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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2020

OR

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

Commission File Number 001-36075

EVOKE PHARMA, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-8447886**
(State or other jurisdiction of incorporation)	**(IRS Employer Identification No.)**
420 Stevens Avenue, Suite 370, Solana Beach, CA	**92075**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (858) 345-1494

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.0001 per share	EVOK	The Nasdaq Capital Market

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

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

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

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

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

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

As of May 7, 2020, the registrant had 24,702,590 shares of common stock outstanding.

EVOKE PHARMA, INC.

FORM 10-Q

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Evoke Pharma, Inc.

Condensed Balance Sheets

	March 31, 2020	December 31, 2019
	(Unaudited)	
Assets		
Current Assets:		
Cash and cash equivalents	$ 4,133,188	$ 5,663,833
Prepaid expenses	387,803	581,706
Other current assets	11,551	—
Total current assets	4,532,542	6,245,539
Operating lease right-of-use asset	105,352	138,538
Other assets	—	11,551
Total assets	$ 4,637,894	$ 6,395,628
Liabilities and stockholders' equity		
Current Liabilities:		
Accounts payable and accrued expenses	$ 925,628	$ 1,033,383
Accrued compensation	685,266	843,162
Operating lease liability	105,352	138,538
Total current liabilities	1,716,246	2,015,083
Stockholders' equity:		
Common stock, $0.0001 par value; authorized shares - 50,000,000; issued and outstanding shares - 24,456,914 and 24,431,914 at March 31, 2020 and December 31, 2019, respectively	2,446	2,443
Additional paid-in capital	90,439,901	90,108,492
Accumulated deficit	(87,520,699)	(85,730,390)
Total stockholders' equity	2,921,648	4,380,545
Total liabilities and stockholders' equity	$ 4,637,894	$ 6,395,628

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.

Condensed Statements of Operations
(Unaudited)

	Three Months Ended March 31,	
	2020	**2019**
Operating expenses:		
Research and development	$ 463,853	$ 746,882
General and administrative	1,329,834	1,223,013
Total operating expenses	1,793,687	1,969,895
Loss from operations	(1,793,687)	(1,969,895)
Other income:		
Interest income	3,378	4,629
Total other income	3,378	4,629
Net loss	$ (1,790,309)	$ (1,965,266)
Net loss per share of common stock, basic and diluted	$ (0.07)	$ (0.11)
Weighted-average shares used to compute basic and diluted net loss per share	24,439,881	17,484,318

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.

Condensed Statements of Stockholders' Equity

(Unaudited)

	Common Stock		Additional Paid-In	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Deficit	Equity
Balance at January 1, 2020	24,431,914	$ 2,443	$ 90,108,492	$ (85,730,390)	$ 4,380,545
Stock-based compensation expense	—	—	310,162	—	310,162
Issuance of common stock, net	25,000	3	21,247	—	21,250
Net loss	—	—	—	(1,790,309)	(1,790,309)
Balance at March 31, 2020	24,456,914	$ 2,446	$ 90,439,901	$ (87,520,699)	$ 2,921,648

	Common Stock		Additional Paid-In	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Deficit	Equity
Balance at January 1, 2019	17,427,533	$ 1,743	$ 82,628,312	$ (78,604,735)	$ 4,025,320
Stock-based compensation expense	—	—	378,959	—	378,959
Issuance of common stock, net	450,000	45	636,387	—	636,432
Net loss	—	—	—	(1,965,266)	(1,965,266)
Balance at March 31, 2019	17,877,533	$ 1,788	$ 83,643,658	$ (80,570,001)	$ 3,075,445

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.

Condensed Statements of Cash Flows

(Unaudited)

	Three Months Ended March 31,	
	2020	**2019**
Operating activities		
Net loss	$ (1,790,309)	$ (1,965,266)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	310,162	378,959
Change in operating assets and liabilities:		
Prepaid expenses and other assets	227,089	142,299
Accounts payable and other current liabilities	(298,837)	(482,878)
Net cash used in operating activities	(1,551,895)	(1,926,886)
Financing activities		
Proceeds from issuance of common stock, net	21,250	636,432
Net cash provided by financing activities	21,250	636,432
Net decrease in cash and cash equivalents	(1,530,645)	(1,290,454)
Cash and cash equivalents at beginning of period	5,663,833	5,319,004
Cash and cash equivalents at end of period	$ 4,133,188	$ 4,028,550

See accompanying notes to these unaudited condensed financial statements.

1. Organization and Basis of Presentation

Evoke Pharma, Inc. (the "Company") was incorporated in the state of Delaware in January 2007. The Company is a specialty pharmaceutical company focused primarily on the development of drugs to treat gastroenterological disorders and disease.

Since its inception, the Company has devoted substantially all of its efforts to developing its sole product candidate, Gimoti™, and has not realized revenues from its planned principal operations. On June 1, 2018, the Company filed a 505(b)(2) New Drug Application ("NDA") for Gimoti with the U.S. Food and Drug Administration ("FDA") and on April 1, 2019, the Company received a Complete Response Letter ("CRL") from FDA for the NDA. The CRL stated that FDA has determined it cannot approve the NDA in its present form and provided recommendations to address the two remaining approvability issues in an NDA resubmission. The approvability issues are related to clinical pharmacology and product quality/device quality. FDA did not request any new clinical data and did not raise any safety concerns.

On July 25, 2019, the Company completed a type A meeting with FDA to obtain FDA's feedback and agreement on the Company's plan to address deficiencies cited in the CRL in support of a resubmission of the Gimoti NDA. The focus of the discussion was on topics noted in the CRL, including the root cause analysis of low drug exposure in the comparative bioavailability study and additional product quality/device quality control testing.

On December 19, 2019, based on FDA feedback received during the type A meeting, the Company resubmitted the Gimoti NDA to FDA. The resubmission provided the requested additional information intended to address the deficiencies cited in the CRL. To address the clinical pharmacology issues, the resubmission included an in-depth root cause analysis, as well as patient use and experience data from the Company's clinical trials. To address product quality/device quality issues cited in the CRL, the resubmission included 3-month stability data from commercial scale registration batches that met all product specifications. The Company believes these data support the acceptance criteria for performance characteristics and device quality control it proposed in the Gimoti NDA. Additionally, as requested by FDA, the resubmission included data from an analysis of pump performance characteristics for the product used in the comparative bioavailability study and the product from commercial scale registration batches. The results of this testing showed all products performed within specifications.

On January 17, 2020, the Company received a notice from FDA that it had accepted the Company's NDA resubmission for review and set a target goal date for a decision under the Prescription Drug User Fee Act ("PDUFA") of June 19, 2020.

The Company does not anticipate realizing revenues until FDA approves the NDA and the Company begins commercializing Gimoti, which events may never occur. The Company's activities are subject to the significant risks and uncertainties associated with any specialty pharmaceutical company that has substantial expenditures for research and development, including funding its operations.

Going Concern

The Company has incurred recurring losses and negative cash flows from operations since inception and expects to continue to incur net losses for the foreseeable future until such time, if ever, that it can generate significant revenues from the sale of Gimoti. Although the Company had approximately $4.1 million in cash and cash equivalents at March 31, 2020, the Company anticipates that it will continue to incur losses from operations due to pre-approval and pre-commercialization activities, including interactions with FDA on the Company's NDA resubmission for Gimoti, potentially manufacturing commercial batches of Gimoti, and general and administrative costs to support operations. As a result, the Company believes that there is substantial doubt about its ability to continue as a going concern for one year after the date these financial statements are issued. The financial statements do not include any adjustments that may result from the outcome of this uncertainty.

The determination as to whether the Company can continue as a going concern contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. In its report on the Company's financial statements for the year ended December 31, 2019, the Company's independent registered public accounting firm included an explanatory paragraph expressing substantial doubt regarding the Company's ability to continue as a going concern.

The Company's net losses may fluctuate significantly from quarter to quarter and year to year. The Company believes, based on its current operating plan, that its existing cash and cash equivalents will be sufficient to fund its operations through the target goal date for a decision under PDUFA and into the third quarter of 2020. If Gimoti is approved by FDA, additional funds will become available from the revolving credit facility (the "Eversana Credit Facility") with Eversana Life Sciences Services, LLC ("Eversana"), as disclosed in Note 5, which the Company believes, based on its current operating plan, will provide sufficient cash to fund the Company's operations into 2021, excluding any potential future Gimoti product revenue. This period could be shortened if there are any unanticipated increases in planned spending. Even with the Eversana Credit Facility, the Company will be required to raise

additional funds through debt, equity or other forms of financing, such as potential collaboration arrangements, to fund future operations and continue as a going concern.

There can be no assurance that additional financing will be available when needed or on acceptable terms. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations, financial condition and future prospects. There can be no assurance that the Company, if required, will be able to further develop Gimoti, resubmit the Gimoti NDA or receive FDA approval of the Gimoti NDA. Because the Company's business is entirely dependent on the success of Gimoti, if the Company is unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or the Company, the Company will be required to curtail all of its activities and may be required to liquidate, dissolve or otherwise wind down its operations.

Impact of COVID-19

To date, the Company has not experienced material disruptions to its financial condition or operations from the novel coronavirus disease ("COVID-19") pandemic. In anticipation of the PDUFA target goal date of June 19, 2020 for its Gimoti NDA, the Company has continued its pre-commercial activities, including refining the commercial manufacturing process, and with Eversana, has continued preparing for the potential commercialization of Gimoti, if FDA approval is obtained. However, there can be no assurance that the Company or Eversana will not be impacted by the COVID-19 pandemic. For example, FDA may delay the PDUFA target goal date due to FDA's internal resource constraints as a result of disruptions or shifting of resources within FDA due to the COVID-19 pandemic, or other reasons. In addition, the COVID-19 pandemic may disrupt the operations of the Company's third-party suppliers and manufacturers and delay the Company's manufacturing timelines and commercial launch of Gimoti, if approved, and may negatively impact the Company's ability to successfully commercialize Gimoti and generate product sales, if Gimoti is approved. Further, the COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions which could have an adverse effect on the Company's business and financial condition, including impairing its ability to raise capital when needed. In April 2020, the Company applied for and was approved for a Small Business Administration loan under the Paycheck Protection Program, established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. On May 1, 2020, the Company received the loan proceeds in the amount of approximately $104,000.

2. Summary of Significant Accounting Policies

The accompanying condensed balance sheet as of December 31, 2019, which has been derived from audited financial statements, and the unaudited interim condensed financial statements, have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and follow the requirements of the U.S. Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP can be condensed or omitted. In management's opinion, the unaudited interim financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company's financial position and its results of operations and its cash flows for the periods presented. These statements do not include all disclosures required by GAAP and should be read in conjunction with the Company's financial statements and accompanying notes for the year ended December 31, 2019, which are contained in the Company's Annual Report on Form 10-K filed with the SEC on March 12, 2020. The results for interim periods are not necessarily indicative of the results expected for the full fiscal year or any other interim period.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ materially from those estimates.

Contract Research Organizations and Consultants

The Company relies on contract research organizations ("CROs") and consultants to assist with ongoing regulatory discussions and submissions supporting the NDA. If these CROs and consultants are unable to continue their support, this could adversely affect FDA's review of the NDA.

In addition, the Company relies on third-party manufacturers for the production of Gimoti. If the third-party manufacturers are unable to continue manufacturing Gimoti, or if the Company loses one of its sole source suppliers used in its manufacturing processes, the Company may not be able to meet any development needs or commercial supply demand for Gimoti, if approved by FDA, and the development and/or commercialization of Gimoti could be materially and adversely affected.

The Company also relies on third-party sales and marketing organizations for the management of the pre-commercial launch preparation for Gimoti, as well as for a dedicated sales team to sell Gimoti, if approved by FDA. If such third-party organizations are unable to continue managing the launch preparation, or serving as a dedicated sales team, the commercialization of Gimoti could be materially and adversely affected.

Stock-Based Compensation

Stock-based compensation expense for stock option grants and employee stock purchases under the Company's Employee Stock Purchase Plan (the "ESPP") is recorded at the estimated fair value of the award as of the grant date and is recognized as expense on a straight-line basis over the employee's requisite service period, except awards with a performance condition. Awards with performance conditions commence vesting when the satisfaction of the performance condition is probable. The estimation of stock option and ESPP fair value requires management to make estimates and judgments about, among other things, employee exercise behavior, forfeiture rates and volatility of the Company's common stock. The judgments directly affect the amount of compensation expense that will be recognized.

The Company grants stock options to purchase common stock to employees and members of the board of directors with exercise prices equal to the Company's closing market price on the date the stock options are granted. The risk-free interest rate assumption was based on the yield of an applicable rate for U.S. Treasury instruments with maturities similar to those of the expected term of the award being valued. The weighted-average expected term of options and employee stock purchases was calculated using the simplified method as prescribed by accounting guidance for stock-based compensation. This decision was based on the lack of relevant historical data due to the Company's limited historical experience. In addition, due to the Company's limited historical data, the estimated volatility was calculated based upon the Company's historical volatility, supplemented, as necessary, with historical volatility of comparable companies in the biotechnology industry whose share prices are publicly available for a sufficient period of time. The assumed dividend yield was based on the Company never paying cash dividends and having no expectation of paying cash dividends in the foreseeable future.

Research and Development Expenses

Research and development costs are expensed as incurred and primarily include compensation and related benefits, stock-based compensation expense and costs paid to third-party contractors for product development activities and drug product materials. The Company expenses costs relating to the purchase and production of pre-approval inventories as research and development expense in the period incurred until FDA approval is received.

The Company does not own or operate manufacturing facilities for the production of Gimoti, nor does it plan to develop its own manufacturing operations in the foreseeable future. The Company currently depends on third-party contract manufacturers for all of its required raw materials, drug substance and finished product for its pre-commercial product development. The Company has agreements with Cosma S.p.A. to supply metoclopramide for the manufacture of Gimoti, and with Thermo Fisher Scientific Inc., who acquired Patheon UK Limited, for product development and manufacturing of Gimoti. The Company currently utilizes third-party consultants, which it engages on an as-needed, hourly basis, to manage product development and manufacturing contractors.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common stock outstanding for the period, without consideration for common stock equivalents. Diluted net loss per share is calculated by dividing the net loss by the weighted-average number of common share equivalents outstanding for the period determined using the treasury-stock method. Dilutive common stock equivalents are comprised of warrants to purchase common stock, options to purchase common stock under the Company's equity incentive plans and potential shares to be purchased under the ESPP. For the periods presented, the following table sets forth the outstanding potentially dilutive securities that have been excluded from the calculation of diluted net loss per share because to do so would be anti-dilutive:

	Three Months Ended March 31,	
	2020	**2019**
Warrants to purchase common stock	2,713,561	2,713,561
Common stock options	3,989,371	3,672,624
Employee stock purchase plan	24,714	6,126
Total excluded securities	6,727,646	6,392,311

3. Technology Acquisition Agreement

In June 2007, the Company acquired all worldwide rights, data, patents and other related assets associated with Gimoti from Questcor Pharmaceuticals, Inc. ("Questcor") pursuant to an Asset Purchase Agreement. The Company paid Questcor $650,000 in the form of an upfront payment and $500,000 in May 2014 as a milestone payment based upon the initiation of the first patient dosing in the Company's Phase 3 clinical trial for Gimoti. In August 2014, Mallinckrodt, plc ("Mallinckrodt") acquired Questcor. As a result of that acquisition, Questcor transferred its rights included in the Asset Purchase Agreement with the Company to Mallinckrodt. In addition to the payments previously made to Questcor, the Company may also be required to make additional milestone payments totaling up to

$52 million. In March 2018, the Company and Mallinckrodt amended the Asset Purchase Agreement to defer development and approval milestone payments, such that, rather than paying two milestone payments based on FDA acceptance for review of the NDA and final product marketing approval, the Company would be required to make a single $5 million payment on the one-year anniversary after the Company receives FDA approval to market Gimoti.

The remaining $47 million in milestone payments depend on Gimoti's commercial success and will only apply if Gimoti receives regulatory approval. In addition, the Company will be required to pay Mallinckrodt a low single digit royalty on net sales of Gimoti. The Company's obligation to pay such royalties will terminate upon the expiration of the last patent right covering Gimoti, which is expected to occur in 2032, subject to possible extension should any additional, later expiring, patents be granted.

4. Stockholders' Equity

At the Market Equity Offering Program

In November 2017, the Company filed a shelf registration with the SEC on Form S-3. The shelf registration statement includes a prospectus for the at-the-market offering to sell up to an aggregate of $16.0 million of shares of the Company's common stock through B. Riley FBR, Inc. ("FBR") as a sales agent (the "FBR Sales Agreement"). During the three months ended March 31, 2019, the Company sold 450,000 shares of common stock at a weighted-average price per share of $1.44 pursuant to the FBR Sales Agreement and received proceeds of approximately $636,000, net of commissions and fees. There were no shares sold under the FBR Sales Agreement during the three months ended March 31, 2020. From April 1, 2020 through May 7, 2020, the Company sold 245,676 shares of common stock at a weighted-average price per share of $1.31 pursuant to the FBR Sales Agreement and received proceeds of approximately $316,000, net of commissions and fees.

Future sales will depend on a variety of factors including, but not limited to, market conditions, the trading price of the Company's common stock and the Company's capital needs. There can be no assurance that FBR will be successful in consummating future sales based on prevailing market conditions or in the quantities or at the prices that the Company deems appropriate.

In addition, the Company will not be able to make future sales of common stock pursuant to the FBR Sales Agreement unless certain conditions are met, which include the accuracy of representations and warranties made to FBR under the FBR Sales Agreement. Furthermore, FBR is permitted to terminate the FBR Sales Agreement in its sole discretion upon ten days' notice, or at any time in certain circumstances, including the occurrence of an event that would be reasonably likely to have a material adverse effect on the Company's assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations. The Company has no obligation to sell the remaining shares available for sale pursuant to the FBR Sales Agreement.

Stock-Based Compensation

Stock-based compensation expense includes charges related to employee stock purchases under the ESPP and stock option grants. The Company measures stock-based compensation expense based on the grant date fair value of any awards granted to its employees. Such expense is recognized over the period of time that employees provide service and earn rights to the awards.

During the three months ended March 31, 2020, the Company granted stock options to purchase 875,000 shares of the Company's common stock. Of such options, 50% do not begin vesting until the date, if any, that FDA approves the Gimoti NDA. The estimated fair value of each stock option award granted was determined on the date of grant using the Black Scholes option-pricing valuation model with the following weighted-average assumptions for option grants during the three months ended March 31, 2020 and 2019:

	Three Months Ended March 31,	
	2020	**2019**
Common Stock Options		
Risk free interest rate	0.96%	2.55%
Expected option term	6.0 years	6.0 years
Expected volatility of common stock	99.73%	90.34%
Expected dividend yield	0.0%	0.0%

The estimated fair value of the shares to be acquired under the ESPP was determined on the initiation date of each six-month purchase period using the Black-Scholes option-pricing valuation model with the following weighted-average assumptions for ESPP shares to be purchased during the three months ended March 31, 2020 and 2019:

	Three Months Ended March 31,	
	2020	**2019**
Employee Stock Purchase Plan		
Risk free interest rate	1.11%	2.52%
Expected term	6.0 months	6.0 months
Expected volatility of common stock	69.72%	130.36%
Expected dividend yield	0.0%	0.0%

The Company recognized non-cash stock-based compensation expense to employees and directors in its research and development and its general and administrative functions during the three months ended March 31, 2020 and 2019 as follows:

	Three Months Ended March 31,	
	2020	**2019**
Research and development	$ 120,562	$ 152,174
General and administrative	189,600	226,785
Total stock-based compensation expense	$ 310,162	$ 378,959

As of March 31, 2020, there was approximately $2.2 million of unrecognized compensation costs related to outstanding employee and board of director options, which are expected to be recognized over a weighted-average period of 1.29 years. Should the Gimoti NDA be approved by FDA, there will be approximately $423,000 of additional compensation costs to be recognized.

5. Commercial Services and Loan Agreements with Eversana

On January 21, 2020, the Company entered into a commercial services agreement (the “Eversana Agreement”) with Eversana for the commercialization of Gimoti. Pursuant to the Eversana Agreement, Eversana will commercialize and distribute Gimoti in the United States, if approved by FDA. Eversana will manage the marketing of Gimoti to gastroenterologists and other targeted health care providers, as well as the sales and distribution of Gimoti to wholesalers, pharmacies and other customers within the United States.

Under the terms of the Eversana Agreement, the Company maintains ownership of the Gimoti NDA, as well as legal, regulatory, and manufacturing responsibilities for Gimoti. Eversana will utilize its internal sales organization, along with other commercial functions, for market access, marketing, distribution and other related patient support services. The Company will record sales for Gimoti and retain more than 80% of net product profits once the parties’ costs are reimbursed. Eversana will receive reimbursement of its commercialization costs pursuant to an agreed upon budget and a percentage of product profits in the mid-to-high teens. Net product profits are the net sales (as defined in the Eversana Agreement) of Gimoti, less (i) reimbursed commercialization costs, (ii) manufacturing and administrative costs set at a fixed percentage of net sales, and (iii) third party royalties. During the term of the Eversana Agreement, Eversana agreed to not market, promote, or sell a competing product in the United States.

The term of the Eversana Agreement is from January 21, 2020 until five years from the date, if any, that FDA approves the Gimoti NDA. Upon expiration or termination of the agreement, the Company will retain all profits from product sales and assume all corresponding commercialization responsibilities. Within 30 days after each of the first three annual anniversaries of commercial launch, either party may terminate the agreement if net sales of Gimoti do not meet certain annual thresholds. Either party may terminate the agreement: for the material breach of the other party, subject to a 60-day cure period; in the event an insolvency, petition of the other party is pending for more than 60 days; upon 30 days written notice to the other party if Gimoti is subject to a safety recall; the other party is in breach of certain regulatory compliance representations under the agreement; the Company discontinues the development or production of Gimoti; Gimoti is not commercially launched within nine months of FDA approval, if any, or the net profit is negative for any two consecutive calendar quarters beginning with the first full calendar quarter 24 months following commercial launch; or if there is a change in applicable laws that makes operation of the services as contemplated under the agreement illegal or commercially impractical. Either party may also terminate the Eversana Agreement upon a change of control of the Company’s ownership, subject, in the event that the Company initiates such termination, to a one-time payment equal to between two times and one times annualized service fees paid by the Company under the Eversana Agreement, with such amount based on which year after commercial launch the change of control occurs. Such payment amount would be reduced by the amount of previously reimbursed commercialization costs and profit split paid for the related prior twelve-month period and any revenue which occurred

prior to the termination yet to be collected. In addition, Eversana may terminate the Eversana Agreement if Gimoti is not approved by FDA by December 31, 2020 (provided Eversana gives the Company notice of such termination no later than March 1, 2021), or if the Company withdraws Gimoti from the market for more than 90 days.

In addition, in connection with the Eversana Agreement, the Company and Eversana entered into the Eversana Credit Facility, pursuant to which Eversana agreed to provide a revolving Credit Facility of up to $5.0 million to the Company upon FDA approval of the Gimoti NDA, if any, as well as certain other customary conditions. The Eversana Credit Facility is secured by all of the Company's personal property other than its intellectual property. Under the terms of the Eversana Credit Facility, the Company cannot grant an interest in its intellectual property to any other person. Each loan under the Eversana Credit Facility will bear interest at an annual rate equal to 10.0%.

The Company may prepay any amounts borrowed under the Eversana Credit Facility at any time without penalty or premium. The maturity date of all amounts, including interest, borrowed under the Eversana Credit Facility will be 90 days after the expiration or earlier termination of the Eversana Agreement. The Eversana Credit Facility also includes events of default, the occurrence and continuation of which provide Eversana with the right to exercise remedies against the Company and the collateral securing the loans under the Eversana Credit Facility, including the Company's cash. These events of default include, among other things, the Company's failure to pay any amounts due under the Eversana Credit Facility, an uncured material breach of the representations, warranties and other obligations under the Eversana Credit Facility, the occurrence of insolvency events and the occurrence of a change in control.

On January 23, 2020, the Company and Novos Growth, LLC mutually agreed to terminate, effective immediately, a commercialization agreement entered into in January 2019.

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

The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Quarterly Report on Form 10-Q and the financial statements and accompanying notes thereto for the fiscal year ended December 31, 2019 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC, on March 12, 2020. Past operating results are not necessarily indicative of results that may occur in future periods.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business strategy, prospective products, product approvals, such as the timing and results of any decision regarding the New Drug Application, or NDA, for Gimoti from the U.S. Food and Drug Administration, or FDA, including whether FDA will act by the Prescription Drug User Fee Act, or PDUFA, target goal date for a decision of June 19, 2020, our plans to commercialize Gimoti, if approved, in partnership with Eversana Life Sciences Services, LLC, or Eversana, future regulatory developments, research and development costs, the timing and likelihood of success, plans and objectives of management for future operations, future results of current and anticipated products and the expected impact of the novel coronavirus, or COVID-19, on us, FDA or on third parties on whom we rely, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statement. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. Although we believe the expectations reflected in these forward-looking statements are reasonable, such statements are inherently subject to risk and we can give no assurances that our expectations will prove to be correct. Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely. As a result of many factors, including without limitation those set forth under "Risk Factors" under Item 1A of Part II below, and elsewhere in this Quarterly Report on Form 10-Q, our actual results may differ materially from those anticipated in these forward-looking statements. Except as required by applicable law, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes. For all forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

We use our registered trademark, EVOKE PHARMA, and our trademarked product name, GIMOTI, in this Quarterly Report on Form 10-Q. This Quarterly Report on Form 10-Q also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this Quarterly Report on Form 10-Q appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to "Evoke," "we," "us" and "our" refer to Evoke Pharma, Inc.

Overview

We are a specialty pharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. We are developing Gimoti, an investigational metoclopramide nasal spray for the relief of symptoms associated with acute and recurrent diabetic gastroparesis in women. Diabetic gastroparesis is a GI disorder afflicting millions of individuals worldwide and is characterized by slow or delayed gastric emptying and evidence of gastric retention in the absence of mechanical obstruction and can cause various serious digestive system symptoms and other complications. Metoclopramide tablets and injection are the only products currently approved in the United States to treat the symptoms associated with acute and recurrent diabetic gastroparesis. Gimoti is a novel nasal spray formulation of metoclopramide designed to provide systemic delivery of the molecule through the nasal mucosa. We submitted an NDA for Gimoti to FDA on June 1, 2018 and received a Day-74 FDA filing communication letter in August 2018. The letter stated that the NDA was sufficiently complete to permit a substantive review and set a target goal date for a decision under the Prescription Drug User Fee Act, or PDUFA, of April 1, 2019.

On March 1, 2019, we received a multi-disciplinary review letter, or DRL, from FDA, which provided preliminary notice of certain deficiencies identified during FDA's initial review of the Gimoti NDA. The DRL described concerns that insufficient data had been offered regarding certain product quality control and reproducibility for the commercially available sprayer device used with Gimoti, that there is a lack of adequate information to support sex-based efficacy claims and that the pharmacology data provided may not demonstrate bioavailability to the Listed Drug, Reglan Tablets10 mg. On March 14, 2019, we submitted a response to the DRL to FDA, and on March 21, 2019, we met with FDA to obtain feedback on our responses.

On April 1, 2019, we received a CRL from FDA for our NDA. The CRL, while citing fewer issues than the DRL, stated that FDA has determined it could not approve the NDA in its present form and provided recommendations to address the two remaining approvability issues in an NDA resubmission. The approvability issues were related to clinical pharmacology and product quality/device quality. FDA did not request any new clinical data and did not raise any safety concerns.

The clinical pharmacology issue was specific to a low maximum observed plasma concentration, or C_{max}, in subjects representing less than 5% of the total administered Gimoti doses in the pivotal pharmacokinetic, or PK, study. FDA stated the overall lower mean C_{max} was driven by the data from these few doses. We conducted an analysis excluding these aberrant doses, which showed that the PK study met the bioequivalence criteria for both men and women, although there is no assurance that FDA will agree with our conclusion. FDA recommended a root cause analysis to determine the origin of the PK variability and mitigation strategies to address their concern. Additionally, FDA requested data from three registration batches of commercial product to be manufactured at the proposed commercial manufacturing site, by the proposed commercial process and tested using validated analytical methods. These data were requested to provide additional support for the proposed acceptance criteria for droplet size distribution and other essential performance characteristics for the commercial product specifications.

On July 25, 2019, we completed a type A meeting with FDA to obtain FDA's feedback and agreement on our plan to address deficiencies cited in the CRL in support of a resubmission of the Gimoti NDA. The focus of the discussion was on topics noted in the CRL, including the root cause analysis of low drug exposure in the comparative bioavailability study and additional product quality/device quality control testing.

On December 19, 2019, based on FDA feedback received during the type A meeting, we resubmitted the Gimoti NDA to FDA. The resubmission provided the requested additional information intended to address the deficiencies cited in the CRL. To address the clinical pharmacology issues, the resubmission included an in-depth root cause analysis, and patient use and experience data from our clinical trials. To address product quality/device quality issues cited in the CRL, the resubmission included 3-month stability data from commercial scale registration batches that met all product specifications and support the proposed acceptance criteria for performance characteristics and device quality control. Additionally, as requested by FDA, the resubmission included data from an analysis of pump performance characteristics for the product used in the comparative bioavailability study and the product from commercial scale registration batches. The results of this testing showed all products performed within specifications.

On January 17, 2020, we received a notice from FDA that it had accepted our NDA resubmission for review and set a target goal date for a decision under PDUFA of June 19, 2020.

On January 21, 2020, we entered into the Eversana Agreement for the commercialization of Gimoti, if approved. Pursuant to the Eversana Agreement, Eversana will commercialize and distribute Gimoti in the United States, if approved by FDA. Eversana will manage the marketing of Gimoti to gastroenterologists and other targeted health care providers, as well as the sales and distribution of Gimoti to wholesalers, pharmacies and other customers within the United States. Eversana will also provide a $5 million revolving credit facility, or Eversana Credit Facility, that we can access if FDA approves Gimoti. On January 23, 2020, we and Novos Growth, LLC mutually agreed to terminate, effective immediately, a commercialization agreement entered into in January 2019.

We have no products approved for sale, and we have not generated any revenue from product sales or other arrangements. We have primarily funded our operations through the sale of our convertible preferred stock prior to our initial public offering in September 2013, borrowings under our bank loans and the sale of shares of our common stock on the Nasdaq Capital Market. We have incurred losses in each year since our inception. Substantially all of our operating losses resulted from expenses incurred in connection with advancing Gimoti through development activities and general and administrative costs associated with our operations. We expect to continue to incur significant expenses and operating losses for at least the next several years. We may never become profitable, or if we do, we may not be able to sustain profitability on a recurring basis.

As of March 31, 2020, we had cash and cash equivalents of approximately $4.1 million. Current cash on hand is intended to fund interactions with FDA on the NDA resubmission for Gimoti, and potentially manufacturing commercial batches of Gimoti. In addition, cash will be needed to fund pre-commercialization and pre-approval activities for Gimoti, including preparing for marketing and commercial manufacturing of Gimoti, and general and administrative costs to support operations. Our operations have consumed substantial amounts of cash since inception. We believe, based on our current operating plan, that our existing cash and cash equivalents will be sufficient to fund our operations through the target goal date for a decision under PDUFA and into the third quarter of 2020. If Gimoti is approved by FDA, additional funds will become available from the Eversana Credit Facility which we believe, based on our current operating plan, will provide sufficient cash to fund our operations into 2021, excluding any potential future Gimoti product revenue. This period could be shortened if there are any unanticipated increases in planned spending, including as a result of the COVID-19 pandemic. Even with the Eversana Credit Facility, we will be required to raise additional funds in order to continue as a going concern. There can be no assurance that we will be able to further develop Gimoti, if required, and receive FDA approval of the Gimoti NDA. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

Impact of COVID-19

To date, we have not experienced material disruptions to our financial condition or operations from the novel coronavirus disease ("COVID-19") pandemic. In anticipation of the PDUFA target goal date of June 19, 2020 for our Gimoti NDA, we have continued our pre-commercial activities, including refining the commercial manufacturing process, and with Eversana, have continued preparing for the potential commercialization of Gimoti, if FDA approval is obtained. However, there can be no assurance that we or Eversana will not be impacted by the COVID-19 pandemic. For example, FDA may delay the PDUFA target goal date due to FDA's internal resource constraints as a result of disruptions or shifting resources within FDA due to the COVID-19 pandemic, or other reasons. In addition, the COVID-19 pandemic may disrupt the operations of our third-party suppliers and manufacturers and delay our manufacturing timelines and commercial launch of Gimoti, if approved, and may negatively impact our ability to successfully commercialize Gimoti and generate product sales, if Gimoti is approved. Further, the COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions which could have an adverse effect on our business and financial condition, including impairing our ability to raise capital when needed. In April 2020, we applied for and were approved for a Small Business Administration loan under the Paycheck Protection Program, established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. On May 1, 2020, we received the loan proceeds in the amount of approximately $104,000.

Technology Acquisition Agreement

In June 2007, we acquired all worldwide rights, data, patents and other related assets associated with Gimoti from Questcor Pharmaceuticals, Inc., or Questcor, pursuant to an asset purchase agreement. We paid Questcor $650,000 in the form of an upfront payment and $500,000 in May 2014 as a milestone payment based upon the initiation of the first patient dosing in our Phase 3 clinical trial for Gimoti. In August 2014, Mallinckrodt, plc, or Mallinckrodt, acquired Questcor. As a result of that acquisition, Questcor transferred its rights included in the asset purchase agreement with us to Mallinckrodt. In addition to the payments previously made to Questcor, we may be required to make additional milestone payments totaling up to $52 million. In March 2018, we amended the asset purchase agreement with Mallinckrodt to defer development and approval milestone payments, such that rather than paying two milestone payments based on FDA acceptance for review of the NDA and final product marketing approval, we would be required to make a single $5 million payment one year after we receive FDA approval to market Gimoti.

The remaining $47 million in milestone payments depend on Gimoti's commercial success and will only apply if Gimoti receives regulatory approval. In addition, we will be required to pay Mallinckrodt a low single digit royalty on net sales of Gimoti. Our obligation to pay such royalties will terminate upon the expiration of the last patent right covering Gimoti, which is expected to occur in 2032, subject to possible extension should any additional, later expiring, patents be granted.

Financial Operations Overview

Research and Development Expenses

We expense all research and development expenses as they are incurred. Research and development expenses primarily include:

- clinical and regulatory-related costs;
- expenses incurred under agreements with contract research organizations, or CROs;
- manufacturing and stability testing costs and related supplies and materials; and
- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense.

All of our research and development expenses to date have been incurred in connection with the development of Gimoti. The process of conducting clinical trials necessary to obtain regulatory approval is costly and time consuming. While we resubmitted the NDA for Gimoti in December 2019, the successful development and commercialization of Gimoti is still highly uncertain, in part due to our receipt of the CRL from FDA. We are unable to estimate with any certainty the costs we will incur in the continued development and regulatory review of Gimoti, though such costs may be significant. Clinical development timelines, the probability of success and development costs can differ materially from expectations. We may never succeed in achieving marketing approval for our product candidate.

The costs of clinical trials may vary significantly over the life of a project owing to, but not limited to, the following:

- per patient trial costs;
- the number of sites included in the trials;
- the countries in which the trials are conducted;
- the length of time required to enroll eligible subjects;
- the number of subjects that participate in the trials;
- the number of doses that subjects receive;

- the cost of comparative agents used in trials;
- the drop-out or discontinuation rates of subjects;
- potential additional safety monitoring or other studies requested by regulatory agencies;
- the duration of patient follow-up; and
- the efficacy and safety profile of the product candidate.

We do not yet know when Gimoti may be commercially available, if at all.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related benefits, including stock-based compensation. Other general and administrative expenses include professional fees for accounting, tax, patent costs, legal services, insurance, facility costs and costs associated with being a publicly-traded company, including fees associated with investor relations and directors and officers liability insurance premiums. We expect that general and administrative expenses will increase in the future as we expand our operating activities, prepare for the growth needs associated with potential commercialization of Gimoti and continue to incur additional costs associated with being a publicly-traded company and maintaining compliance with exchange listing and SEC requirements. These increases will likely include higher consulting costs, legal fees, accounting fees, directors' and officers' liability insurance premiums and fees associated with investor relations.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our actual results may differ materially from these estimates under different assumptions or conditions.

The critical accounting policies and estimates underlying the accompanying unaudited financial statements are those set forth in Part II, Item 7 included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which was filed with the SEC on March 12, 2020.

Other Information

None.

Results of Operations

Comparison of Three Months Ended March 31, 2020 and 2019

The following table summarizes the results of our operations for the three months ended March 31, 2020 and 2019:

	Three Months Ended March 31,		Increase/
	2020	2019	(Decrease)
Research and development expenses	$ 463,853	$ 746,882	$ (283,029)
General and administrative expenses	$ 1,329,834	$ 1,223,013	$ 106,821

Research and Development Expenses. Research and development expenses for the three months ended March 31, 2020 compared to the three months ended March 31, 2019 decreased by approximately $283,000. During 2020, we incurred expenses responding to requests for additional information from FDA and preparing for future manufacturing and potential commercial launch of Gimoti. Costs incurred in 2020 included approximately $370,000 for wages, taxes and employee insurance, including approximately $121,000 of stock-based compensation expense, and approximately $76,000 related to manufacturing. During 2019, we incurred expenses responding to requests for additional information from FDA and preparing for future manufacturing and potential commercial launch of Gimoti. Costs incurred in 2019 included approximately $572,000 for wages, taxes and employee insurance, including approximately $152,000 of stock-based compensation expense, approximately $103,000 related to manufacturing, and approximately $68,000 related to responding to FDA questions on the NDA and the DRL.

General and Administrative Expenses. General and administrative expenses for the three months ended March 31, 2020 compared to the three months ended March 31, 2019 increased by approximately $107,000. Costs incurred in 2020 primarily included

approximately $624,000 for wages, taxes and employee insurance, including approximately $190,000 of stock-based compensation expense, and approximately $634,000 for legal, accounting, directors and officers liability insurance and other costs associated with being a public company. Costs incurred in 2019 primarily included approximately $617,000 for wages, taxes and employee insurance, including approximately $227,000 of stock-based compensation expense, approximately $491,000 for legal, accounting, directors and officers liability insurance and other costs associated with being a public company, and approximately $35,000 for pre-commercialization costs.

Liquidity and Capital Resources

In November 2017, we filed a shelf registration with the SEC on Form S-3. The shelf registration statement includes a prospectus for the at-the-market offering to sell up to an aggregate of $16.0 million of shares of our common stock through B. Riley FBR, Inc., or FBR, as a sales agent, or FBR Sales Agreement. During the three months ended March 31, 2019, we sold 450,000 shares of common stock at a weighted-average price per share of $1.44 pursuant to the FBR Sales Agreement and received proceeds of approximately $636,000, net of commissions and fees. There were no shares sold under the FBR Sales Agreement during the three months ended March 31, 2020. From April 1, 2020 through May 7, 2020, we sold 245,676 shares of common stock at a weighted-average price per share of $1.31 pursuant to the FBR Sales Agreement and received proceeds of approximately $316,000, net of commissions and fees.

Under current SEC regulations, if at the time we file our Annual Report on Form 10-K ("Form 10-K"), and our public float is less than $75 million, and for so long as our public float remains less than $75 million, the amount we can raise through primary public offerings of securities in any twelve-month period using shelf registration statements is limited to an aggregate of one-third of our public float, which is referred to as the baby shelf rules. As of May 7, 2020, our public float was approximately $29.6 million, based on 21,640,215 shares of outstanding common stock held by non-affiliates at a price of $1.37 per share, which was the last reported sale price of our common stock on the Nasdaq Capital Market on May 6, 2020. As a result of our public float being below $75 million, we will be limited by the baby shelf rules until such time as our public float exceeds $75 million, which means we only have the capacity to sell shares up to one-third of our public float under shelf registration statements in any twelve-month period. If our public float decreases, the amount of securities we may sell under our Form S-3 shelf registration statement will also decrease. As of May 7, 2020, we had the capacity to issue up to approximately $4.7 million of additional shares of common stock pursuant to the FBR Sales Agreement.

Future sales under the FBR Sales Agreement will depend on a variety of factors including, but not limited to, market conditions, the trading price of our common stock and our capital needs. There can be no assurance that FBR will be successful in consummating future sales based on prevailing market conditions or in the quantities or at the prices that we deem appropriate.

In addition, we will not be able to make future sales of common stock pursuant to the FBR Sales Agreement unless certain conditions are met, which include the accuracy of representations and warranties made to FBR under the FBR Sales Agreement. Furthermore, FBR is permitted to terminate the FBR Sales Agreement in its sole discretion upon ten days' notice, or at any time in certain circumstances, including the occurrence of an event that would be reasonably likely to have a material adverse effect on our assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations. We have no obligation to sell the remaining shares available for sale pursuant to the FBR Sales Agreement.

Management concluded that there is substantial doubt about our ability to continue as a going concern. Our independent registered public accounting firm also included an explanatory paragraph in their report on our financial statements as of and for the year ended December 31, 2019 with respect to our ability to continue as a going concern. This doubt about our ability to continue as a going concern for at least twelve months from the date of the financial statements could materially limit our ability to raise additional funds through the issuance of new debt or equity securities or otherwise. Future reports on our financial statements may also include an explanatory paragraph with respect to our ability to continue as a going concern. We have incurred significant losses since our inception and have never been profitable, and it is possible we will never achieve profitability. On January 17, 2020, we received a notice from FDA that it had accepted our NDA resubmission for review and set a target goal date for a decision under PDUFA of June 19, 2020. We believe, based on our current operating plan, that our existing cash and cash equivalents will be sufficient to fund our operations through the PDUFA target goal date and into the third quarter of 2020. If Gimoti is approved by FDA, additional funds will become available from the Eversana Credit Facility which we believe, based on our current operating plan, will provide sufficient cash to fund our operations into 2021 excluding any potential future Gimoti product revenue. This period could be shortened if there are unanticipated increases in planned spending, including as a result of the COVID-19 pandemic. Even with the Eversana Credit Facility, we will be required to raise additional funds in order to continue as a going concern. There can be no assurance that we will be able to further develop Gimoti, if required, and receive FDA approval of the Gimoti NDA. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

These estimates of cash runway could be shortened if there are any significant increases in planned spending on responding to the issues raised by FDA in the CRL, pre-commercialization and pre-approval activities, including hiring a sales force, preparing for marketing and manufacturing of Gimoti, and our general and administrative costs to support operations. There is no assurance that other financing will be available when needed to allow us to continue as a going concern. The perception that we may not be able to

continue as a going concern may cause others to choose not to deal with us due to concerns about our ability to meet our contractual obligations.

We expect to continue to incur expenses and increase operating losses for at least the next several years. In the near-term, we anticipate incurring costs as we:

- respond to any requests or issues raised by FDA in its review of the NDA and conduct additional development activities, if required;
- continue the pre-approval and pre-commercialization activities for Gimoti;
- continue the preparation of the commercial manufacturing process;
- maintain, expand and protect our intellectual property portfolio; and
- continue to fund the additional accounting, legal, insurance and other costs associated with being a public company.

The following table summarizes our cash flows for the three months ended March 31, 2020 and 2019:

	Three Months Ended March 31,	
	2020	**2019**
Net cash used in operating activities	$ (1,551,895)	$ (1,926,886)
Net cash provided by financing activities	$ 21,250	$ 636,432
Net decrease in cash and cash equivalents	$ (1,530,645)	$ (1,290,454)

Operating Activities. The primary use of our cash has been to fund our clinical research, prepare our NDA, manufacture Gimoti, and other general operations. The cash used in operating activities during the three months ended March 31, 2020 was primarily related to ongoing communication with FDA related to the resubmitted NDA, and pre-approval and pre-commercialization activities. The cash used in operating activities during the three months ended March 31, 2019 was primarily related to ongoing communication with FDA related to the NDA and pre-approval and pre-commercialization activities. We expect that cash used in operating activities will increase in 2020 due to responding to FDA questions related to the NDA resubmission, pre-approval and pre-commercialization activities, as well as commercialization activities should FDA approve the NDA for Gimoti.

Financing Activities. During the three months ended March 31, 2019, we received net proceeds of approximately $636,000 from the sale of 450,000 shares of common stock pursuant to the FBR Sales Agreement. There were no shares sold under the FBR Sales Agreement during the three months ended March 31, 2020. During the three months ended March 31, 2020, we received proceeds of $21,250 from the sale of 25,000 shares of common stock pursuant to our Employee Stock Purchase Plan.

The amount and timing of our future funding requirements will depend on many factors, including but not limited to:

- we may not have sufficient financial and other resources to complete clinical development for Gimoti, including to address potential questions that may arise from our Gimoti NDA resubmission;
- we may not be able to provide acceptable evidence of safety and efficacy for Gimoti;
- we may be required to undertake additional clinical trials and other studies of Gimoti before we receive approval of the NDA we resubmitted;
- FDA may disagree with the design of our future clinical trials, if any are necessary;
- variability in subjects, adjustments to clinical trial procedures and inclusion of additional clinical trial sites;
- FDA may not agree with the analysis of our clinical trial results;
- the results of our clinical trials may not meet the level of statistical or clinical significance or other bioequivalence parameters required by FDA for marketing approval;
- subjects in our clinical trials may die or suffer other adverse effects for reasons that may or may not be related to Gimoti, such as dysgeusia, headache, diarrhea, nasal discomfort, tremor, myoclonus, somnolence, rhinorrhea, throat irritation, and fatigue;
- contract manufacturers, suppliers, and/or consultants may not meet appropriate timeliness;
- if approved, Gimoti will compete with well-established products already approved for marketing by FDA, including oral and intravenous forms of metoclopramide, the same active ingredient in the nasal spray for Gimoti;
- we may not be able to obtain, maintain and enforce our patents and other intellectual property rights; and

- we may not be able to establish commercial-scale manufacturing capabilities.

Off-Balance Sheet Arrangements

Through March 31, 2020, we have not entered into and did not have any relationships with unconsolidated entities or financial collaborations, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purpose.

Contractual Obligations and Commitments

There were no material changes outside the ordinary course of our business during the three months ended March 31, 2020 to the information regarding our contractual obligations that was disclosed in Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2019, filed with the SEC on March 12, 2020.

Item 3. Quantitative and Qualitative Disclosure about Market Risk

As of March 31, 2020, there have been no material changes in our market risk from that described in "Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations – Quantitative and Qualitative Disclosures about Market Risk" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on March 12, 2020.

Item 4. Controls and Procedures

Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the timelines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Business Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, control 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.

As required by SEC Rule 13a-15(b), as of March 31, 2020 we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Business Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of the end of the period covered by this report. Based on the foregoing, our Chief Executive Officer and Chief Business Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of March 31, 2020.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the quarter ended March 31, 2020 that materially affect, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are currently not a party to any material legal proceedings.

Item 1A. Risk Factors

There have been no material changes to the risk factors included in "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on March 12, 2020, other than as set forth below:

Our business may be impacted by epidemic diseases such as the recent global outbreak of the COVID-19 coronavirus.

The recent outbreak of COVID-19, which has been declared by the World Health Organization to be a pandemic, has spread across the globe and is impacting worldwide economic activity. A pandemic, including COVID-19 or other public health epidemic, poses the risk that we or our employees, or our third-party suppliers and manufacturers may be prevented from conducting business activities for an indefinite period of time, including due to spread of the disease within these groups or due to shutdowns that may be requested or mandated by governmental authorities. The continued spread of COVID-19 and the measures taken by the governments of countries affected could disrupt the supply chain and the manufacture or shipment of drug substance, sprayer and finished drug product for Gimoti for commercial sale, cause us to delay or materially modify our commercial launch plans and hiring strategy, which could increase costs or decrease potential revenues following any commercial launch and have a material adverse effect on our business, financial condition and results of operations. Moreover, to the extent any of these risks and uncertainties adversely impact us in the ways described above or otherwise, they may also have the effect of heightening many of the other risks set forth in our Annual Report on Form 10-K for the year ended December 31, 2019. The COVID-19 pandemic and mitigation measures have also had an adverse impact on global economic conditions which could have an adverse effect on our business and financial condition, including impairing our ability to raise capital when needed. The extent to which the COVID-19 pandemic impacts our regulatory review timelines, manufacturing capabilities and commercial launch plans and other results will depend on future developments that are highly uncertain and cannot be predicted, including new information that may emerge concerning the severity of the virus and the actions to contain its impact.

Disruptions at FDA and other government agencies caused by funding shortages or global health concerns could hinder their ability to hire, retain or deploy key leadership and other personnel, or otherwise prevent new or modified products from being developed, approved or commercialized in a timely manner or at all, which could negatively impact our business.

The ability of FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, statutory, regulatory, and policy changes, FDA's ability to hire and retain key personnel and accept the payment of user fees, and other events that may otherwise affect FDA's ability to perform routine functions. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable. Disruptions at FDA and other agencies may also slow the time necessary for new drugs or modifications to approved drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the COVID-19 pandemic, on March 10, 2020 FDA announced its intention to postpone most foreign inspections of manufacturing facilities and products through April 2020, and subsequently, on March 18, 2020, FDA announced its intention to temporarily postpone routine surveillance inspections of domestic manufacturing facilities. Regulatory authorities outside the United States may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent FDA or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of FDA or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosure

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Index to Exhibits

Exhibit Number	Description of Exhibit
3.1 (1)	Amended and Restated Certificate of Incorporation of the Company
3.2 (1)	Amended and Restated Bylaws of the Company
4.1 (2)	Form of the Company's Common Stock Certificate
4.2 (3)	Investor Rights Agreement dated as of June 1, 2007
4.3 (3)	Warrant dated June 1, 2012 issued by the Company to Silicon Valley Bank
4.4 (4)	Form of Warrant issued by the Company to certain investors under the Securities Purchase Agreement between the Company and such investors dated July 25, 2016
4.5 (5)	Form of Warrant issued by the Company to certain investors under the Securities Purchase Agreement between the Company and such investors dated August 3, 2016
4.6 (6)	Form of Amendment to Common Stock Purchase Warrant, amending certain of the warrants dated July 25, 2016 and August 3, 2016
4.7 (7)	Form of Amendment to Common Stock Purchase Warrant, amending certain of the warrants dated July 25, 2016 and August 3, 2016
4.8 (8)	Form of Amendment to Common Stock Purchase Warrant, amending certain of the warrants dated July 25, 2016 and August 3, 2016
4.9 (9)	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934
10.1†	Commercial Services Agreement, dated as of January 21, 2020, between the Company and Eversana Life Sciences Services, LLC
10.2	Loan Agreement, dated as of January 21, 2020, between the Company and Eversana Life Sciences Services, LLC
10.3#	Non-Employee Director Compensation Policy, as Amended and Restated, Effective February 28, 2020
31.1*	Certification of Chief Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
31.2*	Certification of Chief Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

(1) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on September 30, 2013.
(2) Incorporated by reference to the Company's Amendment No. 3 to Registration Statement on Form S-1 filed with the SEC on August 16, 2013.
(3) Incorporated by reference to the Company's Registration Statement on Form S-1 filed with the SEC on May 24, 2013.
(4) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on July 20, 2016.
(5) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on August 1, 2016.

(6) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on December 16, 2016.
(7) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on March 23, 2018.
(8) Incorporated by reference to the Company's Current Report on Form 8-K filed with the SEC on April 4, 2018.
(9) Incorporated by reference to the Company's Annual Report on Form 10-K filed with the SEC on March 12, 2020.
Management contract or compensatory plan or arrangement.
* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.
† Certain portions of this exhibit have been omitted and are subject to confidential treatment.

SIGNATURES

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

Evoke Pharma, Inc.

Date: May 12, 2020

By: /s/ David A. Gonyer
David A. Gonyer
President and Chief Executive Officer
(Principal Executive Officer)

Date: May 12, 2020

By: /s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio
Executive Vice President, Chief Business Officer, Treasurer and Secretary
(Principal Financial and Accounting Officer)

Exhibit 10.1

EXECUTION COPY

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE EVOKE PHARMA, INC. HAS DETERMINED THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO EVOKE PHARMA, INC. IF PUBLICLY DISCLOSED.

This Commercial Services Agreement (the "**Agreement**") is made on January 21, 2020 (the "**Effective Date**") by and between:

Evoke Pharma, Inc., with a place of business at 420 Stevens Avenue, Suite 370, Solana Beach, CA ("**Evoke**"); and

Eversana Life Science Services, LLC, with a place of business at 190 N. Milwaukee Street, Milwaukee, WI 53202 ("**Eversana**").

Evoke and Eversana are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

BACKGROUND

Whereas, Evoke is a pharmaceutical company that has all rights necessary to market, promote and Commercialize (as defined below) the Product (as defined below) in the Territory (as defined below);

Whereas, Eversana is a life sciences services company that has experience supervising and managing sales teams that provide marketing and promotional services related to pharmaceutical products; and

Whereas, Evoke wishes to engage Eversana to supervise and manage the day to day Commercialization of the Product in the Territory under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other consideration received by the Parties, the Parties hereby agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the following words and expressions shall have the stated definitions:

1.1. "**Act**" means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.), as amended from time to time, together with any rules, regulations, guidances, guidelines and requirements of the FDA as may be in effect from time to time.

1.2. "**Adverse Event**" means the development of an undesirable medical condition or the deterioration of a pre-existing medical condition following or during exposure to the Product, whether or not considered causally related to the Product, the exacerbation of any pre-existing condition(s) occurring following or during the use of the Product or any other adverse event, adverse experience or adverse drug experience described in the FDA's Investigational New Drug safety reporting and post-marketing reporting regulations, 21 C.F.R. § 312.32 and § 314.80, respectively, as they may be amended from time to time. For purposes of this Agreement, without limiting the forgoing, "undesirable medical condition" includes symptoms (e.g., nausea,

chest pain), signs (e.g., tachycardia, enlarged liver) or the abnormal results of an investigation (e.g., laboratory findings, electrocardiogram), including unfavorable side effects, toxicity, injury, overdose, sensitivity reactions or failure of the Product to exhibit its expected pharmacologic/biologic effect.

1.3. "**Affiliate**" means any entity that is, directly or indirectly, controlled by, under common control with, or in control of a party, where "control" means power to elect or appoint a majority of directors or to direct the management of an entity.

1.4. "**Anti-Corruption Laws**" means the Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, the Anti-Kickback Statute, the False Claims Act, the Department of Health and Human Services Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers, released April 2003, the Antifraud and Abuse Amendment to the Social Security Act, and any other applicable law, rule, regulation or industry code governing anti-bribery and anti-corruption laws and laws for the prevention of kickbacks, fraud, abuse, racketeering, money laundering or terrorism.

1.5. "**Applicable Law**" means (a) all applicable laws, rules and regulations, including any applicable rules, regulations, guidelines or other requirements of Governmental Authorities that may be in effect in the Territory from time to time during the Term, including (i) the Act, (ii) the PDMA, (iii) Anti-Corruption Laws, (iv) all federal, state or local statutes, laws, ordinances, regulations or guidelines relating to employment, safety and health of employees and the withholding and payment of required taxes with respect to employees, (v) all federal, state or local statutes, laws, ordinances, regulations or guidelines relating to data protection and privacy, including the United States Department of Health and Human Services privacy rules under the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act and (b) the PhRMA Code on Interactions with Healthcare Professionals.

1.6. "**Arising Product Know-How**" means all Know-How relating to the Product arising out of or in connection with either Party's or their respective Affiliates' activities under or in connection with this Agreement. Arising Product Know-How includes any Evoke Know-How and any Confidential Information related to the Product but excludes any Eversana Know-How.

1.7. "**Business Day**" means a day on which companies in the United States are generally open for business.

1.8. "**Change of Control**" means (a) the acquisition of Evoke by another entity by means of any transaction or series of related transactions (including, without limitation, any merger, consolidation in which the majority of the outstanding shares of Evoke are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring entity or its subsidiary, but excluding any transaction effected primarily for the purpose of changing Evoke's jurisdiction of incorporation), unless Evoke's shareholders of record as constituted immediately prior to such transaction or series of related transactions will, immediately after such transaction or series of related transactions hold at least a majority of the voting power of the surviving or acquiring entity or (b) a sale of all or substantially all of the assets of Evoke to which this Agreement pertains.

1.9. "**Commercial Launch**" is the date an Eversana sales representative provides the first Detail of the Product in the Territory.

1.10. "**Commercial Services**" means the services set forth in Exhibit B.

1.11. "**Commercialization**," "**Commercialize**" and "**Commercializing**" mean any and all customary processes and activities undertaken by a pharmaceutical company to accomplish the commercialization of a pharmaceutical product, including without limitation the storage, distribution, sales, promotion and marketing of the Product and managing returns of the Product, Patient Access Programs, and reimbursements but expressly excludes activities related to development or testing of the Product or Manufacturing.

1.12. "**Commercialization Budget**" means the commercialization budget for marketing the Product and subject to amendments and approval by the Joint Management Committee from time to time.

1.13. "**Commercialization Costs**" shall have the meaning set forth in Section 5.3.

1.14. "**Commercialization Plan**" means the commercialization plan for marketing the Product and subject to amendments and approval by the Joint Management Committee from time to time.

1.15. "**Competing Product**" means a product with an indication approved by FDA for the treatment of functional motility disorder, which for purposes of this Agreement, shall not be deemed to be the treatment of constipation.

1.16. "**Compliance Provisions**" means those representations, warranties and covenants set forth in Section 6.2, Section 6.3, and Section 8.1.

1.17. **"Confidential Information**" means all business, operational, marketing, financial, technical, manufacturing, scientific, or other information that is confidential or proprietary to a Party, an Affiliate of a Party, and is not generally known to the public, and shall include Manufacturing Data and this Agreement (and the terms hereof), either Party's processes and methods, process specifications and designs, inventions, Know-How, intellectual property, business and marketing plans, financial information, customer data, research and development activities and other materials or information relating to business or activities which are not generally known to the public, all confidential information of Third-Parties in the possession of the disclosing Party; and all notes, analysis, compilations, studies, summaries and other material prepared by or for the disclosing Party containing or based, in whole or in part, on any information included in the foregoing.

1.18. "**Corporate Trademarks**" means the trade names, corporate names and corporate logos of Evoke or Evoke's Affiliates used in the Prescribing Information, Promotional Materials, training materials or other material provided hereunder or otherwise authorized or approved by Evoke.

1.19. "**Dedicated Employees**" shall have the meaning set forth in Section 3.2.e.

1.20. "**Detail**" means a face-to-face visit during which a Sales Force representative makes a presentation with respect to the Product to an Eligible Prescriber, such that (i) the relevant characteristics of the Product are described by the Sales Force representative in a fair and balanced manner consistent with the requirements of this Agreement and Applicable Law and (ii) such Eligible Prescriber is given an opportunity to place an order for Product in accordance with this Agreement. When used as a verb, "Detail" means to perform a Detail.

1.21. "**Eligible Prescriber**" means a health care provider that has the authority to prescribe the Product under Applicable Law and, in the event a Commercialization Plan includes the provision of Product samples by members of the Sales Force, Eligible Prescriber shall further mean a health care provider that is allowed to receive Product samples.

1.22. "**Eversana Know-How**" means all Know-How and other intellectual property (a) in Eversana's possession and control of as of the Effective Date of this Agreement ("**Eversana Pre-existing IP**") or (b) independently developed by Eversana without use of any Evoke Confidential Information or Evoke Know-How and comes into Eversana's possession and control at any time during the Term, and in each case (a) and (b) not developed or otherwise acquired in connection with this Agreement.

1.23. "**Evoke Know-How"** means all Know-How in the possession and control of Evoke as of the Effective Date, or at any time during the Term, that is reasonably necessary or useful for the Commercialization of the Product in the Territory, but shall at all times and under all circumstances exclude Eversana Know-How.

1.24. "**Executive Officers**" means, with respect to Evoke, its Chief Executive Officer, and with respect to Eversana, its Chief Executive Officer.

1.25. "**FDA**" means the Unites States Food and Drug Administration.

1.26. "**Field Alert**" means a field alert report, as required under 21 C.F.R. § 314.81(b)(1), as such regulation may be amended from time to time.

1.27. "**Functional Services**" means the services set forth in Exhibit C.

1.28. "**Governmental Authority**" means any federal, state or local court, administrative agency, commission or other governmental authority or instrumentality, including the FDA, having authority in the United States over the activities contemplated hereunder. Governmental Authority shall include any Regulatory Authority.

1.29. "**Intellectual Property Rights**" means all intellectual property rights anywhere in the world, whether or not registered, including patents, utility models, rights in inventions, trademarks, service marks, rights in trade dress (including product configuration and packaging), rights in business and trade names, rights in domain names, designs, copyrights, trade secrets, rights in Know-How and confidential information, and, in each case, rights of a similar or corresponding character.

1.30. "**Joint Management Committee**" has the meaning set forth in Section 4.

1.31. "**Know-How**" means all proprietary information related to a product or service, including all patentable and non-patentable inventions, discoveries, technologies, knowledge, trade secrets, experience, skill, techniques, methods, processes (including manufacturing processes), procedures, formulas, compounds, compositions of matter, assays, tests (including diagnostic tests), materials, specifications, descriptions, results and data (including Manufacturing Data), business or financial information or information of any type whatsoever, in any tangible or intangible form, marketing reports, business plans, standard operating procedures, and procedures.

1.32. **"Manufacture**" and "**Manufacturing**" mean all activities related to the manufacture of a pharmaceutical product for the Territory, including without limitation manufacturing for clinical use or commercial sale, as well as compliance with Applicable Laws relating to the foregoing activities, but expressly excludes activities related to Commercialization.

1.33. "**Manufacturing Data**" means all data, information, material, and documentation developed or generated with respect to the Manufacturing of a pharmaceutical product, including manufacturing and control data and other data and documentation requested by or submitted to a Regulatory Authority.

1.34. "**Manufacturing and Administrative Costs**" means a fixed fee for Evoke's manufacturing and administrative costs, which shall be equivalent to [***] percent ([***]%) of Net Sales.

1.35. "**NDA**" means a New Drug Application filed with the FDA requesting permission to place a drug on the market in accordance with 21 CFR Part 314, and all amendments or supplements filed pursuant to the requirements of the FDA.

1.36. "**NDA Approval**" means the approval of a NDA by FDA for Commercialization of the Product.

1.37. "**NDA Approval Date**" means date on which Evoke receives NDA Approval.

1.38. "**Net Profit**" means Net Sales, less the following: [***].

1.39. "**Net Sales**" with respect to the Product means gross invoice price (not including value added taxes, sales taxes or similar taxes) of Product, actually sold by or on behalf of Eversana to Third Parties after deducting, if not previously deducted, from the amount invoiced or received:

[***]

1.40. "**Other Reportable Information**" means any communication or other information that is otherwise required to be reported by Eversana to Evoke in accordance with the training to be provided under this Agreement, other than Adverse Events.

1.41. "**Patient Access Programs**" means programs to assist patients with filling their prescriptions, including, without limitation, through help desks, triage procedures, bailment programs, and reduced cost or no cost prescription fulfillment.

1.42. "**PDMA**" means the Prescription Drug Marketing Act of 1987, as amended from time to time, together with any rules, regulations and requirements promulgated thereunder and in effect from time to time.

1.43. "**Person**" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or any other legal entity, including a Governmental Authority.

1.44. "**Pre-Commercial Services**" means the services set forth in Exhibit A.

*** Certain information on this page has been omitted.

1.45. "**Prescribing Information**" means the FDA-approved labeling for the Product.

1.46. "**Product**" means Gimoti™, the nasally delivered formulation of metoclopramide that is the subject of New Drug Application No. [***].

1.47. "**Product Copyrights**" means all copyrightable subject matter related to the Product included in the Prescribing Information, the Promotional Materials, training materials or other material provided hereunder or otherwise authorized or approved by Evoke under this Agreement for use by Eversana in performing the Services.

1.48. "**Product Quality Complaint**" means any and all manufacturing or packaging-related complaints related to the Product, including (a) any complaint involving the possible failure of the Product to meet any of the specifications for the Product and (b) any dissatisfaction with the design, package or labeling of the Product.

1.49. "**Product Trademarks**" means the Product trademarks owned or controlled by Evoke during the Term in the Territory, including any Product trademarks used in the Prescribing Information, Promotional Materials, training materials or other material provided hereunder or otherwise authorized or approved by Evoke, excluding the Corporate Trademarks.

1.50. "**Regulatory Authority**" means any national, federal, state, or local governmental or regulatory authority, agency, department, bureau, commission, council or other government entity located in the Territory, including FDA, Centers for Medicare and Medicaid Services (CMS), and the Office of Inspector General of the U.S. Department of Health and Human Services, regulating or otherwise (a) exercising authority with respect to the development, manufacture, approval, registrations, licensing, or commercialization of the Product in such regulatory jurisdiction in the Territory, or (b) having legal authority with respect to the exploitation of the Product in the Territory.

1.51. "**Regulatory Documentation**" means all applications, registrations, licenses, authorizations and approvals, all correspondence submitted to or received from Regulatory Authorities (including minutes and official contact reports relating to any communications with any Regulatory Authority) and all supporting documents and all clinical studies and tests, relating to the Product, and all data contained in any of the foregoing, including all Regulatory Authority approvals, regulatory drug lists, advertising and promotion documents and related FDA submissions and correspondence, adverse event files and complaint files and related FDA submissions.

1.52. "**Sales & Promotion Policies**" means Eversana's compliance policies and other policies generally applicable to the Commercialization of pharmaceutical products in the Territory, in each case approved by Evoke, as the same may be amended, modified or supplemented from time to time upon notice by Eversana to Evoke.

1.53. "**Services**" means the day-to-day supervision and management by Eversana of the Commercialization of the Product in the Territory, including the Pre-Commercial Services, the Commercial Services, and the Functional Services.

*** Certain information on this page has been omitted.

1.54. "**Term**" shall have the meaning set forth in Section 14.1.

1.55. "**Territory**" means the United States and all of its territories and possessions.

1.56. "**Third Party**" means any Person other than Evoke, Eversana and their respective Affiliates.

1.57. "**Third Party Royalties**" means any and all royalties and other payments that Evoke is required to pay to a Third Party based upon sales of the Product in the Territory (currently [***] percent ([***]%) of Net Sales). Evoke shall notify the Committee in advance of any potential increase of Third Party Royalties.

2. APPOINTMENT [***]

2.1. **Appointment**. Subject to the terms and conditions of this Agreement, on and from the Effective Date and for the duration of the Term, Evoke appoints Eversana to perform the Services, and Eversana hereby agrees to perform the Services in accordance with this Agreement and Applicable Law. In performing the Services, Eversana shall maintain a reasonably adequate number of qualified and trained staff to execute the Services in a commercially reasonable and workman like manner in accordance with industry standards.

2.2. [***]

2.3. **Retained Rights**. Evoke reserves the right to discontinue developing or producing the Product at its discretion at any time and for any reason, including due to legal or regulatory requirements, administrative or court orders, or safety risks; provided, however, that Evoke shall notify Eversana in writing as soon as practicable after any such proposed or anticipated discontinuance. Notwithstanding Section 2.1 or any other provision of this Agreement, Evoke will retain the exclusive right to Manufacture or have Manufactured and supply the Product in and outside the Territory. In addition, Evoke shall retain the right to develop the Product in the Territory and outside the Territory and the right to Commercialize the Product inside and outside the Territory.

2.4. **Other Rights and Obligations**. Eversana acknowledges and agrees that, as between the Parties, Evoke owns all rights, title and interest in and to the Intellectual Property Rights and regulatory rights in the Product. Without limiting the foregoing, Evoke shall own all right, title and interest in and to (a) the Product, (b) the Evoke Know-How, Product Trademarks, the Corporate Trademarks, patent rights in the Product, and the Product Copyrights, and (c) any and all Intellectual Property Rights developed by either Party in the course of performing its obligations under this Agreement, including Arising Product Know-How. Eversana shall and does hereby assign all right, title and interest it may have in and to any Arising Product Know-How, without additional compensation, and shall take such other actions as Evoke may request to fully effect Evoke's ownership of such Arising Product Know-How.

2.5. **Use of Affiliates**. Evoke shall have the right to perform any or all of its obligations and exercise any or all of its rights under this Agreement through any of its Affiliates, and Eversana shall have the right to perform any or all of its obligations and exercise any or all of its rights under this Agreement through any of its Affiliates; provided, however, that (a) any such Affiliate shall be bound by the obligations of such Party under this Agreement, (b) any actions, omissions or conduct by such Affiliate shall be deemed to be actions, omissions or conduct of such Party, and (c) such Party shall remain responsible for the performance of its obligations under this Agreement. Eversana shall not use any Third Parties to perform the Services or otherwise satisfy Eversana's obligations hereunder for any period, without the consent of the Joint Management Committee.

2.6. **Initial Delivery of Evoke Know-How**. Evoke shall promptly deliver to Eversana copies or embodiments of the Evoke Know-How and any other information or material that is held or subsequently acquired by Evoke during the Term that Evoke reasonably believes is necessary for Eversana to perform the Services in accordance with the terms and conditions of this Agreement and Applicable Law. Evoke shall provide such information and material to Eversana in electronic format to the extent reasonably possible.

2.7. **Provision of Assistance and Support**. During the Term, Evoke shall promptly provide to Eversana or its Affiliates at Eversana's request, such reasonable and currently available information and materials relating to the Product as is necessary for Eversana to perform the Services in the Territory in accordance with the terms and conditions of this Agreement and Applicable Law.

2.8. **Non-Solicitation**. Except as permitted under Section 14.3.b below, during the Term of this Agreement, neither Party shall, directly or indirectly, in any manner solicit or induce for employment, or hire or engage the services of, any employee of the other Party or its Affiliates who performed any Services under this Agreement, including but not limited to the Dedicated Employees. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this provision so long as the circumstances indicate that the same was not targeted or directed at the other Party's employees. If either Party breaches this Section 2.8, the other Party shall pay a sum equal to one year's base salary that was payable by the Party to that employee, plus the recruitment costs incurred by the Party in replacing such individual.

3. COMMERCIALIZATION

3.1. **Alliance Managers**. Each Party shall designate a single person (each, an "**Alliance Manager**") to oversee contact between the Parties for all matters related to Commercialization of the Product. Except as otherwise specified herein, the Alliance Managers shall: (a) function as a single point of contact in all substantive communications with the other Party relative to the performance of by Eversana of its Commercialization obligations; and (b) perform any other functions agreed by the Parties. Each Party may replace its Alliance Manager at any time by written notice to the other Party. The initial Alliance Managers are set forth on Exhibit E.

3.2. **Commercialization Plan and Commercialization Budget**

a. **Content**. The Commercialization of the Product shall be governed by a Commercialization Plan, and the costs and expenses relating to the Commercialization of the Product shall be governed by a Commercialization Budget. An initial Commercialization Plan and an initial Commercialization Budget shall be completed and approved by the Committee, respectively, in each case within seventy five (75) days of the Effective Date. The initial Commercialization Plan and initial Commercialization Budget shall detail specific Service activities and related budgets for such activities for each time period: (1) from the Effective Date through NDA Approval, (2) from NDA Approval through Commercial Launch, and (3) from Commercial Launch through twelve (12) months following Commercial Launch, in each case with a goal of efficiently using working capital until the Product has demonstrated its ability to achieve revenue suitable for the Product and the associated costs. The Commercialization Budget will include the cost incurred and cash flow and working capital financing requirements. Each Commercialization Plan shall include without limitation the topics set forth in Schedule 3.2a. For clarity, all subsequent versions of updates to the Commercialization Plan and an Commercialization Budget are subject to the approval of the Committee.

b. **Updates**. Eversana shall, forty-five (45) days before the expected Commercial Launch and in any event no less than on an annual basis thereafter, update each Commercialization Plan and Commercialization Budget for the following year. Eversana shall submit such updated Commercialization Plans and Commercialization Budgets to the Committee for review and approval at least two (2) weeks before the date of the fourth quarter meeting of the Committee, but in no event later than October 31 of each calendar year for the following calendar year. Within thirty (30) days following such submission, the Committee shall either approve the Commercialization Plan and Commercialization Budget prepared by Eversana or approve a modified Commercialization Plan and Commercialization Budget. Any proposed material changes to a previously approved Commercialization Plan or Commercialization Budget shall not take effect unless and until reviewed and approved by the Committee.

c. **Eversana Responsibilities and Expenses**. Eversana shall provide the Services set forth in the Commercialization Plan and the Pre-Commercial Services set forth in Exhibit A, the Commercial Launch and Commercial Services set forth in Exhibit B, the Functional Services set forth in Exhibit C and all other Services necessary to fulfilling Eversana's obligations under this Agreement. Eversana shall be responsible for all costs incurred under the Commercialization Budget, subject to reimbursement by Evoke under Sections 5.3 and 5.6. Eversana shall perform the Services for the Product and not for any other products of Evoke. Eversana shall manage and supervise the logistics, distribution, marketing (within the Eversana commercial sales organization), and sale of the Products and coordinate activities within its 3PL division for such logistics and distribution of the Products.

d. **Evoke Responsibilities.** Evoke shall provide the functions and responsibilities set forth in Exhibit D, including Product manufacturing and obtaining and maintaining all regulatory approvals for the Product as required by Applicable Law, and as is necessary for Eversana to provide the Services in accordance with the terms set forth in this Agreement and Applicable Law.

e. **Sales Force**. Eversana shall engage sales representatives as set forth in the Commercialization Plan (the "**Sales Force**") to market the Product under the supervision and management of Eversana. The Parties acknowledge and agree that the intent and purpose of this Agreement is to maximize the sales volume of Products and profitability, subject to Applicable Law and the Sales & Promotion Policies, and that a sales force expansion shall be contemplated in the Commercialization Plan for this purpose. Eversana shall engage at least twenty (20) Eversana full-time equivalent sales representatives to market the Product at Commercial Launch and thereafter, and such sales representatives shall be one hundred percent (100%) dedicated to the Product to perform Eversana's sales and marketing activities under Exhibit B (the "**Dedicated Employees**"). For clarity, and by way of example only, a sales force representative who is a Dedicated Employee would not market or detail to doctors any other products other than the Product. Additionally, within sixty (60) days of the Effective Date, the Committee shall agree, in writing, on the level of increase in prescription fill rates for the Product per quarter per sales representative over the prior quarter that would trigger a requirement for Eversana to engage an additional full-time equivalent sales representatives by the end of that current quarter to market the Product, up to a maximum of one hundred (100) full-time equivalent sales representatives. Further, Eversana would be permitted, subject to the Committee's approval, to decrease the number of sales representatives at any time due to a recall, FDA advisory, or any other circumstance that the Committee reasonably believes would materially impact future Product sales volume.

f. **Training**. Eversana shall conduct the Product sales and policy training program specified in Section 3.4 according to the policies and procedures of Eversana approved by the Committee.

g. **Cross-Border Transactions**. Eversana shall inform Evoke of any cross-border transactions with respect to the Product that come to the attention of Eversana and shall not engage in any activities to facilitate or support such cross-border transactions.

h. **Performance Concerns**. At the request of Evoke, the Alliance Managers shall discuss in good faith any concerns that Evoke may have regarding the performance of the Sales Force hereunder.

3.3. **Field Observations and Sales Meetings**.

a. Upon Evoke's request, Eversana shall conduct a reasonable number of field observations per year up to a maximum of four (4) per year per Eversana sales representative (which field observations Evoke may also attend in its reasonable discretion) with the Sales Force representatives during normal business hours to evaluate overall quality assurance of the Detailing of the Product by the Sales Force. If any such observations indicate that a Detail is not being delivered or received in accordance with the terms set forth in this Agreement, Eversana shall report such observations to Evoke, and the Alliance Managers shall discuss what, if any, corrective plan of action is required to address such issue; provided that the Committee shall have the sole authority to determine whether to change the content of the Promotional Materials or messages being delivered with respect to the Product during Details.

b. At any sales meetings during which the Product is discussed, Eversana shall have a reasonable number of Eversana personnel with responsibilities for the Product attend such sales meetings (which meetings Evoke may also attend in its sole discretion) and, if necessary, communicate critical Product-related information (as determined by the Committee) at such meetings.

3.4. **Training Program and Materials**. Eversana shall train the members of the Sales Force, prior to such member performing any Commercialization activities, with respect to: (i) disease entity; (ii) Product knowledge; (iii) competitive product knowledge; (iv) compliance with Applicable Law in accordance with Eversana's Sales & Promotion Policies and the Compliance Provisions; (v) reporting of Adverse Events, Field Alerts, Product Quality Complaints, Manufacturing information requests, and Other Reportable Information in accordance with the terms hereof; (vi) use of Promotional Materials; and (vii) such other information the Committee deems necessary or appropriate (collectively, the "**Sales Force Training Matters**"). Once approved by the Committee, Eversana shall not change any initial Sales Force Training Matters in any way and Eversana shall not use any training materials in connection with the Product other than the initial Sales Force Training Matters.

3.5. **Sales Force Training and Qualification**. Eversana shall verify that each Sales Force representative has satisfactorily completing the initial training specified in Section 3.4, has completed a series of role-playing scenarios of a Detail of the Product to the reasonable satisfaction of Eversana, and shall verify on an annual basis that each Sales Force Representative maintains any applicable licenses.

3.6. **Promotional Materials**. Eversana shall be responsible for managing and supervising the Sales Forces' promotion of the Product in the Territory in accordance with the Commercialization Plan. Eversana shall be responsible for designing and producing promotional, marketing and educational materials (in any form or medium), such as printed brochures, videos, and other materials for use by Sales Force representatives, distributors or medical providers or in advertisements or web sites ("**Promotional Materials**"). Eversana shall provide Evoke with copies of all Promotional Materials in a timely manner, for Evoke to ensure medical, legal and regulatory review and approval. Evoke is solely responsible for ensuring any and all Promotional Materials are reviewed and approved by appropriate medical, legal and regulatory personnel to ensure compliance with Applicable Laws. No Promotional Materials will be distributed without prior written consent by Evoke.

3.7. **Sales Reports**. Within ten (10) days after the end of each calendar month, Eversana shall deliver to Evoke a report setting forth the total prescriptions during such calendar month broken out by Sales Force representative and territory. Eversana shall provide such report to Evoke in an Excel spreadsheet or similar electronic database form to the extent reasonably possible.

3.8. **No Registration of Trademarks and Copyrights.** Eversana shall not use (other than in connection with the Services as approved by the Committee), seek to register or register, nor permit any of its Affiliates to use, seek to register or register, any trademark, service mark, name or logo, including as part of any domain name, social media handle or other identifiers, which is confusingly similar to, or a colorable imitation of, the Product Trademarks, Corporate Trademarks or Product Copyrights in any jurisdiction worldwide. Eversana shall not challenge, nor permit any of its Affiliates to challenge, Evoke's or its Affiliates' rights in, or the validity, enforceability, scope, or registerability of, any of the Product Trademarks, Corporate Trademarks or Product Copyrights or any registration or application therefor.

4. MANAGEMENT OF THE COLLABORATION

4.1. **Joint Management Committee**. The Parties shall establish a committee (the "**Joint Management Committee**" or "**Committee**") as more fully described in this Section 4. The Committee shall have review, oversight, and decision-making responsibilities for all Commercialization activities performed under this Agreement. Each Party agrees to keep the Committee informed of its progress and activities under this Agreement. The Committee shall convene at least once per quarter, or more frequently as requested by either Party's Alliance Manager, to discharge its responsibilities. The Alliance Managers shall meet at least once per month.

4.2. **Membership**. The Committee shall be comprised of three (3) representatives (or such other number of representatives as the Parties may agree) from each of Evoke and Eversana. Each Party shall provide the other with a list of its initial members of the Committee no later than fifteen (15) days prior to the first scheduled meeting of the Committee, which shall be no later than thirty (30) days after the Effective Date. Each Party may replace any or all of its representatives on the Committee at any time upon written notice to the other Party in accordance with Section 15. Each representative of a Party shall have relevant expertise in pharmaceutical drug product Commercialization, and be suitable in seniority and experience and have been delegated the authority to make decisions on behalf of the applicable Party with respect to matters within the scope of the Committee's responsibilities. Any member of the Committee may designate a substitute to attend and perform the functions of that member at any meeting of the Committee. Each Party may, in its reasonable discretion, invite non-member representatives of such Party to attend meetings of the Committee as non-voting participants, subject to the confidentiality obligations of Section 11. Evoke shall designate a chairperson to oversee the operation of the Committee. Such chairperson shall confer with the Alliance Managers of both Parties prior to each Committee meeting to identify issues for review and discussion at each Committee meeting, and circulate a meeting agenda at least one (1) week before the meeting.

4.3. **Responsibilities**. The Committee shall perform the following functions, subject to the final decision-making authority of the respective Parties as set forth in Section 4.4:

a. review and approve the Commercialization Plan or recommend amendments or revisions thereto;

b. review and approve the Commercialization Budget or recommend amendments or revisions thereto;

c. review and approve pricing (including the establishment of WAC) and reimbursement;

d. review and approve payer contracting;

e. review and approve channel management;

f. review and approve Sales Forces expansion or reduction and the number and roles of Dedicated Employees;

g. review and approve the Sales Force Training Matters;

h. review and monitor Eversana's training activities with respect to the Sales Force;

i. review and approve the compensation for the Sales Force;

j. review and monitor Eversana' performance of the Services under the Agreement;

k. serve as an information transfer vehicle, from time to time, to facilitate discussions regarding the Commercialization of the Product;

l. review, and provide a forum for the Parties to discuss and approve or not approve, any subcontractors through which Eversana intends to conduct any Services hereunder;

m. resolve disputes between the Parties with respect to Commercialization of the Product; and

n. such other responsibilities as may be assigned to the Committee pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

During the Committee's first meeting and during the final meeting of each calendar year thereafter, the Committee shall, at minimum, discharge its responsibilities under Sections a and b above.

4.4. **Decisions**. Except as otherwise provided herein, with respect to Commercialization of the Product, all decisions of the Committee shall be made by consensus, with each Party having one vote. If the Committee cannot agree on a matter within its authority hereunder within thirty (30) days after it has met and attempted to reach such decision, then, either Party may, by written notice to the other, have such issue referred to the Executive Officers for resolution. The Parties' respective Executive Officers shall meet within fifteen (15) days after such matter is referred to them, and shall negotiate in good faith to resolve the matter. If the Executive Officers are unable to resolve the matter within thirty (30) days after the matter is referred to them, then the issue shall be finally resolved by Evoke, unless the issue or decision increases Eversana's financial or capital expenditures in excess of [***] of the approved Commercialization Budget, in which event the issue shall be resolved by Eversana.

5. Fees and Payments

5.1. **Product Supply.** Evoke shall supply the Product at [***] (and in the event the Committee decides to utilize a retail channel, the Parties agree to adjust such amount for such retail channel) to the Eversana 3PL division. Title to the Product supplied by Evoke shall transfer to Eversana or its Affiliate immediately (i.e. by way of flash title) before the Product is sold by Eversana or its Affiliate. Additional terms and conditions of a sales and distribution agreement (the "**3PL Agreement**") consistent with the foregoing will be negotiated in good faith between Evoke and Eversana's 3PL division, and entered into within thirty (30) days of the Committee's approval of the initial Commercialization Plan.

*** Certain information on this page has been omitted.

5.2. **Reporting of Sales.** Within ten (10) days of each month end, Eversana (including Eversana's 3PL division or other Affiliate that provides sales, distribution, and logistics services with respect to the Product) shall report to Evoke the prescription volumes of the Product made through Eversana's pharmacy network and other sales data that is suitable for use under generally accepted accounting principles ("**GAAP**") of sales recognition methods, as well as any other information necessary for Evoke to calculate Net Sales, including without limitation information regarding rebates, discounts, chargebacks and deductions.

5.3. **Reimbursement of Eversana's Costs by Evoke.** Subject to Section 5.6, following Eversana's 3PL division's receipt of monies from sales of the Product and at such time when Evoke has received from Eversana all necessary information and has the ability to recognize the sales of such Product on its balance sheet in accordance with GAAP to calculate Net Sales (all to occur in no event less frequently than on a monthly basis), on a monthly basis Evoke shall reimburse Eversana for Eversana's costs of rendering Commercial Services to the extent such reimbursement is agreed upon in the Commercialization Budget and actually incurred by Eversana ("**Commercialization Costs**").

5.4. **Reimbursement of Evoke's Costs.** Concurrent with Section 5.3, Evoke shall retain recognized revenue for Evoke's Third Party Royalties and Manufacturing and Administrative Costs.

5.5. **Profit Sharing.** Following reimbursement of each Party's costs under Sections 5.3 and 5.4 above, the Net Profit shall be distributed in a profit split with [***] percent ([***]%) to Eversana and [***] percent ([***]%) to Evoke ("**Profit Split**").

5.6. **Manner of Payment**. All payments owed by one Party to the other Party under Sections 5.3, 5.4, and 5.5 shall be offset against the payments owned by the other Party to the first Party. The net payments thus owed shall be paid by wire transfer to a bank account designated by the applicable payee Party. All net payments owed under Sections 5.3, 5.4, and 5.5 shall be paid on a [***] basis, with such payment being made for the prior [***] no later than [***] after the end of such prior [***] in which such amounts could be calculated. Notwithstanding the foregoing, if for any [***] the reimbursable costs exceed the recognized Net Sales for such [***], then each party shall be reimbursed from the recognized Net Sales for such [***] at a rate of [***] to Evoke and [***] to Eversana. To the extent one of the Parties has been fully reimbursed for such [***], then any remaining Net Sales amount from such [***] would be paid to the other Party until the Net Sales amount from such [***] has been exhausted. For clarity, Evoke shall have no obligation to reimburse Commercialization Costs except in the manner described in this Section 5.6.

*** Certain information on this page has been omitted.

5.7. **Taxes**. The amounts payable by a Party to the other Party pursuant to this Agreement shall be paid free and clear of any and all taxes, except for any withholding taxes required by Applicable Law. Except as provided in this Section 5.7, the receiving Party shall be solely responsible for paying any and all taxes (other than withholding taxes required by Applicable Law to be deducted from payments and remitted by the paying Party) levied on account of, or measured in whole or in part by reference to, any payments it receives. The paying Party shall deduct or withhold from the payments any taxes that it is required by Applicable Law to deduct or withhold. Notwithstanding the foregoing, if the receiving Party is entitled under any applicable tax treaty to a rate reduction of, or the elimination of, applicable withholding tax, it may deliver to the paying Party or the appropriate Governmental Authority (with the assistance of the paying Party to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve the paying Party of its obligation to withhold such tax and the paying Party shall apply the reduced rate of withholding or dispense with withholding, as the case may be; provided that the paying Party has received evidence, in a form satisfactory to the paying Party, of the receiving Party's delivery of all applicable forms (and, if necessary, its receipt of appropriate governmental authorization) at least fifteen (15) days prior to the time that the payments are due. If, in accordance with the foregoing, the paying Party withholds any amount, it shall pay to the receiving Party the balance when due, make timely payment to the proper taxing authority of the withheld amount and send to the receiving Party proof of such payment within ten (10) days following such payment.

5.8. **Loan Facility.** Pursuant to and subject to the terms and conditions of the loan agreement concurrently herewith and attached as Exhibit F (the "**Loan Agreement**"), following Evoke's receipt of NDA Approval only, Eversana will provide Evoke with a revolving loan facility ("**Loan**") of five million dollars ($5,000,000) which can be drawn down, repaid and used by Evoke from time to time (pursuant to the terms and conditions set forth in such Loan Agreement), solely in connection with Evoke's obligations and responsibilities under this Agreement. As collateral for the Loan, the Loan Agreement will grant Eversana a first priority lien on all of its assets, other than Evoke's Intellectual Property Rights and Evoke will represent, warrant and covenant that during the Term of the Loan Agreement, it shall not file, or allow to be filed, any lien or other encumbrance on Evoke's Intellectual Property Rights relating to the Product.

6. REGULATORY MATTERS

6.1. **Ownership of Regulatory Documentation and Approvals**. Evoke is solely responsible for and owns all right, title and interest in and to (a) all Regulatory Documentation concerning the Product and all information contained therein, (b) all regulatory approvals made or granted with respect to the Product, including any NDA Approval, and (c) all final Promotional Materials approved for use by Evoke pursuant to Section 3.6.

6.2. **Responsibility for Regulatory Approvals and Regulatory Communications**.

a. Evoke has the sole right and responsibility for any regulatory approvals and regulatory compliance with respect to the Product.

b. Evoke has the sole right and obligation: (i) to make any communications, reports, submissions and responses to FDA concerning the Product, including by reporting Adverse Events, Other Reportable Information and Field Alerts and (ii) to take any action (including any investigations) and conduct all communications with all Third Parties that

relate to all Product Quality Complaints or complaints related to tampering or contamination with respect to the Product, Adverse Events, Other Reportable Information and Field Alerts with respect to the Product; provided, however, that Eversana shall be responsible for any communications, reports, submissions or responses to Regulatory Authorities that it may be required to make under Applicable Law in connection with performing the Services; and provided, further that Eversana shall, to the extent permitted by Applicable Law, provide Evoke with either (x) reasonable advance written notice of, and an opportunity to discuss in good faith, any proposed communication with FDA in advance thereof with respect to the Product or any activities of Evoke hereunder or (y) otherwise provide written notice to Evoke of any communication with FDA concerning the Product or any activities of Evoke hereunder promptly following such communication and attach copies of such communication (whether by FDA or Eversana) to such notice. Notwithstanding the above, all investigations of Eversana employees or agents related to employment matters and Eversana internal policies and procedures may be conducted independently (with prompt notice to Evoke under Section 6.3d) by Eversana, and investigations relating to the Product or potential violations of Applicable Law shall be conducted in collaboration with Evoke.

c. Eversana shall cooperate with Evoke's reasonable requests and assist Evoke in connection with Evoke: (i) preparing any and all reports to FDA concerning the Product; (ii) preparing and disseminating all communications to Third Parties concerning the Product; and (iii) investigating and responding to any product quality complaint, adverse event, other reportable information, field Alert, or other compliance inquiry or investigation related to the Product. Notwithstanding anything to the contrary set forth above, Evoke is solely responsible for any and all communications with a Governmental Authority and for ensuring all such communications comply with Applicable Laws. For purposes of clarification, Evoke shall be responsible for any and all regulatory reporting requirements including but not limited to aggregate spend reporting, reporting required by any State, as applicable, and pursuant to the disclosures required under the Patient Protection and Affordable Care Act ("**PPACA**"), even if there are joint disclosure obligations; and to the extent Eversana is deemed an applicable manufacturer under PPACA, Evoke shall provide Eversana with confirmation that such disclosures were properly made. Evoke is also solely responsible for: (x) all state and other municipal disclosures, including those related to drug samples, marketing expenses, product pricing, etc., and (y) all state and local municipal disposal laws related to the Product. Eversana shall reasonably cooperate with and assist Evoke, as reasonably requested in connection with such reporting requirements, including by providing Evoke, on a monthly basis, with details of Eversana's aggregate spending in connection with the program set forth herein, to allow Evoke to comply with the reporting requirements set forth above.

d. Evoke is responsible for all (i) any statements, whether written or oral, to a Third Party regarding a Product Quality Complaint, Adverse Event, Other Reportable Information, Field Alert, or other compliance inquiry or investigation with respect to the Product, and (ii) taking any action concerning any Regulatory Authority approval under which the Product is sold. For clarification, in the event Eversana becomes aware of a Product Quality Complaint, Adverse Event, Other Reportable Information, Field Alert, or other compliance inquiry or investigation with respect to the Product, Eversana is only responsible for informing the Third Party that information in respect thereof has been or will be conveyed by Eversana to Evoke.

6.3. **Adverse Events, Other Reports and Threatened Governmental Authority Action**.

a. Eversana shall report to Evoke and the Committee within twenty-four (24) hours from the time it becomes aware of:

i. an Adverse Event or Other Reportable Information associated with the use of the Product or information in or coming into its possession or control concerning such Adverse Event or Other Reportable Information;

ii. information that might necessitate the filing by Evoke of a Field Alert;

iii. information relating to an actual or threatened recall of the Product; or

iv. any Product Quality Complaint associated with the use of the Product.

b. Without limitation of Section 6.3.a, with respect to Adverse Events, Other Reportable Information, Field Alerts, recall, and Product Quality Complaints, in each case with respect to the Product, Eversana shall (i) train and inform members of the Sales Force in accordance with the Sales Force Training Matters and Applicable Law, and require any Eversana employee who has performed or is performing any Commercialization activity, to comply with Applicable Law in connection with collection of information regarding the foregoing, and the reporting of such information; and (ii), establish and actively supervise and manage procedures and protocols reasonably designed to ensure that all relevant information relating to the foregoing that comes to the attention of Eversana, with respect to any member of the Sales Force or any Eversana employee who has performed or is performing any Commercialization activity, is promptly conveyed to Eversana so that Eversana can comply with its reporting obligations hereunder. For the avoidance of doubt, Eversana shall be responsible for training, informing, managing, and supervising members of the Sales Force in accordance with the Sales Force Training Matters and Applicable Law, and Eversana shall notify Evoke of any member of the Sales Force's failure to comply with the policies and procedures of Eversana or Applicable Law.

c. Evoke may, at its option, establish procedures for members of the Sales Force to provide such information referenced in Sections 6.3.a and 6.3.b directly to Evoke or its designee, which may be established or modified by Evoke from time to time by written notice to Eversana.

d. Unless restricted or prohibited by Applicable Law or Governmental Authority, Eversana shall promptly notify Evoke if it receives information regarding any threatened or pending action regarding the Product by any Governmental Authority in the Territory.

e. All training materials regarding Adverse Events, Other Reportable Information, Field Alerts and Product Quality Complaints to be utilized by Eversana in connection with its provision of the Services shall either be provided by Evoke to Eversana or, to the extent Eversana prepares such materials, shall be approved by Evoke. These training materials shall include the contact number and method of transferring potential reports and any specific product information related to the Product.

7. PRODUCT MATTERS

7.1. **Orders for Product; Terms of Sale; Returns**. All sales will be recorded in Evoke's name. Evoke shall have the ultimate responsibility and right to take, accept, reject or cancel orders, fill orders and establish and modify the terms and conditions of the sale of the Product (including with regard to any patient assistance programs and returns), subject to compliance with the approved Commercialization Plan and all action plans previously approved by the Committee. Notwithstanding the foregoing, Eversana shall have the day-to-day responsibility and right to take, accept, reject or cancel orders, and fill orders so long as such actions are consistent with the approved Commercialization Plan and all action plans previously approved by the Committee.

7.2. **Returned Product**. Eversana shall notify Evoke of any returned Product, cooperate with Evoke regarding the handling of such Product, and follow such other Product return procedures as set forth in the 3PL Agreement.

7.3. **Recalled Product**. Each Party shall promptly notify the other Party in writing of any facts relating to the advisability of the recall, withdrawal or withholding from the market of the Product in the Territory. Evoke shall have the sole responsibility and right to determine if any recall, withdrawal or other form of market action is necessary with respect to the Product and shall be solely responsible for taking all actions to effect such recall, withdrawal or market action. At Evoke's request, Eversana will cooperate with Evoke regarding Evoke's handling of any recalls, withdrawals or market actions. Evoke shall be responsible for the costs incurred in connection with any recalls, withdrawals or market actions concerning the Product except Eversana shall be responsible for the costs of such recalls, withdrawals or market actions to the extent caused by Eversana's negligence, failure to comply with Applicable Law, or breach of this Agreement and/or the 3PL Agreement.

8. COMPLIANCE MATTERS

8.1. **Compliance with Laws and Policies**.

a. Eversana shall be legally responsible and liable for the actions, omissions and conduct of its and its Affiliate's employees performing the Services under this Agreement and the 3PL Agreement, including any breach of any Applicable Laws. Eversana shall train the Sales Force's compliance with Applicable Law in accordance with the Sales Force Training Matters approved pursuant to Section 3.4 and promptly inform Evoke of any noncompliance by such Sale Force that comes to the attention of Eversana. Eversana shall notify Evoke in writing promptly if any Third Party (including any Governmental Authority) notifies Eversana in writing that either Party's Commercialization activities with respect to the Product are not in compliance with Applicable Law. Evoke shall be legally responsible and liable for the actions, omissions and conduct of its employees with obligations and responsibilities pursuant to this Agreement and the 3PL Agreement, including any breach of any Applicable Laws.

b. Without limiting Section 8.1a, Eversana shall create and maintain a Sales Force compliance program that includes: (i) Eversana compliance monitoring focused on specific risk areas (including off-label promotion, fraud and abuse and false claims) to assess whether Eversana's policies and procedures are being followed by the Sales Force; and (ii) a mechanism for the Sales Force to report, anonymously if they choose, any

concerns including matters such as potential illegal activity with respect to the Sales Forces' Commercialization activities. Eversana shall report to Evoke promptly, but in no event later than three (3) Business Days after becoming aware of any allegation or investigation of illegal activity (and before reporting any such activity to any Governmental Authority) with respect to the alleged failure by a member of the Sales Force to comply with the requirements set forth in Section 8.1a or any reports provided pursuant to clause (ii) above and what action, if any, was taken by Eversana as a result. Without limitation of the foregoing, Evoke may investigate any reports provided pursuant to clause (ii) above and promptly report the results of such investigation to Eversana. Evoke shall review and approve Eversana's Sales Force compliance program.

c. The Parties acknowledge and agree that any direct or indirect payment or transfer of value, as defined in the Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h(e)(10)) and its implementing regulations (42 C.F.R. § 403.900 et seq.), including any compensation, reimbursement for expenses, meals, travel, and medical journal reprints ("**Payments or Transfers of Value**") to any physician licensed to practice in the Territory or any teaching hospital in the Territory (each, a "**Covered Recipient**") is subject to transparency reporting requirements, including disclosure on the federal Open Payments website. Eversana shall implement Eversana's policies and procedures requiring the Sales Force not to contract with or make any Payment or Transfer of Value to a Covered Recipient on behalf of Evoke without approval of the Evoke. Eversana shall comply with all reporting required by Applicable Law with respect to any Payments or Transfers of Value provided by the Sales Force to Covered Recipients in connection with this Agreement that come to the attention of Eversana. Eversana shall also provide Evoke with any and all information about Payments or Transfers of Value the Sales Force provides to Covered Recipients that come to the attention of Eversana in connection with this Agreement to the extent required to enable Evoke to comply with its transparency obligations under Applicable Law. All Payments or Transfers of Value made by the Sales Force to Covered Recipients in connection with this Agreement shall be made in accordance with Applicable Law to a centrally managed, pre-set rate structure based on a fair market value analysis. Eversana shall provide to Evoke detailed expenditure information in a manner that conforms to industry standards, and Eversana shall maintain such documentation for a minimum of five (5) years.

8.2. **Obligation to Notify**. Each Party shall promptly notify the other Party upon becoming aware of any breach or violation by the Sales Force or by such Party's other employees of the Anti-Corruption Laws and shall take such steps as the Parties may reasonably agree to avoid a potential violation of the Anti-Corruption Laws.

9. INDEPENDENT CONTRACTOR

9.1. **Independent Contractor Status**. The status of each Party under this Agreement shall be that of an independent contractor. Except as otherwise set forth herein, neither Party shall have the right to enter into any agreements on behalf of the other Party, nor shall it represent to any Person that it has any such right or authority.

9.2. Eversana and its directors, officers, employees and any persons providing Services under the Agreement are at all times independent contractors with respect to Evoke. Persons provided by Eversana to perform the Services shall not be deemed employees of Evoke. Neither this

Agreement nor the Services to be rendered hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship between Eversana, its directors, officers, employees and any persons providing Services under the Agreement and Evoke. Evoke understands that Eversana may utilize independent contractors in connection with its performance of the Services.

9.3. Eversana is, and at all times shall remain, solely responsible for the human resource and performance management functions of all Eversana personnel provided to perform the Services. Eversana shall be solely responsible for all disciplinary, probationary and termination actions taken by it, and for the formulation, content and dissemination of all employment policies and rules (including written disciplinary, probationary and termination policies) applicable to its employees, agents and contractors.

9.4. Eversana shall obtain and maintain worker's compensation insurance and other insurances required for Eversana personnel providing the Services and acknowledges that Evoke does not, and shall not obtain or maintain such insurances, all of which shall be Eversana's sole responsibility.

9.5. The Parties agree that Eversana personnel are not, and are not intended to be or be treated as employees of Evoke and that no such individual is, or is intended to be, eligible to participate in any benefits programs or in any Evoke "employee benefit plans" (as defined in Section 3(3) of ERISA).

9.6. Except as otherwise set out in this Agreement, Evoke shall have no responsibility to Eversana or any Eversana personnel for any compensation, expense reimbursements or benefits (including, without limitation, vacation and holiday remuneration, healthcare coverage or insurance, life insurance, pension or profit-sharing benefits and disability benefits), payroll-related or withholding taxes, or any governmental charges or benefits (including, without limitation, unemployment and disability insurance contributions or benefits and workers compensation contributions or benefits) that may be imposed upon or be related to the performance by Eversana or its employees, agents or contractors of the obligations under this Agreement, all of which shall be the sole responsibility of Eversana. To clarify, Evoke will not withhold any income tax or payroll tax of any kind on behalf of Eversana.

9.7. Limitations. Notwithstanding anything to the contrary in this Section 9, Eversana shall have no obligation or responsibility for any damages, liability, loss and costs, including but not limited to attorney's fees (collectively, "**Liability**") to the extent such Liability is attributed to either: (i) discriminatory and/or intentional acts of Evoke, its employees, agents or contractors; or (ii) any benefits payable under any Evoke benefit plan, and any other bonus, stock option, stock purchase, incentive, deferred compensation, supplemental retirement, severance and other similar fringe or employee benefit plans, programs or arrangements that may be sponsored at any time by Evoke that cause, or are either alleged to cause or interpreted by any court or Regulatory Authority to cause, any Eversana personnel to be reclassified as an employee of Evoke. In the event any Liability is alleged against Eversana or its employees which is attributable to Evoke (as set forth in this Section 9.7 (i) and (ii)), Evoke shall indemnify, defend, and hold harmless Eversana and its directors, officers, employees and contractors.

10. STATEMENTS, RECORD-KEEPING AND AUDITS

10.1. **Evoke Statement of Fees.** All payments made to Eversana under this Agreement shall be accompanied by a written statement from Evoke (in a form and level of detail agreed to by the Committee) disclosing the Commercialization Costs, reimbursement of costs and Profit Split paid, as set forth in Section 5 hereof, including calculations based on Net Sales.

10.2. **Evoke Records**. Evoke shall keep complete and accurate books and records (financial and otherwise), in accordance with GAAP, of Net Sales and all such other financial information necessary to determine reimbursement of costs, Profit Split, and any and all other payments to be made to Eversana under this Agreement. Without limitation of the foregoing, Evoke shall further keep, or cause to be kept, complete and accurate books and records reflecting all of its obligations under this Agreement, including such obligations set forth in Exhibit D.

10.3. **Audits of Evoke**. At the request of Eversana, Evoke shall, and shall cause its Affiliates to, permit a nationally recognized independent auditor designated by Eversana and reasonably acceptable to Evoke, at reasonable times and upon reasonable notice, to audit the books and records maintained pursuant to Section 10.2 to ensure the accuracy of all reports and payments made hereunder, no more than twice during any twelve (12)-consecutive month period during the Term and a period of twenty-four (24) months after the expiration or termination hereof or such longer period as required by Applicable Law, and no more than once with respect to any period so examined; provided that if any such audit reveals that Evoke is or was not in material compliance with Applicable Law or this Agreement, Eversana shall have the right to conduct such additional audits as may be reasonably required by Eversana to determine whether Evoke has appropriately remedied such non-compliance. The cost of any such audit shall be borne by Eversana, unless (a) with respect to an audit of payments made hereunder, the audit reveals that Evoke has been overpaid by more than [***], or (b) with respect to an audit of the compliance records, such audit reveals material and continuous noncompliance by Evoke with Applicable Law, the Sales & Promotion Policies, or the Compliance Provisions with respect to its obligations under this Agreement, in which case ((a) or (b)), Evoke shall reimburse Eversana for any third party costs reasonably incurred in connection with the audit, up to a maximum of $[***]. If any such audit concludes that additional payments were owed or that excess payments were received during such period, the owing Party shall pay the additional payments or the receiving Party shall reimburse such excess payments within sixty (60) days after the date on which such audit is completed.

10.4. **Eversana Records**.

a. Eversana shall keep, or shall cause to be kept, complete and accurate books and records (financial and otherwise) pertaining to the performance of the distribution by its distribution division, HUB reimbursement team and Commercialization activities, including monthly sales data by Sales Force representative and territory, records necessary for calculating Net Sales, records of Detail performance, records of Commercialization Costs incurred, training test results and copies of training tests as specified in Section 3.4, in sufficient detail to verify compliance with its obligations hereunder and to calculate and verify all amounts payable hereunder. Eversana shall keep such books and records, or shall cause such books and records to be kept, for a period of twenty-four (24) months after the expiration or termination hereof or such longer period as required by Applicable Law. All financial books and records kept by Eversana hereunder shall be maintained in accordance with GAAP, consistently applied.

a.

*** Certain information on this page has been omitted.

b. Without limitation of the foregoing, Eversana shall keep, or cause to be kept, complete and accurate books and records relating to its obligations under this Agreement, including Eversana's compliance with Applicable Law, the Sales & Promotion Policies and the Compliance Provisions, including with respect to: (i) Eversana's policies and procedures concerning compliance with Applicable Law, the Sales & Promotion Policies and the other compliance obligations set forth herein; (ii) records of any investigations and remedial and disciplinary actions taken to address violations of any of the foregoing; and (iii) records of any payments made in connection with this Agreement (collectively, the "**Compliance Records**"). Such books and records shall be kept for a period of three (3) years after the expiration or termination hereof or such longer period as required by Applicable Law.

10.5. **Audits of Eversana**. At the request of Evoke, Eversana shall, and shall cause its Affiliates to, permit a nationally recognized independent auditor designated by Evoke and reasonably acceptable to Eversana, at reasonable times and upon reasonable notice, to audit the books and records maintained pursuant to Section 10.4 to ensure Eversana' compliance with this Agreement, including the accuracy of all reports and payments and distribution costs, reimbursements and Commercialization Costs made hereunder, no more than once during any twelve (12)-consecutive month period during the Term and a period of twenty four (24) months thereafter and no more than once with respect to any period so examined; provided that if any such audit reveals that Eversana is or was not in material compliance with Applicable Law, the Sales & Promotion Policies or the Compliance Provisions with respect to its obligations under this Agreement, Evoke shall have the right to conduct such additional audits as may be reasonably required by Evoke to determine whether Eversana has appropriately remedied such non-compliance. The cost of any such audit shall be borne by Evoke, unless (a) with respect to an audit of payments made hereunder, the audit reveals that Eversana has been overpaid by more than [***], or (b) with respect to an audit of the Compliance Records, such audit reveals material and continuous noncompliance by Eversana with Applicable Law, the Sales & Promotion Policies or the Compliance Provisions with respect to its obligations under this Agreement, in which case ((a) or (b)), Eversana shall reimburse Evoke for any third party costs reasonably incurred in connection with the audit, up to a maximum of $[***]. If any such audit concludes that additional payments were owed or that excess payments were received during such period, the owing Party shall pay the additional payments or the receiving Party shall reimburse such excess payments within sixty (60) days after the date on which such audit is completed.

11. CONFIDENTIALITY

11.1. **Maintaining Confidentiality.** Confidential Information disclosed under this Agreement shall remain the property of the disclosing Party. At all times during the Term and for five (5) years following the expiration or termination of this Agreement, the receiving Party shall use the Confidential Information solely for the purposes set forth in this Agreement and shall not disclose such Confidential Information to any Third Party except as permitted under this Agreement or with the disclosing Party's prior written consent. The receiving Party shall use at least the same care for maintaining confidentiality of the Confidential Information as it uses to maintain the confidentiality of its own Confidential Information of similar value, but in no event less than commercially reasonable measures within the pharmaceutical industry.

*** Certain information on this page has been omitted.

11.2. **Exceptions to Confidentiality**. The receiving Party's obligations set forth in this Agreement shall not extend to any Confidential Information of the disclosing Party:

a. that the receiving Party can demonstrate by reasonable evidence was in the receiving Party's possession and at its free disposal prior to disclosure by the disclosing Party;

b. that was in the public domain at the time of disclosure by the disclosing Party;

c. that subsequently comes into the public domain through no fault, action or omission of the receiving Party;

d. that becomes available to receiving Party without any obligation of confidentiality from a Third Party that is not known to have a confidentiality obligation to the disclosing Party; or

e. that the receiving Party can demonstrate by reasonable evidence was developed independently by the receiving Party without use of or reliance on any Confidential Information of the other Party.

11.3. **Authorized Disclosure**. Each Party may disclose Confidential Information to the extent that such disclosure is:

a. to its directors, officers, employees, advisers, consultants, attorneys, auditors, agents, contractors, or representatives that reasonably need to know the information for the purposes set out in this Agreement, and who are subject to confidentiality substantially as protective as those set forth in this Agreement;

b. to its Affiliates, including their directors, officers, employees, advisors, consultants, agents, contractors or representatives, to the extent they reasonably need to know the information for the purposes set out in this Agreement, and who are subject to confidentiality obligations substantially as protective as those set forth in this Agreement;

c. to its legal counsels or auditors to conduct internal check, assessment or auditing who need to know the Confidential Information for the purpose of a Party's internal check, assessment or auditing; or

d. as required by laws, rules of public stock exchanges or court orders, provided that the receiving Party may disclose only such information as is legally required, and provided further that the receiving Party shall provide the disclosing Party with as much advance written notice of such requirement as is reasonably possible and a reasonable opportunity to object to or limit such disclosure. Notwithstanding the foregoing, if either Party determines a disclosure of the terms of this Agreement and/or their ancillary documents is required by law or court order, it shall notify the other Party in writing at least ten (10) Business Days before the time of the proposed disclosure, to the extent reasonably possible. For clarification, prior to disclosure of this Agreement as a material contract for Evoke requiring disclosure pursuant to the rules of a public stock exchange, Evoke shall provide Eversana with an opportunity to seek confidential treatment of such terms that Eversana deems privileged and confidential and would justify redactions under Applicable Law.

11.4. **Return or Destruction of Confidential Information**. Upon the effective date of the expiration or termination of this Agreement for any reason, either Party may request in writing and the non-requesting Party shall either, with respect to Confidential Information to which such non-requesting Party does not retain rights under the surviving provisions of this Agreement: (a) promptly destroy all copies of such Confidential Information in the possession or control of the non-requesting Party and confirm such destruction in writing to the requesting Party; or (b) promptly deliver to the requesting Party, at the non-requesting Party's sole cost and expense, all copies of such Confidential Information in the possession or control of the non-requesting Party. Notwithstanding the foregoing, the non-requesting Party shall be permitted to retain such Confidential Information (i) to the extent necessary or useful for purposes of performing any continuing obligations or exercising any ongoing rights hereunder and, in any event, a single copy of such Confidential Information for archival purposes and (ii) any computer records or files containing such Confidential Information that have been created solely by such non-requesting Party's automatic archiving and back-up procedures, to the extent created and retained in a manner consistent with such non-requesting Party's standard archiving and back-up procedures, but not for any other uses or purposes. All Confidential Information shall continue to be subject to the terms of this Agreement for the period set forth in Section 11.1.

11.5. **Use of Name and Disclosure of Terms**. Except as necessary to perform a Party's obligations under this Agreement, each Party (a) shall keep the existence, terms, and the subject matter (including the applicable transactions) covered by this Agreement confidential and shall not disclose such information to any other Person through a press release or otherwise and (b) shall not mention or otherwise use the name or any trademark of the other Party or its Affiliates in connection with this Agreement, in each case ((a) and (b)), without the prior written consent of the other Party in each instance (which shall not be unreasonably withheld, conditioned or delayed). The restrictions imposed by this Section 11.5 shall not prohibit either Party from making any disclosure identifying the other Party that is required by Applicable Law or the requirements of a national securities exchange or another similar regulatory body, provided that any such disclosure shall be governed by Section 11.3. Nor shall the restrictions imposed by this Section 11.5 prohibit either Party from announcing this Agreement to the public promptly following the Effective Date, including such key terms and other items appropriate for such a public release, in each case subject to the written consent of the other Party, which shall not be unreasonably withheld. Further, the restrictions imposed on each Party under this Section 11.5 are not intended, and shall not be construed, to prohibit a Party from (x) identifying the other Party in its internal business communications, provided that any Confidential Information in such communications remains subject to this Article 11 or (y) disclosing (i) information for which consent has previously been obtained and (ii) information of a similar nature to that which has been previously disclosed publicly with respect to this Agreement, each of which ((i) and (ii)) shall not require advance approval, but copies of which shall be provided to the other Party as soon as practicable after the release or communication thereof.

12. REPRESENTATIONS AND WARRANTIES

12.1. **Mutual Representations and Warranties**. Each Party represents and warrants to the other Party that as of the Effective Date:

a. it is an independent legal entity duly organized, validly existing in good standing under the laws of the place of its establishment or incorporation;

b. it has full authority to enter into this Agreement and to perform its obligations under this Agreement and the provisions of this Agreement are legally binding upon it from the Effective Date;

c. its execution of this Agreement and performance of its obligations under it will not violate (i) any provision of its business license, articles of incorporation, articles of association or similar organizational documents; (ii) any Applicable Laws or any governmental authorization or approval; and (iii) any contract to which it is a party or to which it is subject, or result in a default under any such contract;

d. no lawsuit, arbitration or other legal or governmental proceeding is pending or, to its knowledge, threatened against it that would affect its ability to perform its obligations under this Agreement;

e. it has disclosed to the other Party all documents issued by any Governmental Authority that may have a material adverse effect on its ability to fully perform its obligations under this Agreement, and none of the documents it has previously provided to the other Party contain any misstatements or omissions of material facts;

f. it has not been debarred and is not subject to debarment and that it shall not knowingly use in any capacity, in connection with the Services and the program described herein, any Person who has been debarred pursuant to Section 306 of the Act or who is the subject of a conviction described in such section;

g. (i) it and its Affiliates are in compliance with (A) the PhRMA Code on Interactions with Healthcare Professionals and (B) all state codes or requirements that limit or regulate interactions with healthcare practitioners and (ii) it has not been debarred, suspended or excluded from any federal health care program, including Medicare, Medicaid and the Civilian Health and Medical Program of the Uniformed Services. If it or any of its employees who are involved in performing the Services or working with the other Party in connection with the program described herein, is debarred, suspended or excluded during the Term or such Party reasonably believes debarment, suspension or exclusion is contemplated, it shall immediately notify the other Party in writing upon it becoming aware of such debarment, suspension or exclusion. If a Party is so debarred, suspended or excluded, or in the case of any employee who is debarred, suspended or excluded, if the applicable Party permits such employee to continue to perform any Services or work on the program described herein, then the other Party shall have the right to terminate this Agreement upon written notice to the other Party. Any termination of this Agreement pursuant to this Section 12.1(g) shall be treated as a termination pursuant to Section 14.2.d as if such Party had committed a material breach, except that in such event no cure period shall apply and such Party shall have the right to effect such termination immediately upon written notice to other Party;

h. it will comply in all material respects with Applicable Laws in performing its obligations and exercising its rights hereunder.

12.2. **Evoke's Representations and Warranties**. Evoke represents and warrants that as of the Effective Date and within the Term of this Agreement:

a. Evoke has the right to enter into this Agreement;

b. Evoke has no knowledge of any claim alleging that the manufacture, packaging, distribution, sale or use of the Product in the Territory, or that the use of any registered trademark or registered copyright within the Product Trademarks, Corporate Trademarks or Product Copyrights infringes or misappropriates the Intellectual Property Rights or other rights of any Third Party;

c. the manufacture, packaging, distribution, sale or use of the Product in the Territory does not infringe or misappropriate (i) the copyrights and/or trade secrets of any Third Party, and (ii) to the knowledge of Evoke, the patents and/or trademarks of any Third Party;

d. Evoke either owns the Product, or has received all lawful authority from a Third Party necessary to grant Eversana the right to provide the Services, as set forth herein, provided that the foregoing representation and warranty is not intended to be nor shall be construed as a representation or warranty with respect to non-infringement of Third Party Intellectual Property Rights;

e. Evoke is solely responsible for reviewing, finalizing and approving all Product promotional materials and literature (including but not limited Product inserts and all Product promotional materials initially prepared by Eversana) and for ensuring all such materials comply with Applicable Law; and

f. the program(s) pursuant to which Eversana is performing the Services is a Evoke program that is being implemented by Eversana and as such, Evoke is responsible for ensuring that the program set forth herein adheres to Applicable Law.

12.3. **Eversana's Representations and Warranties**. Eversana represents and warrants that as of the Effective Date and within the Term of this Agreement:

a. it has adequate cash flow and otherwise has the financial resources, capacity and capabilities to timely and adequately perform its obligations hereunder;

b. it will not use any promotional or training materials, including all Product promotional materials and Sales Force Training Matters, without review and written approval by Evoke;

c. Eversana has no knowledge of any claim alleging that the use of Eversana Know-How in connection with the Services and the Product in the Territory infringes or misappropriates the Intellectual Property Rights or other rights of any Third Party;

d. the Eversana Know-How and Arising Product Know-How developed by Eversana and the use of the same in connection with the Services and/or the Product in the Territory does not infringe or misappropriate (i) the copyrights and/or trade secrets of any Third Party, and (ii) to the knowledge of Eversana, the patents and/or trademarks of any Third Party;

e. it has not initiated a voluntary proceeding under any applicable bankruptcy code and there is no involuntary proceeding under any applicable bankruptcy code pending against Eversana; and

f. it will continue to be able to run its business as a going concern at least over the nine (9) month period beginning on the Effective Date. And if on any date hereafter Eversana has reason to believe that it will not continue to be able to run its business as a going concern over any nine (9) month period during the Term, then Eversana shall notify Evoke in writing within two (2) days thereafter.

12.4. **DISCLAIMER OF WARRANTIES**. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR GRANTS ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR EXCEPT AS SET FORTH IN SECTION 12.2.c AND 12.3.d, ANY WARRANTY AS TO THE VALIDITY OF ANY PATENTS OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

13. INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

13.1. **Evoke Indemnity**. Evoke shall indemnify, hold harmless and defend Eversana, its Affiliates, and their respective directors, officers, employees, representatives and agents (the "**Eversana Indemnitees**") from and against any and all losses, damages, liabilities, judgments, fines, and amounts paid in settlement, including any associated costs and expenses (including reasonable attorneys' fees) ("**Losses**"), which result directly or indirectly from any claim, demand, suit, action or proceeding brought or initiated by a Third Party against them ("**Claims**") to the extent that such Claims arise out of (i) the manufacture, packaging, branding, labeling, sale or use of the Product, including any death or personal injury arising out of the defective manufacture of the Product by or on behalf of Evoke, including without limitation any product liability or similar claims with respect to the Product; (ii) the manufacture, packaging, branding, labeling, sale or use of the Product infringing the Intellectual Property Rights of a Third Party, except to the extent such infringement relates to the Eversana Know-How; or (iii) the gross negligence, fraud or willful misconduct of any of the Evoke Indemnitees in performing any obligations under this Agreement; or (iv) a material breach of a representation or warranty set forth in this Agreement by an Evoke Indemnitee; provided, however, that Evoke shall not be required to indemnify, hold harmless or defend any Eversana Indemnitee against any claim to the extent that Eversana has an obligation to indemnify an Evoke Indemnitee under Section 13.2.

13.2. **Eversana Indemnity**. Eversana shall indemnify, hold harmless and defend the Evoke, its Affiliates, and their respective directors, officers, employees, representatives and agents (the "**Evoke Indemnitees**") from and against any Losses, which result directly or indirectly from any Claims to the extent that such Claims arise out of: (i) the gross negligence, fraud or willful misconduct of any of the Eversana Indemnitees in performing any obligations under this Agreement, (ii) any infringement of the Intellectual Property Rights of a Third Party predicated on Eversana Know-How or Arising Product Know-How to the extent developed by Eversana; or (iii) a material breach of a representation or warranty set forth in this Agreement by an Eversana indemnitee; provided, however, that Eversana shall not be required to indemnify, hold harmless or defend any Evoke Indemnitee against any claim to the extent that Evoke has an obligation to indemnify a Eversana Indemnitee under Section 13.1.

13.3. **Procedures**. Any indemnified party submitting an indemnity claim under this Section 13, as applicable ("**Indemnified Party**"), shall: (a) promptly notify the indemnifying Party ("**Indemnifying Party**"), of such claim in writing and furnish the Indemnifying Party with a copy of the applicable communication, notice or other action relating to the event for which indemnity is sought; provided that, no failure to provide such notice pursuant to this clause (a) shall relieve the Indemnifying Party of its indemnification obligations, except to the extent such failure materially prejudices the Indemnifying Party's ability to defend or settle the claim; (b) give the Indemnifying Party the authority, information and assistance necessary to defend or settle such

suit or proceeding in such a manner as the Indemnifying Party shall determine; and (c) give the Indemnifying Party sole control of the defense (including the right to select counsel, at the Indemnifying Party's expense) and the sole right to compromise and settle such suit or proceeding; provided, however, that in the case of the foregoing clauses (b) and (c), the Indemnifying Party shall not, without the written consent of the Indemnified Party, compromise or settle any suit or proceeding unless such compromise or settlement (i) is solely for monetary damages (for which the Indemnifying Party shall be responsible), (ii) does not impose injunctive or other equitable relief against the Indemnified Party and (iii) includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding. The Indemnified Party (in its capacity as such) may participate in the defense at its own expense.

13.4. **Limitation of Liability**. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS A RESULT OF GROSS NEGLIGENCE, COMMON LAW FRAUD OR WILLFUL MISCONDUCT, A BREACH OF ARTICLE 11 OR SECTION 2.2.b OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, NEITHER PARTY NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO THE OTHER OR THEIR AFFILIATES, FOR ANY CLAIMS, DEMANDS OR SUITS FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR MULTIPLE DAMAGES, AND OTHER THAN EVOKE'S PAYMENT OBLIGATIONS HEREUNDER, FOR: (i) LOSS OF PROFITS, REVENUE OR INCOME, DIMINUTION IN VALUE OR LOSS OF BUSINESS OPPORTUNITY (IN EACH CASE, WHETHER OR NOT FORESEEABLE AT THE EFFECTIVE DATE) OR (ii) ANY DAMAGES CALCULATED BY REFERENCE TO A MULTIPLIER OF REVENUE, PROFITS, OR SIMILAR METHODOLOGY, CONNECTED WITH OR RESULTING FROM ANY BREACH OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH, OR RELATED HERETO, INCLUDING ANY SUCH DAMAGES WHICH ARE BASED UPON BREACH OF CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW OR ANY OTHER THEORY OF RECOVERY.

EACH PARTY FURTHER ACKNOWLEDGES AND AGREES THAT UPON ANY BREACH OF A WARRANTY CONTAINED HEREIN, EXCEPT IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR DAMAGES SHALL IN NO EVENT EXCEED THE SUM OF ALL PAYMENTS ACTUALLY RECEIVED UNDER THIS AGREEMENT FROM THE OTHER PARTY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE PARTY'S CLAIM AROSE, LESS ANY CLAIMS PREVIOUSLY PAID BY THE OTHER PARTY.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES OTHER REPRESENTATIONS, WARRANTIES OR PROMISES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13.5. Evoke shall reimburse Eversana for all of the out-of-pocket costs and expenses (including, reasonable attorneys' fees) and Eversana employee internal costs incurred by Eversana in connection with any of the following events or occurrences, except to the extent that a breach by Eversana of its express obligations contained in this Agreement are the primary cause of such event or occurrence, or such an investigation is related to Eversana (or its services or business practices) and not specifically targeted at Evoke or its Product or business practices: (i) any directed inspection, investigation or inquiry by any Governmental Authority or Regulatory Authority attributable to Evoke or its Products or business practices; or (ii) any court or Regulatory Authority or Governmental Authority order, subpoena, interrogatory, demand, request for admission or other process of law directed to Eversana and specifically attributable to Evoke or its Product or business practices.

13.6. **Insurance.** Each Party shall at all times maintain general liability insurance policies or self-insurance in such amounts and with such scope of coverage as are normal and customary in the pharmaceutical industry for a Person of comparable size and engaged in activities comparable to the activities in which such Party engages hereunder. As of the NDA Approval Date, Evoke shall maintain product liability insurance for the Product of at least ten million dollars ($10,000,000) naming Eversana as an additional insured under such policy, it being understood and agreed that Eversana shall not need to obtain any product liability insurance during the Term. Evoke shall increase the product liability insurance to fifteen million dollars ($15,000,000) when Product sales exceed one hundred and fifty million dollars ($150,000,000) and to twenty million dollars ($20,000,000) when Product sales exceed two hundred and fifty million dollars ($250,000,000). If requested by the other Party, the insured Party shall furnish a certificate of insurance or other reasonable proof of coverage (which may be a certificate or other evidence issued by a Party under a program of self-insurance) evidencing the requisite coverage required under this Section 13.6 during the Term. The insurance policies shall be under an occurrence form, but if only a claims-made form is available to a Party, then such Party shall continue to maintain such insurance after the expiration or termination of this Agreement for a period of five (5) years.

14. TERM AND TERMINATION

14.1. **Term.** The Agreement shall take into effect as of the Effective Date and shall remain in effect for a term of five (5) years from the NDA Approval Date unless earlier terminated as provided hereunder (the "**Term**").

14.2. **Termination**. This Agreement may be terminated as follows:

a. **Termination Rights Regarding Initial Commercialization Plan and Budget.** Evoke shall have the right to terminate this Agreement if (a) Eversana fails to submit an initial Commercialization Plan and an initial Commercialization Budget to the Committee within forty-five (45) days of the Effective Date or (b) the Committee fails to approve an initial Commercialization Plan and an initial Commercialization Budget within seventy-five (75) days of the Effective Date, with such approval of the initial Commercialization Plan and initial Commercialization Budget not to be unreasonably withheld by the Evoke members of the Committee.

b. **Termination for Late Approval.** Eversana shall have the right to terminate this Agreement if NDA Approval does not occur by December 31, 2020, provided that Eversana gives such termination notice to Evoke no later than March 1, 2021. If the Agreement is terminated according to this Section 14.2.b, Evoke shall reimburse Eversana for [***] non-refundable payments to Third Parties that have been approved by the Committee and paid for by Eversana to Third Parties, or are required to be paid for by Eversana to such Third Parties even after termination of the Agreement.

c. **Termination for Revenue Shortfall**. After each anniversary date of Commercial Launch, either Party shall be entitled to terminate the Agreement if cumulative Net Sales have not exceeded the amount set forth below in the twelve (12) month period immediately preceding such anniversary date (the "**Minimum Net Revenue**" or "**MNR**") so long as such termination right is exercised within thirty (30) days of such anniversary date by providing written notice to the other Party:

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d. **Termination upon Material Breach.** Either Party may terminate this Agreement if the other Party materially breaches this Agreement, and such breach is not cured within sixty (60) days upon receipt from the other Party of written notice specifying in detail the nature and extent of the alleged material breach.

e. **Termination for Insolvency**. Either Party may terminate this Agreement immediately on written notice if the other Party (or, if applicable, a parent of such other Party) shall file in any court or Governmental Authority, pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of the other Party or of its assets, or if the other Party (or, if applicable, a parent of such other Party) shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if the other Party (or, if applicable, a parent of such other Party) shall propose or be a party to any dissolution or liquidation, or if the other Party (or, if applicable, a parent of such other Party) shall make a general assignment for the benefit of its creditors.

f. **Termination for Change of Control.** In the event of a Change of Control of Evoke, Evoke or Eversana shall have the right to terminate the Agreement upon thirty (30) days' written notice. In the event that Evoke is the Party initiating termination, Evoke shall pay Eversana a one-time payment in an amount determined by the date that such written notice is provided relative to the anniversary date of the Commercial Launch. More particularly, if such date is in:

i. Year 1 (within 12 months of Commercial Launch): Evoke shall pay Eversana the prior twelve (12) months of Commercialization Costs actually incurred by Eversana plus [***], and all of Eversana's costs of actually rendered Pre-Commercial Services set forth on Exhibit A (the "**Accrued Pre-Commercialization Costs**");

ii. Years 2 (after 12 months and prior to 24 month anniversary of Commercial Launch): Evoke shall pay Eversana the prior twelve (12) months of Commercialization Costs actually incurred by Eversana plus [***], and all of Eversana's Accrued Pre-Commercialization Costs; or

iii. Year 3 (after 24 months and prior to 36 month anniversary of Commercial Launch): Evoke shall pay Eversana the prior twelve (12) months of Commercialization Costs actually incurred by Eversana plus [***], and all of Eversana's Accrued Pre-Commercialization Costs; or

iv. Years 4-5 (after 36 months and prior to 60 month anniversary of Commercial Launch): Evoke shall pay Eversana the prior twelve (12) months of Commercialization Costs actually incurred by Eversana plus [***], and all of Eversana's Accrued Pre-Commercialization Costs.

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Notwithstanding the foregoing, Eversana shall receive all payments attributable to Services performed, including but not limited to Commercialization Costs and Profit Split incurred prior to the termination, as well as any termination payment owed under this Section 14.2.f. Termination payment owed under this Section 14.2.f would be reduced by the amount of previously reimbursed Commercialization Costs and Profit Split paid for the related prior twelve (12) month period and any Net Sales revenue which occurred prior to termination yet to be collected by Eversana from pharmacies or insurance. Further, Upon termination under this Section 14.2.f, Evoke shall promptly pay Eversana all Loan amounts outstanding, including accrued interest, under Section 5.8.

g. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party if:

(i) the Product is subject to a recall based on material safety concerns for the Product, which shall not include any recall for packaging or labeling issues, manufacturing concerns, or the like;

(ii) the other Party is in breach of Section 12.1(g);

(iii) Evoke discontinues the Product pursuant to its rights under Section 2.3;

(iv) the Product is not Commercially Launched within nine (9) months of NDA Approval Date, provided that a written notice of termination is given within sixty (60) days of the end of the nine (9) month period;

(v) the overall Net Profit is negative for any two consecutive calendar quarters (January through March, April through June, July through September, or October through December) beginning with the first full calendar quarter following twenty-four (24) months after the Commercial Launch of the Product, provided that a written notice of termination is given within sixty (60) days of the end of the second consecutive calendar quarter having a negative Net Profit; or

(vi) there is any change in Applicable Law that makes operation of the Services as contemplated in this Agreement illegal or commercially impractical.

h. Eversana can terminate this Agreement upon thirty (30) days written notice to Evoke if: (i) Evoke withdraws the Product from the market in the Territory for a period of greater than ninety (90) days, provided that a written notice of termination is given within sixty (60) days of such ninety (90) day Product withdrawal period.

14.3. **Effect of Termination or Expiration**.

a. Upon the effective date of expiration or termination of this Agreement, and subject to Section 14.3.b below, Eversana shall promptly cease all performance of the Services and promptly discontinue the use of any Evoke Know-How, Product Trademarks, Product Copyrights, and Corporate Trademarks. At Evoke's election, Eversana either shall (a) promptly return to Evoke or (b) destroy and certify to Evoke such destruction of, all Promotional Materials, training materials, and all other information related to the Product or the activities provided for by this Agreement.

b. Notwithstanding Section 2.8 above, upon the effective date of expiration or termination of this Agreement for any reason, Evoke shall have the right, but not the obligation, to solicit and hire some or all of the Dedicated Employees, solely in accordance with the process set forth in Schedule 14.3.b attached hereto.

c. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof shall not limit any remedies that may otherwise be available in law or equity.

14.4. **Accrued Rights**. Termination or expiration of this Agreement for any reason shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration, including, without limitation, Eversana' rights to any amounts owed by Evoke hereunder and pursuant to the Loan Agreement. Such termination or expiration shall not relieve a Party from obligations that are expressly indicated to survive the termination or expiration of this Agreement. If payments attributable to Services performed before the termination or expiration remain unpaid upon the termination or expiration of the Agreement, including but not limited to reimbursement of Commercialization Costs (if applicable) and Profit Split, Evoke shall make such payments promptly after the termination or expiration of this Agreement.

14.5. **Loan Agreement.** On termination or expiration of this Agreement for any reason, Evoke shall owe Eversana all amounts due pursuant to the Loan and Loan Agreement, in accordance with the terms set forth in the Loan Agreement. For clarification, there are no circumstances pursuant to which Evoke shall not repay Eversana for amounts loaned by Eversana to Evoke, pursuant to the Loan Agreement.

14.6. **Payments Due Eversana Upon Termination.** In addition to other payment obligations set forth in this Agreement due on termination, in the event:

(a) Eversana terminates the Agreement pursuant to Sections 14.2.d (Material Breach); or

(b) Evoke terminates the Agreement pursuant to Sections 14.2.c or 14.2.g.

Evoke shall reimburse or pay Eversana for: (x) one hundred percent (100%) of all un-reimbursed non-refundable Commercialization Costs incurred by Eversana during the twelve (12) month period prior to the effective date of termination (even if such costs are due and payable following such termination); and (y) payment of all Profit Split due as of the effective date of termination; and (z) any reasonable cost and expenses actually incurred by Eversana related to terminating the leases on the fleet automobiles provided to members of the Sales Force who will no longer be employed by Eversana after termination of this Agreement, provided that Eversana shall have the obligation to mitigate such costs and expenses including by (i) allow Evoke to commence an arrangement with the fleet division to assume such cars if and to the extent requested by Evoke), (ii) reassigning such fleet vehicles for use with other Eversana activities outside of the scope of this agreement and (iii) to the extent (i) or (ii) is not feasible, by promptly terminating such leases and disposing of such vehicles.

14.7. **Survival**. The rights and obligations of the Parties set forth in Section 1 (Definitions), Section 2.4 (Other Rights and Obligations), Section 6.1 (Ownership of Regulatory Documentation and Approvals), Section 8.1.c (Eversana Compliance with Laws and Policies), Section 10.2 (Evoke Records) Section 10.3 (Audits of Evoke), Section 10.4 (Eversana Records), Section 10.5 (Audits of

Eversana), Section 11 (Confidentiality), Section 13 (Indemnification, Limitation of Liability and Insurance), Section 14.2 (Termination), Section 14.3 (Effect of Termination), Section 14.4 (Accrued Rights), Section 14.4 (Loan Agreement), Section 14.6 (Payments on Termination), Section 14.7 (Survival), Section 15 (Notice), and Section 16 (General Provisions) shall survive the termination or expiration of this Agreement.

15. NOTICE

Any notice or written communication provided for in this Agreement by a Party to the other Party, including but not limited to any and all offers, writings, or notices to be given hereunder, shall be made by registered mail or by courier service delivered letter, promptly transmitted or addressed to the appropriate Party. The date of receipt of a notice or communication hereunder shall be the date of delivery confirmed by the USPS or the courier service in the case of a courier service delivered letter. All notices and communications shall be sent to the appropriate address set forth below, until the same is changed by notice given in writing to the other Party effective as above

Notice to Evoke:	Dave Gonyer, CEO
Address:	Evoke Pharma, Inc. 420 Stevens Ave, Ste 370 Solana Beach, CA 92075
Notice to Eversana:	Mr. Greg Skalicky, Chief Revenue Officer
Address:	EVERSANA Life Science Services, LLC 190 N. Milwaukee Street Milwaukee, WI 53202
With a copy to:	General Counsel EVERSANA Life Science Services, LLC 190 N. Milwaukee Street Milwaukee, WI 53202

16. GENERAL PROVISIONS

16.1. **Force Majeure**. Except as otherwise set out in this Agreement, no Party to this Agreement shall have any liability whatsoever or (without prejudice to any payments of monies due) be deemed to be in default for any delays or failures in performance of any of its obligations under this Agreement to the extent such delay or failure is caused by or results from causes beyond the reasonable control of the affected Party, potentially including, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, fire, floods, or other acts of God, or acts, omissions or delays in acting by any governmental authority (including government shut down) or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practical. The affected Party shall use all reasonable endeavors to remedy the event or limit the effects of the said event of force majeure upon the other Party in a timely manner. When such circumstances arise, the Parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution, including the extension of any Product approval date under Section 14.2(f). If any force majeure event continues for a period of at least ninety (90) days that would prevent the

performance of any material obligation of or receipt of any material benefit (including, without limitation, payment) by a Party under this Agreement, the affected Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party.

16.2. **Governing Law**. This Agreement shall in all respects be governed by and interpreted according to the laws of New York and the United States without regard to or application of conflict-of-law rules or principles.

16.3. **Integrity.** This Agreement together with the Exhibits attached hereto constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings and discussions, whether oral or written, of the Parties with respect to the subject matter hereof. Any modification of this Agreement shall be effective only when in writing and signed by the Parties.

16.4. **Assignability.** Neither Party may assign this Agreement without the consent of the other Party, except as otherwise provided in this Section 16.4. Either Party may assign this Agreement in whole or in part to any Affiliate of such Party without the consent of the other Party; provided that, such assigning Party provides the other Party with written notice of such assignment and the assignee agrees in writing to assume performance of all assigned obligations. Further, either Party may assign this Agreement, and all of its rights and obligations, without the consent of the other Party, to its successor in interest by way of merger, acquisition, or sale of all or substantially all of its business or assets; provided that, the assigning Party provides the other Party with written notice of such assignment within thirty (30) days after such assignment, merger, acquisition or sale and the assignee agrees in writing to assume performance of all assigned obligations.

16.5. **Severability**. If any provision contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed by limiting such invalid, illegal or unenforceable provision, or if such is not possible, by deleting such invalid, illegal or unenforceable provision from this Agreement; provided that (i) such provision shall be deemed to be replaced by a provision which achieves the original intent of the Parties to the fullest extent possible; (ii) should this Agreement as a result of such deleting not any more reasonably correspond to the good faith intent of the Parties, either Party may propose amendments to the other provisions of this Agreement in order to have the Agreement correspond to such good faith intent and the Parties shall negotiate in good faith on such amendments.

16.6. **Waiver**. No course of dealing or failing of either Party to strictly enforce any term, right or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition. Such waiver or relinquishment (either generally or any given instance and either retroactively or prospectively) shall only be effective if made expressly in writing by the Party with reference to the specific term, right or condition.

16.7. **No Third Party Rights.** The provisions of this Agreement are for the sole benefit of the Parties, their successors and permitted assignees, and they shall not be construed as conferring any rights in any other Persons except as otherwise expressly provided in this Agreement.

16.8. **Headings**. The descriptive headings in this Agreement are for convenience only and shall not be interpreted so as to limit or affect in any way the meaning of the language in the pertaining article, section, paragraph or sub-paragraph.

16.9. **Costs and Expenses.** Each Party shall, unless specifically otherwise agreed hereunder, bear their own costs and expenses connected with such Party's activities and performance under this Agreement.

16.10. **Counterparts**. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

[Intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Evoke: Evoke Pharma, Inc.

/s/ David A. Gonyer

Name: David A. Gonyer

Title: Chief Executive Officer

Eversana: Eversana Life Science Services, LLC

/s/ Tim G. Gutttman

Name: Tim G. Guttman

Title: CFO

[***]

*** Certain information on this page has been omitted.

EXHIBIT F

Loan Agreement

[Terms and Conditions to be incorporated into the Loan Agreement

- Any amounts drawn down from the loan shall bear interest at a rate of ten percent (10%) annually.
- The collateral for the loan would be based on the assets of Evoke but excluding Evoke's intellectual property assets. Evoke agrees to not encumber intellectual property assets relating to the Product.
- During the Term, Evoke has the right to repay the loan at any time at its option and without penalty.
- On termination or expiration of this Agreement for any reason, Evoke shall owe Eversana all amounts due pursuant to the Loan and Loan Agreement, in accordance with the terms set forth in the Loan Agreement. For clarification, there are no circumstances pursuant to which Evoke shall not repay Eversana for amounts loaned by Eversana to Evoke, pursuant to the Loan Agreement.

[***]

*** Certain information on this page has been omitted.

Schedule 14.3.b
Conversion and Conversion Procedures

1. Conversion

(a) Notwithstanding Section 2.8 of the Agreement, during the Term Evoke may solicit, employ or retain one or more Eversana field personnel performing Services hereunder (a "Conversion") provided that Evoke provides at least ninety (90) days prior written notice to Eversana of any proposed Conversion. In the event Evoke wishes to implement a Conversion, Evoke shall pay Eversana a Conversion fee depending on the date the actual Conversion occurs, in according with the following:

(i) Evoke shall pay Eversana a Conversion fee of [***] per Eversana field personnel if the Conversion occurs prior to the first anniversary of such field personnel is deployed in the field to provide the Services (the "Deployment Date"), and

(ii) a fee of [***] per Eversana field personnel if the Conversion occurs after the first anniversary of the Deployment Date and prior to the second anniversary of the Deployment Date; and

(iii) no Conversion fee due for a Conversion that occurs following the second anniversary of the Deployment Date.

(b) Evoke understands and agrees that Eversana cannot guaranty that any field personnel will agree to participate in a Conversion.

(c) In the event Evoke conducts a Conversion and the converted Eversana field personnel had been provided with use of a fleet automobile leased, rented or owned by Eversana and Evoke wishes to commence an arrangement with the fleet division to assume such cars (and all associated costs and liabilities) under Evoke's name, the converted Eversana field personnel may only to continue to have access to such automobile following the Conversion if Evoke either: (i) registers the fleet automobile under its name; or (ii) ensures that Eversana remains named as an additional insured under Evoke's automobile insurance policies until such time as the vehicle is registered in Evoke's name (which shall occur no later than three (3) months following the date of the Conversion). The Parties understand and agree that it is solely Evoke's obligation to ensure one of the above actions are taken and Evoke shall indemnify, defend and holding Eversana harmless for all damages resulting from Evoke's failure to take such action. The Parties further agree that on the effective date of the Conversion, Evoke shall destroy the Eversana insurance card(s) in the fleet vehicle(s) of the converted Eversana sales representatives.

(d) In the event Evoke conducts a Conversion and the converted Eversana field personnel had been provided with use of a fleet automobile leased or rented by Eversana and Evoke does NOT wish to commence an arrangement with the fleet division to assume such cars, in addition to those fees, expenses and payments due from Evoke to Eversana in connection with such Conversion, Evoke shall promptly pay (or if paid by Eversana, promptly reimburse) Eversana for any reasonable cost and expenses actually incurred by Eversana related to terminating the leases on the fleet automobiles provided to members of the Sales Force, provided that Eversana shall have the obligation to mitigate such costs and expenses including by (i) reassigning such fleet vehicles for use with other Eversana activities outside of the scope of this agreement or (ii) to the extent (i) is not feasible, by promptly terminating such leases and disposing of such vehicle.

*** Certain information on this page has been omitted.

Exhibit 10.2
Execution Copy

LOAN AGREEMENT

$5,000,000.00 January 21, 2020

FOR VALUE RECEIVED, the undersigned (together with its permitted successors and assigns, "Borrower"), promises to pay to Eversana Life Science Services, LLC (together with its permitted successors and assigns, "Lender"), in lawful money of the United States of America and in immediately available funds, on or before the Credit Line Termination Date the lesser of (a) FIVE MILLION DOLLARS ($5,000,000.00), and (b) the unpaid principal amount of all advances made by Lender to Borrower as Credit Line Loans, under this Loan Agreement (this "Agreement"), at 190 N. Milwaukee Street, Milwaukee, WI 53202 or such other location as Lender may specify from time to time, together with interest, all as set forth below. Capitalized terms, unless otherwise defined herein, shall have the meanings given in Section 6 of this Agreement.

1. Credit Line Loans.

(a) From time to time during the Credit Line Commitment Period and subject to the terms and conditions hereof, Lender agrees to make Credit Line Loans to Borrower, in an aggregate principal amount at any time outstanding up to, but not exceeding, the Credit Line Commitment; provided, that after giving effect to the making of any Credit Line Loans in no event shall the aggregate principal amount outstanding of such Credit Line Loans exceed the Credit Line Commitment. Amounts borrowed pursuant to this Agreement may be repaid and reborrowed during the Credit Line Commitment Period. The Credit Line Commitment shall expire on the Credit Line Termination Date and all Credit Line Loans and all other amounts owed hereunder with respect to the Credit Line Loans and the Credit Line Commitment shall, subject to Sections 3 and 4, be paid in full no later than such date.

(b) Whenever Borrower desires that Lender make Credit Line Loans, Borrower shall deliver written notice to Lender describing the requested amount of such Credit Line Loan and the requested date of receipt of such Credit Line Loan no later than 2:00 p.m. Pacific Standard Time at least three (3) Business Days in advance of the proposed date of receipt of such Credit Line Loan.

(c) The obligation of Lender to make any Credit Line Loan is subject to the following conditions precedent: (i) Borrower shall have received NDA Approval and (ii) no Event of Default shall have occurred and be continuing.

2. Principal and Interest.

(a) The Credit Line Loans shall bear interest at 12:00 p.m. Pacific Standard Time each day on the unpaid principal balance of the Credit Line Loans then outstanding from and after January 21, 2020 (the "Closing Date") until payment in full at the Interest Rate; provided, that upon the occurrence and during the continuance of an Event of Default the Credit Line Loans shall bear interest on the unpaid principal balance thereof and all accrued and unpaid

interest from and after the date of such Event of Default until the date such Event of Default is cured or waived in writing by Lender or the Credit Line Loans and all such interest is paid in full, at the Interest Rate plus 2.00%. Interest shall be paid in cash on the Credit Line Termination Date. Interest payable pursuant to this Section 1(a) shall be computed on a daily basis on the basis of a 365/366 day year for the actual number of days elapsed in the period during which such interest accrues.

(b) The rate of interest payable hereunder shall in no event exceed the maximum rate permissible under applicable law. If the rate of interest payable hereunder is ever reduced as a result of this paragraph and at any time thereafter the maximum rate permitted by applicable law shall exceed the rate of interest provided for in this Agreement, then the rate provided for in this Agreement shall be increased to the maximum rate provided by applicable law for such period as is required so that the total amount of interest received by Lender is that which would have been received by Lender but for the operation of the first sentence of this paragraph.

(c) Subject to the terms of Sections 3 and 4 below, the principal of and all accrued and unpaid interest on this Agreement shall be due and payable in full in cash on the date that is ninety (90) days after the expiration or earlier termination of the Term under the Commercial Services Agreement (the "Maturity Date").

(d) Any interest not paid when due shall be paid on demand. Whenever any payment shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any payment of interest.

(e) Any and all payments by Borrower under this Agreement shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction of any Tax from any payment made under this Agreement, then (i) Borrower shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable law and (ii) Borrower shall notify Lender of the payment of such withholding and shall provide evidence of the payment thereof.

3. Prepayment.

(a) *Optional Prepayment*: Borrower may, at its option and upon not less than one (1) Business Day prior written notice to Lender, prepay or repay any amounts outstanding under this Agreement at any time during the Credit Line Commitment Period in cash, in whole or in part, and without penalty or premium. Any principal amount of this Agreement prepaid or repaid may be reborrowed up to, but not after, the Maturity Date.

(b) *Termination of Credit Line Commitment*. Borrower may, at its option and upon not less than three (3) Business Day's prior written notice to Lender, terminate in whole or permanently reduce in part the Credit Line Commitment in an amount up to the amount by which the Credit Line Commitment exceeds the Credit Line Loans at the time of the proposed reduction or termination.

(c) *Application of Payments*: Any prepayments made pursuant to this Section 2 shall be applied as follows: *first* to any interest accrued and unpaid on the date of such prepayments; and *second* to the outstanding Credit Line Loans to the full extent thereof.

4. Events of Default.

(a) Each of the following events shall constitute an event of default (an "Event of Default"):

(i) The failure of Borrower to pay any and all amounts due hereunder on the Credit Line Termination Date and such failure continues unremedied for a period of two (2) days;

(ii) The admission by Borrower in writing to Lender of its inability to pay its debts as they become due;

(iii) The assignment by Borrower for the benefit of creditors;

(iv) Borrower commences, or there shall be commenced against Borrower and not dismissed within sixty (60) days of commencement, any voluntary or involuntary case, proceeding, or other action seeking to have an order for relief entered with respect to Borrower, or to adjudicate Borrower as bankrupt or insolvent, in each case under the U.S. Bankruptcy Code or similar law, whether state or federal;

(v) Borrower materially breaches, or fails to comply in any material respect with, any representation, warranty or other obligation in this Agreement or the Commercial Services Agreement; provided, such breach, failure to comply or default, to the extent susceptible of cure, is not cured by Borrower within sixty (60) days after the earlier of (I) any officer of Borrower becoming aware of such breach or (II) receipt of written notice thereof from Lender; or

(vi) The termination of the Commercial Services Agreement pursuant to Section 14.2(f) thereof as a result of a Change of Control.

(b) Upon the occurrence and during the continuance of any Event of Default, Lender may, upon written notice to Borrower (except with respect to an Event of Default under clause (a)(iii), (iv) or (v) above, in which case the following actions shall occur automatically), (i) cause the entire unpaid principal amount, together with all unpaid interest thereon, to be immediately due and payable in full, without diligence, presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, and Lender shall have all remedies under law and equity to enforce its rights under this Agreement and (ii) terminate the Credit Line Commitment.

5. Security.

(a) To secure the payment and performance of Borrower's obligations under this Agreement, Borrower hereby grants to Lender a continuing security interest in and lien upon all Pledged Collateral (as defined below), whether now owned or hereafter acquired, and any

additions, replacements, accessions, or substitutions thereof and all cash and non-cash proceeds and products thereof (collectively, the "Collateral"). Lender is authorized to file UCC financing statements relating to the Collateral. Upon the occurrence and during the continuance of any Event of Default, Lender shall have all the rights and remedies of a secured party under the UCC.

(b) Upon the filing of a UCC financing statement, naming Borrower as "debtor" and Lender as "secured party" and describing the Collateral, in the office of the Secretary of State of Delaware, the security interest of Lender in the Collateral that can be perfected by the filing of a financing statement under the UCC will constitute a valid, perfected, first priority lien (subject to the Permitted Liens).

(c) Until the Credit Line Termination Date, Borrower shall not file, or allow to be filed, any lien or other encumbrance on the Excluded Property relating to the Product (other than Permitted Liens).

6. Use of Proceeds. Borrower shall use the proceeds of the Credit Line Loans solely in connection with the performance of Borrower's obligations and responsibilities under the Commercial Services Agreement, including, without limitation, for the payment of fees, costs and expenses for manufacturing, IP development, prosecution, maintenance and enforcement, regulatory activities and other activities with respect to the Product and the Commercialization of the Product.

7. Definitions. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Commercial Services Agreement or, if not defined therein, in the UCC. For purposes of this Agreement, the following capitalized terms have the indicated meanings:

(a) "Code" means the Internal Revenue Code of 1986, as amended.

(b) "Commercial Services Agreement" means that certain Commercial Services Agreement, dated as of the date hereof, between Borrower and Lender.

(c) "Credit Line Commitment" shall mean the commitment of Lender to make or otherwise fund any Credit Line Loan. The amount of the Credit Line Commitment on the Closing Date is $5,000,000.00.

(d) "Credit Line Commitment Period" shall mean the period from the Closing Date to the Credit Line Termination Date.

(e) "Credit Line Loan" shall mean a loan made by Lender to Borrower pursuant to Section 1.

(f) "Credit Line Termination Date" shall mean the earliest to occur of (a) the Maturity Date, (b) the date the Credit Line Commitment is permanently reduced to zero pursuant to Section 3, and (c) the date of the termination of the Credit Line Commitment pursuant to Section 4(b).

(g) "Excluded Property" means all intellectual property of Borrower (including, without limitation, the Borrower's Intellectual Property Rights).

(h) "FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements (together with any law implementing such agreements) implementing the foregoing.

(i) "Interest Rate" means, for any day, the rate per annum equal to ten percent (10%).

(j) "Liens" any mortgage, pledge, security interest, hypothecation, assignment, lien (statutory or other) or similar encumbrance (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof).

(k) "Permitted Liens" means each of the following:

(i) Liens for taxes (1) not yet due and payable, (2) that are payable without penalty (and no enforcement rights with respect thereof are effective) or (3) if the obligations with respect to such taxes are being contested in good faith by appropriate proceedings timely instituted and diligently conducted; provided that, in the case of a contest, Borrower has established reserves to the extent required by GAAP in respect thereof, or other adequate provision for the payment thereof shall have been made and maintained at all times during such contest and such proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(ii) statutory Liens of landlords, banks (and rights of set-off), carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (1) for amounts not yet overdue or (2) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 10 Business Days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts and such proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(iii) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(iv) Liens solely on any cash earnest money deposits made by Borrower in connection with any letter of intent or purchase agreement;

(v) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(vii) licenses of patents, trademarks and other intellectual property rights granted by Borrower;

(viii) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by Borrower, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements;

(ix) so long as Borrower is using commercially reasonable efforts to terminate such filings, UCC financing statements or other public notices of Liens (1) filed by Persons without the authorization of Borrower or (2) purporting to secure obligations that either (x) do not exist or (y) are not secured by Liens on Borrower's properties;

(xi) Liens arising out of judgments, attachments or awards not resulting in an Event of Default; and

(x) the extent constituting Liens, any obligations or duties of Borrower to any municipality or public authority with respect to any franchise, grant, license or permit provided by such municipality or public authority to Borrower in furtherance of the ordinary course conduct of the business of Borrower.

(l) "Pledged Collateral" means all personal property of Borrower including but not limited to all cash, cash equivalents, accounts, bank and deposit accounts (including any control account, disbursement account and any other bank accounts, chattel paper, instruments, books and records, contract rights, general intangibles (stock, claims, contract rights, and choses in action), goods, equipment inventory, documents, deposit accounts, returned or repossessed goods, commercial tort claims, insurance claims, rights and policies, letter of credit rights, investment property, supporting obligations, and the proceeds (including insurance proceeds), products, parts, accessories, attachments, accessions, replacements, substitutions, additions, and improvements of or to each of the foregoing. Notwithstanding the foregoing or anything to the contrary in this Agreement, "Pledged Collateral" shall not include the Excluded Property; provided, that all proceeds from the sale, lease, license, exchange or other disposition of Excluded Property and the right to such proceeds shall constitute Pledged Collateral hereunder except to the extent that such proceeds or right to such proceeds independently constitutes Excluded Property hereunder.

(m) "Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

(n) "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions

8. Tax Forms.

(a) If Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under this Agreement, then Lender shall deliver to Borrower at the time or times reasonably requested by Borrower such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding.

(b) Without limiting the generality of the foregoing, (I) if Lender is a United States person (as defined in Section 7701(a)(30) of the Code), then Lender shall deliver to Borrower on or prior to the date it acquires an interest in this Agreement (and from time to time thereafter upon reasonable request of Borrower) executed originals of IRS Form W-9 certifying that Lender is exempt from U.S. federal backup withholding Tax; (II) if Lender is not a United States person (a "Foreign Lender"), then Lender shall, to the extent it is legally entitled to do so, deliver to Borrower on or prior to the date it acquires an interest in this Agreement whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States is a party, with respect to payments of interest under this Agreement, executed originals of IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty; (B) in the case of a Foreign Lender claiming that the payments of interest under this Agreement are not subject to withholding based on such income being effectively connected with a U.S. trade or business. executed originals of IRS Form W-8ECI; (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in the form mutually agreed by Borrower and the Foreign Lender to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) two executed originals of IRS Form W-8BEN-E; or (D) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable and (III) if a payment made to Lender under this Agreement would be subject to U.S. federal withholding Tax imposed by FATCA if Lender were to fail to

comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable or under any intergovernmental agreement), Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code or under any intergovernmental agreement) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that Lender has complied with Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (III), "FATCA" shall include any amendments made to FATCA after the date hereof. Lender agrees that (i) if any form or certification it previously delivered expires or becomes obsolete, it shall upon reasonable request of Borrower update such form or certification or promptly notify Borrower in writing of its legal inability to do so and (ii) if any form or certification it previously delivered becomes inaccurate in any respect, it shall promptly update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

9. Miscellaneous.

(a) Notices. Any notice or written communication provided for in this Agreement by a Party to the other Party, including but not limited to any and all offers, writings, or notices to be given hereunder, shall be in accordance with Section 15 of the Commercial Services Agreement.

(b) Governing Law. This Agreement shall in all respects be governed by and interpreted according to the laws of New York and the United States without regard to or application of conflict-of-law rules or principles.

(c) Integrity**.** This Agreement together with the Exhibits attached hereto constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings and discussions, whether oral or written, of the Parties with respect to the subject matter hereof. Any modification of this Agreement shall be effective only when in writing and signed by the Parties.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Borrower may not assign or transfer any interest hereunder without the prior written consent of Lender. Lender may assign this Agreement and shall provide notice of any such assignment to Borrower. Lender's assignee (and all subsequent permitted assignees) shall receive this Agreement subject to all of the terms and conditions of this Agreement including the provisions of this Section 9(a).

(e) Severability. If any provision contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed by limiting such invalid, illegal or unenforceable provision, or if such is not possible, by deleting such invalid, illegal or unenforceable provision from this Agreement; provided that (i) such

provision shall be deemed to be replaced by a provision which achieves the original intent of the Parties to the fullest extent possible; (ii) should this Agreement as a result of such deleting not any more reasonably correspond to the good faith intent of the Parties, either Party may propose amendments to the other provisions of this Agreement in order to have the Agreement correspond to such good faith intent and the Parties shall negotiate in good faith on such amendments.

(f) Waiver. No course of dealing or failing of either Party to strictly enforce any term, right or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition. Such waiver or relinquishment (either generally or any given instance and either retroactively or prospectively) shall only be effective if made expressly in writing by the Party with reference to the specific term, right or condition.

(g) Headings. The descriptive headings in this Agreement are for convenience only and shall not be interpreted so as to limit or affect in any way the meaning of the language in the pertaining article, section, paragraph or sub-paragraph.

(h) Costs and Expenses. Each Party shall, unless specifically otherwise agreed hereunder, bear their own costs and expenses connected with such Party's activities and performance under this Agreement.

(i) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

EVOKE PHARMA, INC.

By: /s/ David A. Gonyer
Name: David A. Gonyer
Title: Chief Executive Officer

EVERSANA LIFE SCIENCE SERVICES, LLC

By: /s/ Tim G. Guttman
Name: Tim G. Guttman
Title: CFO

Exhibit 10.3

EVOKE PHARMA, INC.
NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

(As Amended and Restated Effective February 28, 2020)

Non-employee members of the board of directors (the "***Board***") of Evoke Pharma, Inc. (the "***Company***") shall be eligible to receive cash and equity compensation commencing on the Effective Date, as set forth in this Non-Employee Director Compensation Policy (this "***Policy***"). The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a "***Non-Employee Director***") who may be eligible to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy shall remain in effect until it is revised or rescinded by further action of the Board. The terms and conditions of this Policy shall supersede any prior cash or equity compensation arrangements between the Company and its Non-Employee Directors. This amended and restated Policy will be effective as of February 28, 2020 (the "***Effective Date***").

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall be eligible to receive an annual retainer of $40,000 for service on the Board. In addition, a Non-Employee Director shall receive the following additional annual retainers, as applicable:

(i) Chairperson of the Board. A Non-Employee Director serving as Chairperson of the Board shall receive an additional annual retainer of $20,000 for such service.

(ii) Chairperson of the Audit Committee. A Non-Employee Director serving as Chairperson of the Audit Committee shall receive an additional annual retainer of $10,000 for such service.

(iii) Member of the Audit Committee. A Non-Employee Director serving as a member of the Audit Committee (other than the Chairperson) shall receive an additional annual retainer of $3,750 for such service.

(iv) Chairperson of the Compensation Committee. A Non-Employee Director serving as Chairperson of the Compensation Committee shall receive an additional annual retainer of $5,000 for such service.

(v) Member of the Compensation Committee. A Non-Employee Director serving as a member of the Compensation Committee (other than the Chairperson) shall receive an additional annual retainer of $2,500 for such service.

(vi) Chairperson of the Nominating and Corporate Governance Committee. A Non-Employee Director serving as Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of $3,500 for such service.

(vii) Member of the Nominating and Corporate Governance Committee. A Non-Employee Director serving as a member of the Nominating and Corporate Governance Committee (other than the Chairperson) shall receive an additional annual retainer of $1,750 for such service.

(b) Payment of Retainers. The annual retainers described in Section 1(a) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifth business day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(a), for an entire calendar quarter, the retainer paid to such Non-Employee Director shall be prorated for the portion of such calendar quarter actually served as a Non-Employee Director, or in such positions, as applicable.

2. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the 2013 Equity Incentive Award Plan (the "***Equity Plan***") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the same forms previously approved by the Board, setting forth the vesting schedule applicable to such awards and such other terms as may be required by the Equity Plan. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all grants of awards hereunder are subject in all respects to the terms of the Equity Plan. For the avoidance of doubt, the share numbers in this Section 2 shall be subject to adjustment as provided in the Equity Plan.

(a)Initial Awards. A person who is initially elected or appointed to the Board following the Effective Date, and who is a Non-Employee Director at the time of such initial election or appointment, shall be eligible to receive a stock option to purchase 18,000 shares of the Company's common stock on the date of such initial election or appointment. The awards described in this Section 2(a) shall be referred to as "***Initial Awards***." No Non-Employee Director shall be granted more than one Initial Award.

(b)Subsequent Awards.

(i) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will continue to serve as a Non-Employee Director immediately following such annual meeting, shall be automatically granted an option to purchase 50,000 shares of the Company's common stock on the date of each such annual meeting.

(ii) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as Chairman of the Board immediately following such annual meeting, shall be automatically granted an additional option to purchase 10,000 shares of the Company's common stock on the date of each such annual meeting.

(iii) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as Chairperson of the Audit Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 8,000 shares of the Company's common stock on the date of each such annual meeting.

(iv) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as Chairperson of the Compensation Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 7,500 shares of the Company's common stock on the date of each such annual meeting.

(v) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as Chairperson of the Nominating and Corporate Governance Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 4,000 shares of the Company's common stock on the date of each such annual meeting.

(vi) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as a member of the Audit Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 4,000 shares of the Company's common stock on the date of each such annual meeting.

(vii) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as a member of the Compensation Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 3,750 shares of the Company's common stock on the date of each such annual meeting.

(viii) A Non-Employee Director who is (A) serving on the Board as of the date of any annual meeting of the Company's stockholders after the Effective Date and (B) will serve as a member of the Nominating and Corporate Governance Committee immediately following such annual meeting, shall be automatically granted an additional option to purchase 2,000 shares of the Company's common stock on the date of each such annual meeting.

The awards described in this Section 2(b) shall be referred to as "***Subsequent Awards***." For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an annual meeting of the Company's stockholders shall only receive an Initial Award in connection with such election, and shall not receive any Subsequent Award on the date of such meeting as well.

(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(a) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Subsequent Awards as described in Section 2(b) above.

(d) Terms of Awards Granted to Non-Employee Directors.

(i) Purchase Price. The per share exercise price of each option granted to a Non-Employee Director shall equal 100% of the Fair Market Value (as defined in the Equity Plan) of a share of common stock on the date the option is granted.

(ii)Vesting. Each Initial Award shall vest and become exercisable in three equal annual installments over the three year period following the date of grant, subject to the Non-Employee Director continuing in service on the Board through each such vesting date. Each Subsequent Award shall vest and/or become exercisable on the one-year anniversary of the date of grant, subject to the Non-Employee Director continuing in service on the Board through each such vesting date. All of a Non-Employee Director's Initial Awards and Subsequent Awards shall vest in full upon the occurrence of a Change in Control (as defined in the Equity Plan).

(iii) Term. The term of each stock option granted to a Non-Employee Director shall be ten years from the date the option is granted. Upon a Non-Employee Director's termination of membership on the Board for any reason, his or her stock options granted under this Policy shall remain exercisable for twelve months following his or her termination of membership on the Board (or such longer period as the Board may determine in its discretion on or after the date of grant of such stock options).

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David A. Gonyer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, 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: May 12, 2020

/s/ David A. Gonyer
David A. Gonyer
President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Matthew J. D'Onofrio, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, 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: May 12, 2020

/s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio
Executive Vice President, Chief Business Officer,
Treasurer and Secretary
(Principal Financial Officer)

Exhibit 32.1

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

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David A. Gonyer, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

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

Date: May 12, 2020

/s/ David A. Gonyer
David A. Gonyer
President and Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is 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 Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

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

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew J. D'Onofrio, Executive Vice President, Chief Business Officer, Treasurer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

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

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

Date: May 12, 2020

/s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio
Executive Vice President, Chief Business Officer, Treasurer and Secretary

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is 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 Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.