common stock, par value $0.0001 per share, at any time at the option of the Adjuvant Purchasers at a conversion price of $6,843.75 per share. In connection with certain Company change of control transactions, the Adjuvant Notes may be prepaid at the option of the Company or will become payable at the option of the Adjuvant Purchasers. To the extent not previously prepaid or converted, the Adjuvant Notes were originally automatically convertible into shares of the Company's common stock at a conversion price of $6,843.75 per share immediately following the earliest of the time at which the (i) 30-day value-weighted average price of the Company's common stock was $18,750 per share, or (ii) the Company achieved cumulative net sales of $100.0 million, provided such net sales were achieved prior to July 1, 2022.

On April 4, 2022, the Company entered into the first amendment to the Adjuvant Purchase Agreement (the Adjuvant Amendment). The Adjuvant Amendment extended the affirmative covenant to achieve $100.0 million in cumulative net sales of PHEXXI by June 30, 2022 to June 30, 2023. The Adjuvant Amendment also provided for an adjustment to the conversion price of the Adjuvant Notes such that the conversion price (the Conversion Price) for these Notes, effective as of the May 2023 reverse stock split, will now be the lesser of (i) $678.49 and (ii) 100% of the lowest price per share of common stock (or with respect to securities convertible into common stock, 100% of the applicable conversion price) sold in any equity financing until the Company met the Qualified Financing Threshold. Effective as of the Company's achievement of the Qualified Financing Threshold, the automatic conversion provisions in the Agreement were further amended to provide that the Adjuvant Notes will automatically convert into shares of the Company's common stock at the Conversion Price immediately following the earliest of the time at which the (i) 30-day value-weighted average price of the Company's common stock is $18,750 per share, or (ii) the Company achieves cumulative net sales of PHEXXI of $100.0 million, provided such net sales were achieved prior to July 1, 2023.

The Adjuvant Notes contain various customary affirmative and negative covenants agreed to by the Company. On September 12, 2022, the Company was in default of the Adjuvant Notes due to the default with the Baker Notes under the cross-default provision. On September 15, 2022, the Company entered into a Forbearance Agreement (the Adjuvant Forbearance Agreement) with the Adjuvant Purchasers, pursuant to which the Adjuvant Purchasers agreed to forbear from exercising any of their rights and remedies during the Forbearance Period as defined in therein, but solely with respect to the specified events of default provided under the Adjuvant Forbearance Agreement.

On September 15, 2022, the Company also entered into the second amendment to the Adjuvant Purchase Agreement (the Second Adjuvant Amendment), pursuant to which the conversion price per share was reduced to $26.25, subject to adjustment for certain dilutive Company equity issuance adjustments for a two-year period. In addition, the Company entered into an exchange agreement, pursuant to which the Adjuvant Purchasers agreed to exchange 10% of the outstanding amount of the Adjuvant Notes as of September 15, 2022 (or $2.9 million) for rights to receive 109,842 shares of common stock (the Adjuvant Purchase Rights). The number of shares for each Adjuvant Purchase Right was initially fixed, but is subject to certain customary adjustments, and, until the second anniversary

of issuance (i.e., October 14, 2022), adjustments for certain dilutive Company equity issuances. Refer to Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit for discussion regarding additional issuances of purchase rights under this provision. The Adjuvant Purchase Rights expire on June 28, 2027 and do not have an exercise price per share and, therefore, will not result in cash proceeds to the Company. As of December 31, 2024, all Adjuvant Purchase Rights remain outstanding. The conversion price of the Adjuvant Notes was $0.0154 as of December 31, 2024. Assuming this conversion price per share, the Adjuvant Notes could be converted into 1,997,961,061 shares of common stock.

The Adjuvant Notes are accounted for in accordance with authoritative guidance for convertible debt instruments and are classified as current liabilities in the consolidated balance sheets. The aggregate proceeds of $25.0 million were initially classified as restricted cash for financial reporting purposes due to contractual stipulations that specify the types of expenses the money can be spent on and how it must be allocated. The conversion feature was required to be bifurcated as an embedded derivative because the Company did not have a sufficient number of shares reserved upon conversion as of March 31, 2023; however, the fair value of such feature was immaterial as of such date. As of June 30, 2023, the Company had a sufficient number of shares reserved and the conversion feature was reclassified to stockholders' deficit in accordance with ASC 815, *Derivatives and Hedging* (ASC 815) at that time. See Note 6 – Fair Value of Financial Instruments for a description of the accounting treatment for the Adjuvant Purchase Rights.

The Company was in default of the Adjuvant Notes as of September 30, 2023, due to the failure to meet the cumulative net sales requirement. However, Adjuvant forbore such default in October 2023 and therefore the Company is no longer in default.

As of December 31, 2024, the Adjuvant Notes are recorded in the consolidated balance sheet as short-term convertible notes payable with a total balance of $30.8 million. The balance is comprised of $22.5 million in principal, net of unamortized debt issuance costs, and $8.3 million in accrued interest. As of December 31, 2023, the Adjuvant Notes were recorded in the consolidated balance sheet as short-term convertible notes payable with a total balance of $28.5 million. The balance was comprised of $22.5 million in principal, net of unamortized debt issuance costs, and $6.1 million in accrued interest.

Term Notes

December 2022 and February, March, April, July, August, and September 2023 Notes (SSNs)

The Company entered into eight Securities Purchase Agreements (SPAs) between December 2022 and September 2023 with certain investors. Each of the agreements was materially similar. The variable details of each SPA, such as the principal amount of each note offering, net proceeds, and maturity date, are outlined in the table below. Pursuant to each SPA, the Company agreed to sell in a registered direct offering (i) unsecured 8.0% senior subordinated notes with the maturity dates and aggregate issue prices (ii) warrants to purchase the listed number of shares of the Company's common stock, $0.0001 par value per share (including prefunded common stock Warrants as a part of the September 2023 SPA) and (iii) Series D Preferred Stock (the Preferred Shares; December 2022 SPA only) (collectively, the Senior Subordinated Notes, or SSNs). The SSNs had net proceeds to the Company, and are convertible at, the amounts listed below. Assuming the applicable conversion price per share, the SSNs could be converted into 625,499,977 shares of common stock as of December 31, 2024.

The SSNs' interest rates are subject to increase to 12% upon an event of default and the SSNs have no Company right to prepayment prior to maturity; however, the Company has the option to redeem the respective SSNs at a redemption premium of 32.5%. The Purchasers can also require the Company to redeem their respective SSNs a) at the respective premium rate tied to the occurrence of certain subsequent transactions, and b) in the event of subsequent placements (as defined). Also, pursuant to the terms of the SPAs, Purchasers have certain rights to participate in subsequent issuances of the Company's securities, subject to certain exceptions. Additionally, the conversion rate and warrant strike price are subject to adjustment upon the issuance of other securities (as defined) below the stated conversion rate and strike price at issuance. The strike prices adjusted as discussed in the table below.

The Company evaluated the SSNs in accordance with ASC 480 and determined that the SSNs were all liability instruments at issuance. The applicable SSNs were then evaluated in accordance with the requirements of

ASC 825 and the Company concluded that they were not precluded from electing the fair value option for the applicable SSNs.

The Company also evaluated the Warrants in accordance with ASC 480 and determined that the Warrants issued before the Reverse Stock Split in May 2023 were required to be recorded as liabilities at fair value in the Company's consolidated balance sheets. The applicable SSNs were marked-to-market at each reporting date with changes in fair value recognized in the consolidated statement of operations, unless the change is concluded to be related to changes in the Company's credit rating, in which case the change was recognized as a component of accumulated other comprehensive loss in the consolidated balance sheets. As a result of the Reverse Stock Split, the Company had sufficient shares available for issuance to cover the potential exercises; therefore, the Warrants that were previously classified as liabilities were marked-to-market and reclassified to equity in May 2023. For the Warrants issued after the Reverse Stock Split, the Company determined they were required to be recorded in equity.

On December 21, 2023, warrants to purchase up to 9,972,074 shares of the Company's common stock were exchanged for 613 shares of the Company's series F-1 convertible and redeemable preferred stock (Series F-1 Shares, as defined below). The Series F-1 Shares, some of which were also issued based on the partial value of certain purchase rights, as described above, were immediately exchanged for Aditxt series A-1 preferred stock; 26,280 and 22,280 Series F-1 Shares were outstanding as of December 31, 2024 and 2023, respectively, and held by Aditxt.

Summary of SSNs and Warrants at Issuance (December 2022 to September 2023):

Notes	Principal At Issuance (in thousands)	Net Proceeds Before Issuance Costs (in thousands)	Common Warrants	Preferred Shares	Maturity Date	At Issuance	Conversion Price At 12/31/2023	Conversion Price At 12/31/2024
December 2022 Notes	$ 2,308	$ 1,500	369,230	70 - Series D	12/21/2025	$ 6.25	$ 0.0615	$ 0.0154
February 2023 Notes[1]	1,385	900	653,538	—	2/17/2026	$ 2.50	$ 0.0615	$ 0.0154
March 2023 Notes	600	390	240,000	—	3/17/2026	$ 2.50	$ 0.0615	$ 0.0154
March 2023 Notes[2]	538	350	258,584	—	3/20/2026	$ 2.50	$ 0.0615	$ 0.0154
April 2023 Notes	769	500	615,384	—	3/6/2026	$ 1.25	$ 0.0615	$ 0.0154
July 2023 Notes	1,500	975	1,200,000	—	3/6/2026	$ 1.25	$ 0.0615	$ 0.0154
August 2023 Notes	1,000	650	799,999	—	8/4/2026	$ 1.25	$ 0.0615	$ 0.0154
September 2023 Notes[3]	2,885	1,875	26,997,041	—	9/26/2026	$ 0.13	$ 0.0615	$ 0.0154
Total Offerings	$ 10,985	$ 7,140	31,133,776					

(1) Warrants include 99,692 issued to the placement agent.
(2) Warrants include 43,200 issued to the placement agent.
(3) Warrants include 22,189,349 common warrants at $0.13 per share and 4,807,692 pre-funded warrants exercisable at $0.001 per share.

5. Balance Sheet Details

Prepaid and Other Current Assets

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

	December 31,	
	2024	2023
Insurance	$ 391	$ 777
PDUFA fees	606	—
Research & development	13	13
Short-term deposits	127	76
Other	322	329
Total	$ 1,459	$ 1,195

Property and Equipment, Net

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

		December 31,	
	Useful Life	2024	2023
Research equipment	5 years	$ 585	$ 586
Computer equipment and software	3 years	145	647
Construction in-process	—	429	1,156
		1,159	2,389
Less: accumulated depreciation		(701)	(1,186)
Total, net		$ 458	$ 1,203

Depreciation expense for property and equipment was immaterial in the year ended December 31, 2024 and was $0.5 million in the year ended December 31, 2023. The construction in-process balance is net of an impairment of approximately $0.7 million as of December 31, 2024.

Intangible Asset, Net

Intangible asset, net, acquired in 2024, consists of the following (in thousands):

		December 31	
	Useful Life	2024	
Intellectual Property	11 years	$ 10,216	$ —
Less: accumulated amortization		(619)	—
Total, net		$ 9,597	$ —

The intangible asset relates entirely to the asset acquired with the SOLOSEC asset acquisition and as described further in Note 7 – Commitments and Contingencies, the useful life is based on the SOLOSEC IP patent expiration. Amortization expense was $0.6 million in the year ended December 31, 2024. Amortization expense is expected to be approximately $0.9 million in each subsequent year until the intangible asset is fully amortized, which will be in approximately 10.7 years. As described in Note 2 – Summary of Significant Accounting Policies, the intangible asset value is adjusted at each reporting date in conjunction with the mark-to-market adjustment of the contingent liabilities, which could impact the expected amortization. The initial intangible asset fair value was $16.1 million at acquisition and the adjustment for the year ended December 31, 2024 was a reduction to the intangible balance of $5.9 million.

Accrued Expenses

Accrued expenses consist of the following (in thousands):

	December 31,	
	2024	2023
Clinical trial related costs	$ 2,498	$ 2,498
Accrued royalty	1,976	1,146
Other	1,035	583
Total	$ 5,509	$ 4,227

6. Fair Value of Financial Instruments

Fair Value of Financial Liabilities

The following table is a summary of the Company's convertible debt instruments as of December 31, 2024 and 2023, respectively (in thousands):

As of December 31, 2024	Principal Amount	Unamortized Issuance Costs	Accrued Interest	Net Carrying Amount	Fair Value	
					Amount	Leveling
Baker Notes[1][2]	$ 109,488	$ —	$ —	$ 109,488	$ 13,801	Level 3
Adjuvant Notes[3]	22,500	—	8,269	30,769	N/A	N/A
December 2022 Notes[1]	973	—	—	973	118	Level 3
February 2023 Notes[1]	980	—	—	980	120	Level 3
March 2023 Notes[1]	1,209	—	—	1,209	147	Level 3
April 2023 Notes[1]	883	—	—	883	108	Level 3
July 2023 Notes[1]	1,322	—	—	1,322	161	Level 3
August 2023 Notes[1]	1,119	—	—	1,119	136	Level 3
September 2023 Notes[1]	3,147	—	—	3,147	383	Level 3
Totals	$ 141,621	$ —	$ 8,269	$ 149,890	$ 14,974	N/A

As of December 31, 2023	Principal Amount	Unamortized Issuance Costs	Accrued Interest	Net Carrying Amount	Fair Value	
					Amount	Leveling
Baker Notes[1][2]	$ 99,460	$ —	$ —	$ 99,460	$ 13,510	Level 3
Adjuvant Notes[3]	22,500	(27)	6,064	28,537	N/A	N/A
December 2022 Notes[1]	940	—	—	940	118	Level 3
February 2023 Notes[1]	905	—	—	905	118	Level 3
March 2023 Notes[1]	1,204	—	—	1,204	157	Level 3
April 2023 Notes[1]	816	—	—	816	106	Level 3
July 2023 Notes[1]	1,534	—	—	1,534	202	Level 3
August 2023 Notes[1]	1,033	—	—	1,033	136	Level 3
September 2023 Notes[1]	2,945	—	—	2,945	384	Level 3
Totals	$ 131,337	$ (27)	$ 6,064	$ 137,374	$ 14,731	N/A

(1) These liabilities are/were carried at fair value in the consolidated balance sheets. As such, the principal and accrued interest was included in the determination of fair value. The related debt issuance costs were expensed.

(2) The Baker Notes principal amount includes $24.9 million and $13.7 million of interest paid in-kind as of December 31, 2024 and 2023, respectively.

(3) The Adjuvant Notes are recorded in the consolidated balance sheets at their net carrying amount which includes principal and accrued interest, net of unamortized issuance costs.

The following tables summarize the Company's derivative liabilities as of December 31, 2024 and 2023 as discussed in Note 8 – Convertible and Redeemable Preferred Stock and Stockholders' Deficit (in thousands):

	Fair Value		
	December 31, 2024	December 31, 2023	Leveling
Purchase rights	$ 1,359	$ 1,926	Level 3
Total derivative liabilities	$ 1,359	$ 1,926	

Change in Fair Value of Level 3 Financial Liabilities

The following tables summarize the changes in Level 3 financial liabilities related to Baker Notes and SSNs measured at fair value on a recurring basis for the year ended December 31, 2024 (in thousands):

	Baker Notes (Assigned to Future Pak; (Note 4))	Total SSNs (Note 4)	Total
Balance at December 31, 2023	$ 13,510	$ 1,221	$ 14,731
Balance at issuance	24,670	—	24,670
Extinguishment/conversion	(25,790)	(52)	(25,842)
Payments	(509)	—	(509)
Change in fair value presented in the Consolidated Statements of Comprehensive Operations	1,920	4	1,924
Balance at December 31, 2024	$ 13,801	$ 1,173	$ 14,974

The following tables summarize the changes in Level 3 financial liabilities related to Baker Notes and SSNs measured at fair value on a recurring basis for the year ended December 31, 2023 (in thousands):

	Baker Notes	Total SSNs (Note 4)	Total
Balance at December 31, 2022	$ 39,260	$ 156	$ 39,416
Balance at issuance	26,960	220	27,180
Payments	(1,154)	—	(1,154)
Extinguishment	(26,682)	—	(26,682)
Change in fair value presented in the Consolidated Statements of Operations	(1,214)	(1)	(1,215)
Change in fair value presented in the Consolidated Statements of Comprehensive Operations	(23,660)	846	(22,814)
Balance at December 31, 2023	$ 13,510	$ 1,221	$ 14,731

The following table summarizes the changes in Level 3 financial liabilities related to derivative liabilities measured at fair value on a recurring basis for the year ended December 31, 2024 (in thousands):

	Purchase Rights	Derivative Liabilities Total
Balance at December 31, 2023	$ 1,926	$ 1,926
Balance at issuance	3,300	3,300
Exercises	(169)	(169)
Change in fair value presented in the Consolidated Statements of Operations	(3,698)	(3,698)
Balance at December 31, 2024	$ 1,359	$ 1,359

The following table summarizes the changes in Level 3 financial liabilities related to derivative liabilities measured at fair value on a recurring basis for the year ended December 31, 2023 (in thousands):

	April and June 2020 Baker Warrants	May 2022 Public Offering Common Warrants	June 2022 Baker Warrants	December 2022 Warrants	February and March 2023 Warrants	Purchase Rights	Derivative Liabilities Total
Balance at December 31, 2022	$ 1	$ 303	$ 170	$ 107	$ —	$ 1,095	$ 1,676
Balance at issuance	—	—	—	—	6	5,556	5,562
Exercises	—	(7)	—	—	—	(424)	(431)
Change in fair value presented in the Consolidated Statements of Operations	(1)	(295)	(169)	(107)	(6)	(4,301)	(4,879)
Reclassified to equity	—	(1)	(1)	—	—	—	(2)
Balance at December 31, 2023	$ —	$ —	$ —	$ —	$ —	$ 1,926	$ 1,926

Valuation Methodology

Baker Notes

From the third quarter of 2022 through the second quarter of 2023, the fair value of the Baker Notes issued, as described in Note 4 – Debt, and subsequent changes in fair value recorded at each reporting date, was determined by estimating its repurchase price or recoverable amount based on a scenario-based approach. The recoverable amount was estimated based on the fair value of the Market Value of Invested Capital (MVIC) of the Company. Specifically, an adjusted net asset value method was used to determine the net recoverable value of the Company as of each valuation date, including an estimate of the fair value of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty and discount rates.

Starting in the third quarter of 2023, the fair value of the Baker Notes is determined using a Monte Carlo simulation-based model. The Monte Carlo simulation was used to take into account several embedded features and factors, including the exercise of the repurchase right, the Company's future revenues, meeting certain debt covenants, the maturity term of the note and dissolution. For the dissolution scenario, the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair value of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty (5.0%) and discount (15.0%) rates.

The fair value of the Baker Notes is subject to uncertainty due to the assumptions that are used in the Monte Carlo simulation-based model. These factors include but are not limited to the Company's future revenue, the probability and timing of the exercise of the repurchase right, and expectations regarding potential dissolution. The fair value of the Baker Notes is sensitive to these estimated inputs made by management that are used in the calculation.

SSNs

The fair values of the SSNs issued, as described in Note 4 – Debt, were determined by estimating the fair value of the MVIC of the Company on a going-concern basis. This was estimated using forms of the cost and market approaches. In the cost approach, an adjusted net asset value method was used to determine the net recoverable value of the Company, including an estimate of the fair value of the Company's intellectual property. The estimated fair value of the Company's intellectual property was valued using a relief from royalty method which required management to make significant estimates and assumptions related to forecasts of future revenue, and the selection of the royalty and discount rates. The guideline public company method served as another valuation indicator. In this form of the market approach, comparable market revenue multiples were selected and applied to the Company's forward revenue forecast to ultimately derive a MVIC indication. An option-pricing model (OPM) was then applied to value the SSNs by allocating the estimated MVIC through the Company's capital structure including the more senior notes payoff in a hypothetical exit event. Under the OPM, each debt or equity class is modeled as a call option

with a distinct claim on the total value of the Company. The option's exercise price is based on the Company's total value available for each participating security holder. By constructing a series of options in which the exercise price is set at incremental levels of value, which correspond to the value necessary for each level of equity to participate, we determined the incremental option value of each series. When multiplied by the percentage of ownership of each equity class participating under that series, the result is the incremental value allocated to each class under that series. The annual valuation adjustments for the year ended December 31, 2023 were recorded as an $0.8 million change in fair value of financial instruments attributed to credit risk change in the consolidated statements of comprehensive operations. Such adjustment was immaterial for the year ended December 31, 2024.

Purchase Rights

The Adjuvant Purchase Rights and the May Note Purchase Rights (collectively Purchase Rights) are recorded as derivative liabilities in the consolidated balance sheets. The Purchase Rights are valued using an OPM, like a Black-Scholes Methodology, with changes in the fair value being recorded in the consolidated statements of operations. The assumptions used in the OPM are considered level 3 assumptions and include, but are not limited to, the market value of invested capital, the cumulative equity value of the Company as a proxy for the exercise price and the expected term the Purchase Rights will be held prior to exercise and a risk-free interest rate.

Warrants

Warrants previously classified as liabilities were reclassified as equity instruments during the second quarter of 2023 as a result of the Reverse Stock Split. The Company will continue to re-evaluate the classification of its warrants at the close of each reporting period to determine their proper balance sheet classification. The warrants are valued using an OPM based on the applicable assumptions, which include the exercise price of the warrants, time to expiration, expected volatility of our peer group, risk-free interest rate, and expected dividends. The assumptions used in the OPM are considered level 3 assumptions and include, but are not limited to, the market value of invested capital, the cumulative equity value of the Company as a proxy for the exercise price, the expected term the warrants will be held prior to exercise, a risk-free interest rate, and probability of change of control event. Additionally, because the warrants are re-priced under certain provisions in the agreements, at each re-pricing event the Company must value the warrants using a Black-Scholes model immediately prior to and immediately following the re-pricing event. The incremental fair value is recorded as an increase to accumulated deficit and additional paid-in-capital, in accordance with ASC 470.

The Company recorded a $0.2 million adjustment into accumulated deficit in the consolidated statement of convertible and redeemable preferred stock and stockholders' deficit during the year ended December 31, 2023 in accordance with ASC 260, *Earnings per Share* (ASC 260), related to the down round features triggered due to reset of exercise price for equity classified warrants. No such adjustment was made in the year ended December 31, 2024.

SOLOSEC Asset Acquisition Intangible Asset and Contingent Liabilities

The total consideration for the SOLOSEC asset acquisition included an up-front payment (paid at closing), sales-based payments to be paid over the next 15 years (the Earnout Term) in each year in which SOLOSEC adjusted net revenue is over a specified threshold, a $10.0 million one-time payment once the cumulative SOLOSEC adjusted net revenues reach $100 million, and assumption of quarterly royalty payments based on SOLOSEC net revenue. As discussed in Note 7 – Commitments and Contingencies, the fair value of the consideration is attributed to the SOLOSEC product line and was therefore recorded as an intangible asset.

The fair value of the total consideration, including cash paid and future sales-based payments, is determined using a Monte Carlo simulation model, which assumes the Company's revenue follows a geometric Brownian motion. Using specific revenue factors, including expected growth, risk adjustments, and revenue volatility, future revenues were simulated through the Earnout Term to assess whether sales-based payments would be triggered in each relevant period, as stipulated by the SOLOSEC Asset Purchase Agreement. The average output of the Monte Carlo simulations for each period provides the expected payment value, which is then discounted to its present value to derive the fair value of future sales-based payments and recorded as contingent liabilities. The discount rate is based on (i) the risk-free rate, plus (ii) a credit spread reflecting the Company's interest-bearing debt, (iii) an additional spread to account for credit migration as of the valuation date, and (iv) a further incremental spread to reflect that the contingent liabilities is subordinated obligations relative to the Company's other debt obligations.

The fair value of the SOLOSEC contingent liabilities is subject to uncertainty due to the assumptions made by management that are used in the Monte Carlo simulation-based model. These factors include the estimated future SOLOSEC net revenue, the risk-neutral revenue calculation and simulation assumptions, payment timing, and the discount rate.

The fair value of the SOLOSEC contingent liabilities will be updated at each reporting period using the methodology described above. Any changes to the fair value will be recorded as an adjustment to the carrying value of both the contingent liabilities and the SOLOSEC IP intangible asset as per ASC 323, *Investments – Equity Method and Joint Ventures* (ASC 323). Periodic intangible amortization will also be prospectively updated based on the new fair value of the SOLOSEC IP.

7. Commitments and Contingencies

Asset Acquisition and Contingent Liabilities

SOLOSEC

The Company reviewed the SOLOSEC acquisition in accordance with ASC 805, *Business Combinations* (ASC 805), including applying the screen test. In accordance with ASC 805, the Company engaged a third-party valuation specialist to estimate the fair value for the SOLOSEC IP as well as for the total consideration. Per the valuation, the fair value of the SOLOSEC IP exceeded 90% of the total consideration, which indicates that the screen test failed. Further, the Company did not acquire any substantive processes, which indicates that the acquisition is an asset acquisition rather than a business combination. The Company recorded the fair value of the future sales-based payments as contingent liabilities in accordance with ASC 450, *Contingencies* (ASC 450) and the fair value of the total consideration plus the transaction costs as an intangible asset in accordance with ASC 350, *Intangibles* (ASC 350).

Per the Transition Services Agreement (TSA) entered into in conjunction with the SOLOSEC asset acquisition, the Company is committed to purchasing finished goods inventory from the seller through a transition period ending in November 2026 at a pre-defined unit price. The total expected commitment is approximately $3.5 million; however, the quantities purchased can be negotiated if both parties agree. The Company concluded that the inventory purchase commitment does not meet the definition of derivatives under ASC 815. During the year ended December 31, 2024, there were approximately $0.3 million in purchases under this commitment. The Company expects to purchase approximately $1.4 million in the year ended December 31, 2025, and $1.7 million in the year ended December 2026 under this commitment. The TSA also requires the seller to provide transitional support services until the Company can fully establish SOLOSEC operations; the Company is obligated to pay an immaterial amount quarterly for these services.

The Company is also obligated to pay a quarterly royalty in amounts equal to a certain percentage of the SOLOSEC net revenue, beginning July 14, 2024. There are no minimum quarterly or annual royalty payment amounts. Such royalty costs were approximately $0.1 million for the year ended December 31, 2024. As of December 31, 2024, an immaterial amount related to the SOLOSEC royalty was included in contingent liabilities in the consolidated balance sheet.

Operating Leases

Fleet Lease

In December 2019, the Company and Enterprise FM Trust (the Lessor) entered into a Master Equity Lease Agreement whereby the Company leases vehicles to be delivered by the Lessor from time to time with various monthly costs depending on whether the vehicles are delivered for a term of 24 or 36 months, commencing on each corresponding delivery date. The leased vehicles are for use by eligible employees of the Company's commercial operations team. As of December 31, 2024, there were a total of 19 leased vehicles. The Company determined that the leased vehicles are accounted for as operating leases under ASC 842, *Leases* (ASC 842).

In September 2022, the Company extended the lease term of the vehicles with a term of 24 months by an additional 12 months. In May and June 2024, the Company again extended the lease term by an additional 12 months

for vehicles with initial terms of 24 months. In both instances, the Company determined that such extensions are accounted for as modifications; the Company reassessed the lease classification and the incremental borrowing rate on the modification dates and accounted for these modifications accordingly.

2020 Lease and the First Amendment

On October 3, 2019, the Company entered into an office lease for approximately 24,474 square feet (the High Bluff Premises) pursuant to a non-cancelable lease agreement (the 2020 Lease). The 2020 Lease commenced on April 1, 2020 with an expiry of September 30, 2025, unless terminated earlier in accordance with its terms. The Company provided the landlord with a $0.8 million security deposit in the form of a letter of credit for the High Bluff Premises.

On April 14, 2020, the Company entered into the first amendment to the 2020 Lease for an additional 8,816 rentable square feet of the same office location (the Expansion Premises), which commenced on September 1, 2020 with an expiry of September 30, 2025. The Company provided an additional $0.05 million in a letter of credit for the Expansion Premises.

On March 20, 2023, the Company received a notice of default from its landlord for failing to timely pay March 2023 rent, resulting in a breach under the agreement. As a result, the Company's letter of credit in the amount of $0.8 million, in restricted cash, was recovered by the landlord. In June 2023, the Company reached a settlement with the landlord. As a result of such settlement, the Company reversed its associated remaining ROU assets of $3.3 million and lease liabilities of $4.2 million and recognized a gain of $0.2 million.

2022 Sublease

On May 27, 2022, the Company entered into a sublease agreement with AMN Healthcare, Inc. (AMN), pursuant to which the Company agreed to sublease 16,637 rentable square feet of the High Bluff Premises to AMN for a term commencing on June 15, 2022 and ending coterminous with the 2020 Lease on September 30, 2025, in exchange for the sum of approximately $0.1 million per month, subject to an annual 3.5% increase each year. The sublease was terminated along with the settlement of the 2020 Lease in June 2023. Gross sublease income $0.3 million for the year ended December 31, 2023.

		Years Ended December 31,	
Lease Cost (in thousands)	**Classification**	**2024**	**2023**
Operating lease expense	Research and development	$ 3	$ 127
Operating lease expense	Selling and marketing	175	360
Operating lease expense	General and administrative	11	339
Total		$ 189	$ 826

Lease Term and Discount Rate	**December 31, 2024**	**December 31, 2023**
Weighted Average Remaining Lease Term (in years)	0.77	0.75
Weighted Average Discount Rate	12%	12%

Maturity of Operating Lease Liabilities (in thousands)	**December 31, 2024**
Year ending December 31, 2025	84
Year ending December 31, 2026	8
Total lease payments	92
Less imputed interest	(3)
Total	$ 89

	Years Ended December 31,	
Other information (in thousands)	**2024**	**2023**
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash outflows in operating leases	$ 283	$ 1,524

Other Contractual Commitments

In November 2019, the Company entered into a supply and manufacturing agreement with a third-party to manufacture PHEXXI, with potential to manufacture other product candidates, in accordance with all applicable current good manufacturing practice regulations. There were approximately $2.0 million in purchases under the supply and manufacturing agreement for the year ended December 31, 2024, and no such purchases during the year ended December 31, 2023.

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. As of December 31, 2024, there were no other claims or actions pending against the Company which management believes have a probable, or a reasonably possible, probability of an unfavorable outcome other than the TherapeuticsMD dispute as described below.

During the year ended December 31, 2023, the Company settled a portion of its trade payables with numerous vendors, which resulted in a $2.1 million reduction in trade payables. However, the Company may receive trade payable demand letters from its vendors that could lead to potential litigation. As of December 31, 2024, approximately 86% of the Company's trade payables were greater than 90 days past due.

On December 14, 2020, a trademark dispute captioned TherapeuticsMD, Inc. v Evofem Biosciences, Inc., was filed in the U.S. District Court for the Southern District of Florida against the Company, alleging trademark infringement of certain trademarks owned by TherapeuticsMD under federal and state law (Case No. 9:20-cv-82296). On July 18, 2022, the Company settled the lawsuit with TherapeuticsMD, with certain requirements which were required to be performed by July 2024 (the Settlement Timeline), including changing the name of PHEXXI. The Company failed to meet the terms of the settlement agreement by the Settlement Timeline. As a result, the Company is currently working with TherapeuticsMD on resolution of this issue, including having filed an application for a new name in September 2024, which was conditionally approved by the FDA in early 2025. In accordance with ASC 450, the Company has accrued $0.8 million, the present value of the probable settlement amounts payable over the next several years, as a component of contingent liabilities in the consolidated balance sheet.

As of March 14, 2025, the Company has received five letters from purported Company stockholders demanding that the Company's board of directors take action on behalf of the Company to remedy allegations regarding the Company's disclosures to shareholders with respect to various alleged omissions of material information in its preliminary proxy statement filed September 23, 2024 relating to the Amended and Restated Merger Agreement, as amended, and one demand made under Section 220 of the DGCL for books and records related to the transaction and disclosures in the proxy statement. The Company believes all such demands are without merit.

On September 27, 2024, Future Pak, LLC, as agent for the Purchasers (in such capacity, the Designated Agent) provided a Notice of Event of Default and Reservation of Rights (the Notice of Default) relating to the Securities Purchase and Security Agreement dated April 23, 2020, as amended (SPA), by and among the Company, Designated Agent, as certain guarantors and the purchasers (each a Purchaser and collectively Purchasers). The Notice of Default claims that by entering into arrangements to repay certain existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the SPA. According to the Notice of Default, the Designated Agent has accelerated repayment of the outstanding principal balance owed by the Company under the Securities Purchase Agreement. If all Purchasers exercise the Section 5.7 Option (as defined below), the repurchase price would be equal to $106.8 million. Pursuant to Section 5.7(b) of the SPA, upon the occurrence of an Event of Default, each Purchaser may elect, at its option, to require the Company to repurchase the Note held by such Purchaser (or any portion thereof) at a repurchase price equal to two times the sum of the outstanding principal balance and all accrued and unpaid interest thereon, due within three business days after such Purchaser delivers a notice of such election (the Section 5.7 Option).

On October 27, 2024, the Designated Agent sent an amended and supplemented notice to the Notice of Default which adds additional claims of default based on the Company's current repayment agreements of existing obligations, including obligations owed to the U.S. Department of Health and Human Services, an Event of Default has occurred under Section 9.1(e) of the Securities Purchase and Security Agreement dated April 23, 2020, as amended. Furthermore, the Amended Notice stated that, because the events of default described in the Amended

Notice of Default are not the certain prior events of default listed in the Forbearance Agreement (the Specified Defaults), the Designated Agent and the holders of the senior secured promissory notes described in the SPA thereby provided notice to the Company that the Forbearance Agreement is terminated as of October 27, 2024. The Company strongly disagrees with the Designated Agent's claim that any Event of Default has occurred.

On November 8, 2024, the Designated Agent sent an amended and supplemented notice to the Notices (the Third Amended Notice of Default) which adds new claims of default based on (i) the Company's failure to maintain a cash position of $1.0 million or greater, as required under Section 5(b) of the Forbearance Agreement (ii) the Company's failure to deliver financial and operating reports in accordance with the timeline required under the Section 8.1(n) of the Baker Stock Purchase Agreement, and (iii) to clarify the outstanding balance under the notes of the Baker Stock Purchase Agreement plus all accrued and unpaid interest thereon, in the sum of approximately is $107.0 million as opposed to the Repurchase Price as defined in the Fourth Amendment. The Company intends to vigorously contest any attempt by the Designated Agent and the Purchasers to exercise their default rights and remedies under the SPA.

Intellectual Property Rights

In 2014, the Company entered into an amended and restated license agreement (the Rush License Agreement) with Rush University Medical Center (Rush University) pursuant to which Rush University granted the Company an exclusive, worldwide license of certain patents and know-how related to its multipurpose vaginal pH modulator technology. For the U.S. patent that the Company licensed from Rush University, multiple Orders Granting Interim Extension (OGIEs) were received from the United States Patent and Trademark Office (USPTO), extending the expiration of this patent to March 6, 2025. No further OGIEs have been received and the patent is believed to be expired. PHEXXI remains protected in the U.S. by four additional *Orange Book* patents solely-owned by Evofem.

Pursuant to the Rush License Agreement, the Company was obligated to pay Rush University an earned royalty based upon a percentage of net sales in the range of mid-single digits until the expiration of this patent. In September 2020, the Company entered into the first amendment to the Rush License Agreement, pursuant to which the Company was also obligated to pay a minimum annual royalty amount of $0.1 million to the extent the earned royalties do not equal or exceed $0.1 million commencing January 1, 2021. Such royalty costs, included in cost of goods sold, were $0.8 million and $0.7 million for the years ended December 31, 2024 and 2023 respectively. As of December 31, 2024 and 2023, approximately $2.0 million and $1.1 million were included in accrued expenses in the consolidated balance sheets. No further royalties will be due to Rush University after the patent expiration.

8. Convertible and Redeemable Preferred Stock and Stockholders' Deficit

Warrants

In April and June 2020, pursuant to the Baker Bros. Purchase Agreement, as discussed in Note 4 – Debt, the Company issued warrants to purchase up to 2,732 shares of common stock in a private placement at an exercise price of $4,575 per share. The Second Baker Amendment provides that the exercise price of the Baker Warrants will equal the conversion price of the Baker Notes. The exercise price of the Baker warrants was $0.0154 per share as of December 31, 2024.

In May 2022, the Company completed an underwritten public offering (the May 2022 Public Offering) which included the issuance of common warrants to purchase 362,640 shares of common stock at a price to the public of $93.75 and the issuance of common warrants to purchase 205,360 shares of common stock at a price to the public of $93.63 (the May 2022 Common Stock Warrants). The May 2022 Common Stock Warrants were exercisable beginning on May 24, 2022 and have a five-year term. Due to features in the May 2022 Common Stock Warrants, including dilution adjustments requiring strike price resets, additional warrants have been periodically issued as required in the warrant agreements. As of December 31, 2024 there were 894,194 May 2022 Common Stock Warrants outstanding with an exercise price of $0.0154.

In June 2022, as required by the Second Baker Amendment, the Company issued the June 2022 Baker Warrants to purchase up to 582,886 shares of the Company's common stock, $0.0001 par value per share. The June 2022 Baker Warrants have an exercise price of $93.75 per share and a five-year term and were exercisable beginning June 28, 2022. The June 2022 Baker Warrants also contain customary 4.99% and 19.99% limitations on exercise provisions. The exercise price and number of shares issuable upon exercise of the June 2022 Baker Warrants is subject

to adjustment for certain dilutive issuances, stock splits and similar recapitalization transactions. The exercise price of these warrants was $0.0154 per share as of December 31, 2024.

In February, March, April, July, August, and September 2023, pursuant to the SSNs as discussed in Note 4 – Debt, the Company issued warrants to purchase up to 1,152,122 shares of the Company's common stock at an exercise price of $2.50 per share, up to 2,615,383 shares of the Company's common stock at an exercise price of $1.25 per share, and up to 22,189,349 shares of the Company's common stock at an exercise price of $0.13 per share. The exercise price of these warrants was $0.0154 per share as of December 31, 2024.

On December 21, 2023, warrants to purchase up to 9,972,074 shares of the Company's common stock were exchanged for 613 shares of the Company's Series F-1 Shares.

As of December 31, 2024, warrants to purchase up to 20,807,539 shares of the Company's common stock remain outstanding at a weighted average exercise price of $2.42 per share. In accordance with ASC 815, certain warrants previously classified as equity instruments were determined to be liability classified (the Reclassified Warrants) due to the Company having an insufficient number of authorized shares as of December 31, 2022; however, the impacted warrants were reclassified back to as equity instruments during the second quarter of 2023 as a result of the May 2023 Reverse Stock Split. During the first quarter of 2024, the Company obtained waivers from a majority of the convertible instrument holders, removing the requirement for shares to be reserved for conversion of their instruments, which will prevent the instruments from needing to be liability classified due to an insufficient number of authorized shares going forward. The Company will continue to re-evaluate the classification of its warrants at the close of each reporting period to determine the proper balance sheet classification for them. These warrants are summarized below:

Type of Warrants	Underlying common stock to be Purchased	Exercise Price	Issue Date	Exercise Period
Common Warrants.....	451	$ 14,062.50	May 24, 2018	May 24, 2018 to May 24 2025
Common Warrants.....	888	$ 11,962.50	April 11, 2019	October 11, 2019 to April 11, 2026
Common Warrants.....	1,480	$ 11,962.50	June 10, 2019	December 10, 2019 to June 10, 2026
Common Warrants.....	1,639	$ 0.0154	April 24, 2020	April 24, 2020 to April 24, 2025
Common Warrants.....	1,092	$ 0.0154	June 9, 2020	June 9, 2020 to June 9, 2025
Common Warrants.....	8,003	$ 735.00	January 13, 2022	March 1, 2022 to March 1, 2027
Common Warrants.....	8,303	$ 897.56	March 1, 2022	March 1, 2022 to March 1, 2027
Common Warrants.....	6,666	$ 309.56	May 4, 2022	May 4, 2022 to May 4, 2027
Common Warrants.....	894,194	$ 0.0154	May 24, 2022	May 24, 2022 to May 24, 2027
Common Warrants.....	582,886	$ 0.0154	June 28, 2022	May 24, 2022 to June 28, 2027
Common Warrants.....	49,227	$ 0.0154	December 21, 2022	December 21, 2022 to December 21, 2027
Common Warrants.....	130,461	$ 0.0154	February 17, 2023	February 17, 2023 to February 17, 2028
Common Warrants.....	258,584	$ 0.0154	March 20, 2023	March 20, 2023 to March 20, 2028
Common Warrants.....	369,231	$ 0.0154	April 5, 2023	April 5, 2023 to April 5, 2028
Common Warrants.....	349,463	$ 0.0154	July 3, 2023	July 3, 2023 to July 3, 2028
Common Warrants.....	615,384	$ 0.0154	August 4, 2023	August 4, 2023 to August 4, 2028
Common Warrants.....	12,721,893	$ 0.0154	September 27, 2023	September 27, 2023 to September 27, 2028
Prefunded Common Warrants	4,807,694	$ 0.0010	September 27, 2023	September 27, 2023 to September 27, 2028
Total.....	20,807,539			

Preferred Stock

Effective December 15, 2021, the Company amended and restated its certificate of incorporation, under which the Company is currently authorized to issue up to 5,000,000 shares of total preferred stock, including the authorized convertible and redeemable preferred stock designated for Series B-1 and B-2, Series C, Series E-1, and Series F-1, and nonconvertible and redeemable preferred stock (Series D), par value $0.0001 per share.

Convertible and Redeemable Preferred Stock

On August 7, 2023, the Company filed a Certificate of Designation of Series E-1 Convertible Preferred Stock (Certificate of Designation), par value $0.0001 per share (the Series E-1 Shares). An aggregate of 2,300 shares was authorized. The Series E-1 Shares are convertible into shares of common stock at a conversion price of $0.40 per share and are both counted toward quorum on the basis of and have voting rights equal to the number of shares of common stock into which the Series E-1 Shares are then convertible. The Series E-1 Shares are senior to all common stock with respect to preferences as to dividends, distributions and payments upon a dissolution event. In the event of a liquidation event, the Series E-1 Shares are entitled to receive an amount per share equal to the Black Scholes Value as of the liquidation event plus the greater of 125% of the conversion amount (as defined in the Certificate of Designation) and the amount the holder of the Series E-1 Shares would receive if the shares were converted into common stock immediately prior to the liquidation event. If the funds available for liquidation are insufficient to pay the full amount due to the holders of the Series E-1 Shares, each holder will receive a percentage payout. The Series E-1 Shares are entitled to dividends at a rate of 10% per annum or 12% upon a triggering event. Dividends are payable in shares of common stock and may, at the Company's election, be capitalized and added to the principal monthly. The Series E-1 Shares also have a provision that allows them to be converted to common stock at a conversion rate equal to the Alternate Conversion Price (as defined in the Certificate of Designation) times the number of shares subject to conversion times the 25% redemption premium in the event of a Triggering Event (as defined in the Certificate of Designation) such as in a liquidation event. The Series E-1 Shares are mandatorily redeemable in the event of bankruptcy. Series E-1 Shares rank higher than all shares of the Company's common stock and Series F-1 Shares (defined below) with respect to the preferences as to dividends and any distributions and payments upon the liquidation, dissolution, and winding up of the Company.

On August 7, 2023, certain investors party to the December 2022 Notes and the February 2023 Notes exchanged $1.8 million total in principal and accrued interest under the outstanding convertible promissory notes for 1,800 shares of Series E-1 Shares (the August 2023 Preferred Stock Transaction). Per the Series E-1 Convertible Preferred Stock Certificate of Designation, the conversion rate can also be adjusted in several future circumstances, such as on certain dates after the exchange date and upon the issuance of additional convertible securities with a lower conversion rate or in the instance of a Triggering Event. As such, the conversion price as of December 31, 2023 was adjusted to $0.0615 per share. The Series E-1 Shares are classified as mezzanine equity within the consolidated balance sheets in accordance with ASC 480 because of a fixed 25% redemption premium upon a Triggering Event and no mandatory redemption feature. During the year ended December 31, 2023, $1.8 million was recorded as an increase to additional paid-in-capital for the preferred shares in the consolidated statement of convertible and redeemable preferred stock and stockholders' deficit related to the August 2023 Preferred Stock Transaction and a dividend of $0.1 million was recorded as an increase to the number of Series E-1 Shares outstanding. A deemed dividend of $0.1 million was recorded as an increase to the number of Series E-1 Shares outstanding in the year ended December 31, 2024.

On December 11, 2023, the Company filed a Certificate of Designation of Series F-1 Convertible Preferred Stock (F-1 Certificate of Designation), par value $0.0001 per share (the Series F-1 Shares). An aggregate of 95,000 shares was authorized. The Series F-1 Shares are convertible into shares of common stock at a conversion price of $0.0635 per share and do not have the right to vote on any matters presented to the holders of the Company's common stock. The Series F-1 Shares are senior to all common stock and subordinate to the Series E-1 Shares with respect to preferences as to distributions and payments upon a dissolution event. In the event of a liquidation event, the Series F-1 Shares are entitled to receive an amount per share equal to the Black Scholes Value as of the liquidation event plus the greater of 125% of the conversion amount (as defined in the F-1 Certificate of Designation) and the amount the holder of the Series F-1 Shares would receive if the shares were converted into common stock immediately prior to the liquidation event. If the funds available for liquidation are insufficient to pay the full amount due to the holders of the Series F-1 Shares, each holder will receive a percentage payout. The Series F-1 Shares are not entitled to dividends. The Series F-1 Shares also have a provision that allows them to be converted to common stock at a conversion rate equal to the Alternate Conversion Price (as defined in the F-1 Certificate of Designation) times the number of shares subject to conversion times the 25% redemption premium in the event of a Triggering Event (as defined in the F-1 Certificate of Designation) such as in a liquidation event. The Series F-1 Shares are mandatorily redeemable in the event of bankruptcy. In June 2024, the Required Holders, as defined in the F-1 Certificate of Designation, approved an amended and restated certificate of designation (the Amended F-1 Certificate of Designation) to the Company's certificate of designation designating the rights, preferences and limitations of the

Company's Series F-1 Shares. Series F-1 Shares rank higher than all shares of the Company's common stock with respect to the preferences as to dividends and any distributions and payments upon the liquidation, dissolution, and winding up of the Company. The Amended F-1 Certificate of Designation provides for the removal of the conversion price adjustment provisions previously included and changed the conversion price to $0.0154.

On December 21, 2023, the Company issued a total of 22,280 Series F-1 Shares to certain investors, including 613 shares exchanged for warrants to purchase up to 9,972,074 shares of the Company's common stock and 21,667 shares to exchange a partial value of the outstanding purchase rights. The holders of the Series F-1 Shares immediately exchanged their Series F-1 Shares to Aditxt's Series A-1 preferred stock, and as a result, Aditxt currently holds the Company's Series F-1 Shares.

During 2024, as part of the funding requirement by Aditxt pursuant to the A&R Merger Agreement, the Company issued a total of 4,000 Series F-1 Shares to Aditxt for an aggregate purchase price of $4.0 million. Additionally, Aditxt also paid the Company $1.0 million in May 2024 in conjunction with signing the Reinstatement and Fourth Amendment to the Merger Agreement. The 4,000 Series F-1 Shares were recorded at fair value with the variance between the immaterial fair value and the total $5.0 million cash received being recorded as additional paid-in-capital in the consolidated balance sheet as of December 31, 2024.

Nonconvertible and Redeemable Preferred Stock

On December 16, 2022, the Company filed a Certificate of Designation of Series D Non-Convertible Preferred Stock, par value $0.0001 per share (the Series D Preferred Shares). An aggregate of 70 shares was authorized; these shares were not convertible into shares of common stock, had limited voting rights equal to 1% of the total voting power of the then-outstanding shares of common stock entitled to vote, were not entitled to dividends, and were required to be redeemed by the Company once its shareholders approved a reverse split, as described in the Certificate of Designation. All 70 shares of the Series D Preferred were subsequently issued in connection with the December 2022 Securities Purchase Agreement as discussed in Note 4 – Debt. The Series D Preferred Shares, which were classified as liabilities as of December 31, 2022, were redeemed in July 2023.

Common Stock

Effective September 14, 2023, the Company further amended its amended and restated certificate of incorporation to increase the number of authorized shares of common stock to 3,000,000,000 shares.

Purchase Rights

On September 15, 2022, the Company entered into certain exchange agreements with the Adjuvant Purchasers and the May 2022 Notes Purchasers to exchange, upon request, the Purchase Rights for an aggregate of 942,080 shares of the Company's common stock. The number of right shares for each Purchase Right is initially fixed at issuance, but subject to certain customary adjustments for certain dilutive Company equity issuances until the second anniversary of issuance. These Purchase Rights expire on June 28, 2027. Refer to Note 6 – Fair Value of Financial Instruments for the accounting treatment of the Purchase Rights. In 2023, the Company subsequently signed an additional agreement with the holders of the Purchase Rights upon which the total aggregate value of the Purchase Rights is fixed at $24.7 million, to be paid in a variable number of shares based on the current exercise price.

In connection with the SSNs issuances, during the years ended December 31, 2024 and 2023, the Company increased the number of outstanding Purchase Rights by 1,133,836,815 and 380,821,882, respectively, due to the reset of its exercise price, recorded a $3.3 million and $5.6 million loss on issuance of financial instruments in the Consolidated Statements of Operations, respectively. The exercise price will also be adjusted if any other convertible instruments have price resets. In addition, the Company issued 69,875,000 and 16,534,856 shares of common stock upon the exercises of certain Purchase Rights during the years ended December 31, 2024 and 2023, respectively.

On December 21, 2023, the Company issued 21,667 shares of the Series F-1 Shares in exchange for a partial value of certain purchase rights, as described above.

As of December 31, 2024, Purchase Rights of 1,519,148,899 shares of the Company's common stock remained outstanding.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance, on a one-for-one basis, is as follows in common equivalent shares as of December 31, 2024:

Common stock issuable upon the exercise of stock options outstanding	3,372
Common stock issuable upon the exercise of common stock warrants	10,598,201
Common stock available for future issuance under the 2019 ESPP	509
Common stock available for future issuance under the Amended and Restated 2014 Plan	5,789
Common stock available for future issuance under the Amended Inducement Plan	609
Common stock reserved for the exercise of purchase rights	741,490,642
Common stock reserved for the conversion of convertible notes	161,791,329
Common stock reserved for the conversion of series E-1 preferred stock	44,294,716
Total common stock reserved for future issuance[(1)]	958,185,167

(1) The common stock reserved for future issuances in the table above include only the shares that must be legally reserved based on the applicable instruments' agreements whereas the total common stock reserved for future issuance in Note 2 – Summary of Significant Accounting Policies includes all potentially dilutive securities that are not included in the diluted EPS as per U.S. GAAP.

9. Stock-based Compensation

Equity Incentive Plans

No equity awards were issued in either year presented. The following table summarizes stock-based compensation expense related to stock options granted to employees, non-employee directors and consultants included in the consolidated statements of operations as follows (in thousands):

	Years Ended December 31,	
	2024	2023
Research and development	$ 33	$ 117
Sales and marketing	91	188
General and administrative	723	884
Total	$ 847	$ 1,189

The 2012 Equity Incentive Plan (the 2012 Plan) provides for the issuance of RSAs, RSUs, 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. No further awards may be issued under the 2012 Plan.

On September 15, 2014, the Company's board of directors adopted, and stockholders approved, the 2014 Equity Incentive Plan (the 2014 Plan), which was amended and restated on each of May 2018 and February 26, 2019 (the Amended and Restated 2014 Plan). Per the terms of the Amended and Restated 2014 Plan, the shares reserved will automatically increase on each January 1 through 2024, by an amount equal to the smaller of (i) 4% of the number of shares of common stock issued and outstanding on the immediately preceding December 31; or (ii) an amount determined by our board of directors. There was no increase to the shares reserved under the plan on January 1, 2023 or 2024. No further awards may be issued under the 2014 Plan as it expired in September 2024.

On July 24, 2018, upon the recommendation by the Compensation Committee, the Company's board of directors adopted the Evofem Biosciences, Inc. 2018 Inducement Equity Incentive Plan (the Inducement Plan). Under the Inducement Plan, as amended, the number of authorized shares total 666 shares. The only persons eligible to receive awards under the Inducement Plan are individuals who satisfy the standards for inducement grant recipients under Nasdaq Marketplace Rule 5635(c)(4), 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.

Stock Options

The following table summarizes share option activity for the years ended December 31, 2024:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in Years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2023	3,747	$ 6,950.00	6.3	—
Granted	—	$ —	—	—
Exercised	—	$ —	—	—
Forfeited	(375)	$ 5,580.03	—	—
Outstanding as of December 31, 2024	3,372	$ 7,201.29	5.3	—
Options expected to vest as of December 31, 2024	3,372	$ 7,201.29	5.3	—
Options vested and exercisable as of December 31, 2024	3,206	$ 7,566.54	5.1	—

As of December 31, 2024, unrecognized stock-based compensation expense for employee stock options was approximately $0.2 million, which the Company expects to recognize over a weighted-average remaining period of 0.7 years, assuming all unvested options become fully vested.

There were no stock-based compensation awards issued for the years ended December 31, 2024 and 2023.

10. Employee Benefits

The Company has a defined contribution 401(k) plan (401(k) Plan) for all qualifying employees. Employees are eligible to participate in the plan beginning on the first day of the month following their three-month anniversary of employment. Under the terms of the 401(k) Plan, employees may make voluntary contributions as a percentage of their compensation. The Company makes a safe-harbor contribution of 3.0% of each employee's gross earnings, subject to Internal Revenue Service limitations. In the years ended December 31, 2024 and 2023, the Company made safe-harbor contributions of approximately $0.2 million in each year.

11. Income Taxes

The Company is subject to taxation in the U.S. and various states jurisdictions. Tax years since inception remain open to examination by the major taxing jurisdictions. The Company's consolidated pretax income (loss) for the years ended December 31, 2024 and 2023 were generated by domestic as follows (in thousands). There are no consolidated pretax losses generated by foreign operations for the periods indicated.

	2024	2023
United States	$ (8,860)	$ 52,996
Total	$ (8,860)	$ 52,996

The income tax provision for the years ended December 31, 2024 and 2023 consisted of the following (in thousands):

	2024	2023
United States	$ —	$ —
State	—	(17)
Total current tax provision	—	(17)
Total deferred tax provision	—	—
Total	$ —	$ (17)

The reconciliation between the Company's effective tax rate on income (loss) before income tax and the statutory tax rate for the years ended December 31, 2024 and 2023 was as follows:

	2024	2023
Statutory rate	21.00%	21.00%
State income tax, net of federal benefit	3.24%	(0.39)%
Nondeductible expenses	(5.46)%	0.23%
Equity-based expenses	(3.16)%	3.04%
Change in fair value of purchase rights	9.93%	(1.93)%
Change in fair value of financial instruments	(6.24)%	(27.17)%
Return to provision	1.48%	0.18%
Tax credits	—%	(0.44)%
Uncertain tax positions	0.08%	0.12%
Change in valuation allowance	(20.87)%	5.37%
Effective tax rate	—%	(0.01)%

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company's net deferred tax assets arising from its taxable subsidiaries consisted of the following components as of December 31, 2024 and 2023 (in thousands):

	2024	2023
Deferred tax assets:		
Net loss carryforwards	$ 131,573	$ 130,746
Fixed assets and intangibles	302	246
Research and development capitalization	6,302	4,067
Research and development credits	2,493	6,320
Stock-based compensation	2,566	2,513
Other	3,212	1,098
Total deferred tax assets	146,448	144,990
Deferred tax liabilities		
Lease assets	(21)	(22)
Fixed assets	(12)	(156)
Other	—	(27)
Less: valuation allowance	(146,415)	(144,785)
Net deferred tax assets	$ —	$ —

In assessing the ability to realize deferred tax assets, management considers whether it is more likely than not that some portion or all the deferred tax assets will be realized. Generally, the ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Based on historical performance and future expectations, management has determined a valuation allowance is needed in respect to its ending deferred tax assets.

As of December 31, 2024, the Company had net operating loss (NOL) carryforwards for federal income tax purposes of approximately $573.9 million, which will begin to expire in 2030 if not utilized. As of December 31, 2024, the Company had NOL carryforwards in various states of approximately $226.0 million. The state carryforwards have varying expiration dates beginning in 2030.

As of December 31, 2024, the Company had federal and state research and development (R&D) tax credit carryforwards of approximately $6.4 million and $2.5 million, respectively. The federal R&D tax credits begin to expire in 2031, unless utilized, and the state credits do not expire.

For the tax years beginning on or after January 1, 2022, the Tax Cuts and Jobs Act of 2017 ("TCJA") eliminates the option to currently deduct research and development expenses and requires taxpayers to capitalize and amortize them over five years for research activities performed in the U.S. and 15 years for research activities

performed outside the U.S. pursuant to IRC Section 174. Although Congress is considering legislation that would repeal or defer this capitalization and amortization requirement, it is not certain that this provision will be repealed or otherwise modified. If the requirement is not repealed or replaced, it will decrease our tax deduction for research and development expense in future years.

The following table summarized the activity related to the Company's gross unrecognized tax benefits as of December 31, 2024 and 2023 (in thousands):

	2024	2023
Balance at the beginning of the year	$ 3,051	$ 2,988
Adjustments related to prior year tax positions	(8)	55
Increases related to current year tax positions	—	8
Balance at end of year	$ 3,043	$ 3,051

The Company recognizes a tax benefit from an uncertain tax position when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits, and uncertain income tax positions must meet a more likely than not recognition threshold to be recognized. The Company recognizes interest and penalties related to unrecognized tax benefits within the income tax expense line in the consolidated statements of operations. There were no accrued interest and penalties associated with unrecognized tax benefits as of December 31, 2024. The Company does not anticipate a significant change in its uncertain tax benefits over the next 12 months.

Management believes it is more likely than not that all significant tax positions taken to date would be sustained by the relevant taxing authorities. Furthermore, the Company has not recognized any tax benefits to date because the Company has established a full valuation allowance for its deferred tax assets due to uncertainties as to their ultimate realization.

Pursuant to Internal Revenue Code (IRC) sections 382 and 383, use of the Company's NOLs and R&D credit carryforwards may be limited if a cumulative change in ownership of more than 50.0% (by value) occurs within a rolling three-year period. The Company completed a formal Section 382 analysis through the period ending December 31, 2019, and determined it experienced ownership changes in 2010 and 2018. Accordingly, the Company has reduced its deferred tax asset for NOLs and R&D tax credits by the estimated impact of IRC sections 382 and 383 as of December 31, 2019. Any future ownership changes could further impact the utilization of the NOLs and R&D tax credits, however given the full valuation allowance this would not result in an impact to the Company's tax expense.

12. Subsequent Events

Subsequent to December 31, 2024, the Company negotiated a portion of its trade payables with numerous vendors, which resulted in a $5.6 million reduction in trade payables and accrued expenses.

On March 22, 2025, the Company, Parent and Merger Sub entered into the fifth amendment to the A&R Merger Agreement (the Fifth Amendment), to (i) change the required consummation date to September 30, 2025; (ii) add a Parent Investment of $1.5 million to be completed by April 7, 2025; and (iii) add a special meeting consummation date being on or prior to September 26, 2025.

Exhibit 21.1

Subsidiaries of Evofem Biosciences, Inc.

Evofem Biosciences Operations, Inc.

Evofem, Inc.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333- 258321, 333-253881, 333-234769, 333-232303, 333-231126 and 333-230191 on Form S-3 and Registration Statement Nos. 333-200409, 333-203059, 333-225366, 333-226517, 333-231991, 333-231993, 333-237119, 333-237126, 333-238228, 333-252516 and 333-263422 on Form S-8 of our report (which contains an explanatory paragraph relating to the Company's ability to continue as a going concern as described in Note 1 to the consolidated financial statements) dated March 23, 2025, relating to the consolidated financial statements of Evofem Biosciences, Inc. appearing in this Annual Report on Form 10-K for the year ended December 31, 2024.

/s/ BPM, LLP
Sacramento, California
March 23, 2025

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 annual report on Form 10-K 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: March 24, 2025

By: */s/ Saundra Pelletier*
Saundra Pelletier
President, Chief Executive Officer, and Interim Chairperson of the Board
(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, Ivy Zhang, certify that:

1 I have reviewed this annual report on Form 10-K 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: March 24, 2025

By: */s/ Ivy Zhang*
Ivy Zhang
Chief Financial Officer and Secretary
(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 Annual Report of Evofem Biosciences, Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Annual 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 Annual 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 Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 24, 2025

By:*/s/ Saundra Pelletier*
Saundra Pelletier
President, Chief Executive Officer, and Interim Chairperson of the Board
(Principal Executive Officer)

Date: March 24, 2025

By:*/s/ Ivy Zhang*
Ivy Zhang
Chief Financial Officer and Secretary
(Principal Financial Officer and Principal Accounting Officer)

This certification accompanies the Form 10-K 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-K), irrespective of any general incorporation language contained in such filing.

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