# FORM 8-K

Current report filing

Filing Date: **2020-10-15** | Period of Report: **2020-10-14**
**SEC Accession No.** 0001618835-20-000226



## FILER

**Evofem Biosciences, Inc.**
CIK:**1618835**| IRS No.: **208527075** | State of Incorp.:**DE** | Fiscal Year End: **1231**
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SIC: **2834** Pharmaceutical preparations

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

# FORM 8-K

**CURRENT REPORT**
**Pursuant to Section 13 or 15(d)**
**of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): October 14, 2020**

# EVOFEM BIOSCIENCES, INC.
**(Exact name of registrant as specified in its charter)**

| Delaware | 001-36754 | 20-8527075 |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

**12400 High Bluff Drive, Suite 600, San Diego, CA 92130**
**(Address of principal executive offices and zip code)**

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

**Not applicable.**
**(Former name or former address, if changed since last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|---|---|
| Common Stock, par value $0.0001 per share | EVFM | The Nasdaq Stock Market LLC |

| | | |
|---|---|---|
| | | (Nasdaq Capital Market) |
| Series A Preferred Stock Purchase Rights, par value $0.0001 per share | N/A | The Nasdaq Stock Market LLC(Nasdaq Capital Market) |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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. ☐

**Item 1.01. Entry into a Material Definitive Agreement.**

*Securities Purchase Agreement*

On October 14, 2020, Evofem Biosciences, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Purchase Agreement") with Adjuvant Global Health Technology Fund, L.P., and Adjuvant Global Health Technology Fund DE, L.P. (together, the "Purchasers" and each a "Purchaser"), pursuant to which the Company sold unsecured convertible promissory notes in aggregate principal amount of $25 million of (the "Notes") in a private placement (the "Private Placement") closing on the same date as the date of the Purchase Agreement, October 14, 2020 (the "Closing Date"). Unless otherwise converted or pre-paid in accordance with their terms, the Notes will mature on the fifth anniversary of the Closing Date. The Notes may be prepaid at the option of the Company and/or will become payable at the option of the Purchasers in connection with certain Company change of control transactions. Until prepaid or converted, outstanding balances under the Notes will accrue interest at a rate of 7.5% per annum, and accrued interest will accrete on a quarterly basis in arrears to the outstanding balances of the Notes. The Notes are subordinate and junior in right of payment to the senior secured promissory notes issued pursuant to that certain Securities Purchase and Security Agreement, dated April 23, 2020, by and between the Company, its wholly owned subsidiaries as guarantors, certain affiliates of Baker Bros. Advisors LP as purchasers, and Baker Bros. Advisors LP, as designated agent.

The Notes are convertible, subject to customary 4.99% and 19.99% beneficial ownership limitations, into shares of the Company's common stock, par value $0.0001 per share, at any time at the option of the Purchasers at a conversion price of $3.65 per share (the "Conversion Price"). To the extent not previously prepaid or converted, the Notes will automatically convert into shares of the Company's common stock at the Conversion Price immediately following the earliest of the time at which the (i) 30-day value-weighted average price of the Company's common stock is $10.00 per share, or (ii) Company achieves cumulative net sales from the sales of Phexxi™ (lactic acid, citric acid, and potassium bitartrate) of $100,000,000, provided such net sales are achieved prior to July 1, 2022.

The Notes and the shares of common stock issuable upon conversion of the Notes (the "Underlying Shares") have not been registered under the Securities Act of 1933, as amended (the "Securities Act") and were issued and sold in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. The Purchasers acquired the securities for investment and acknowledged that each is an accredited investor as defined by Rule 501 under the Securities Act. The Notes and Underlying Shares may not be offered or sold in the absence of an effective registration statement or exemption from the registration requirements under the Securities Act. Neither this Current Report on Form 8-K nor any of its exhibits is an offer to sell or the solicitation of an offer to buy any securities described in this Current Report on Form 8-K.

Pursuant to the Purchase Agreement, the Company covenants that by no later than June 30, 2022 the Company shall have recognized cumulative net sales from the sales of Phexxi of at least $100.0 million, determined in accordance with U.S. generally accepted accounting principles. In addition, the Purchase Agreement includes customary covenants, representations and warranty provisions for agreements of its kind.

*Registration Rights Agreement*

In connection with the sale and issuance of the Notes, on October 14, 2020, the Company and the Purchasers entered into a Registration Rights Agreement (the "Adjuvant Registration Rights Agreement"), pursuant to which the Company agreed, subject to Purchaser demand and conversions of the Notes in amounts of at least $5 million, to register Underlying Shares for resale within the 30 day period following their issuance. The Registration Rights Agreement includes customary covenants, representations, warranties and indemnification provisions for agreements of its kind.

*Side Letter Agreement*

In connection with the Purchase Agreement, on October 14, 2020, the Company, Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. entered into a Global Health Access Agreement Letter Agreement (the "Adjuvant

Side Letter"), pursuant to which the Company agreed to certain global access covenants and cooperative procedures designed to make Phexxi and the Company's EVO100 product candidate, subject to appropriate regulatory approvals, available to public health programs and private purchasers in Low and Middle Income Countries (as such terms are

defined by the World Bank, such countries each an "LMIC", and collectively, "LMICs"). These global access commitments became effective as of the Closing Date and will remain in effect for the 10 year period following the Closing Date. In addition, the Company agreed to use the proceeds from the sale of the Notes for (i) the clinical development of EVO100 for prevention of sexually transmitted infections, (ii) cost of goods sold-reduction efforts for Phexxi, including the transfer of manufacturing operations to a clinical manufacturing organization located outside of the United States, and (iii) LMIC regulatory matters and market entry activities. The Adjuvant Side Letter also contains covenants, provisions and other terms customary for agreements of its kind.

The foregoing summaries of the Securities Purchase Agreement, the Notes, the Adjuvant Registration Rights Agreement and the Adjuvant Side Letter do not purport to be complete and are qualified in their entirety by reference to the documents attached hereto as exhibits 10.1, 10.2, 10.3, and 10.4, respectively. The representations, warranties and covenants made by the Company in these agreements were made solely for the benefit of the parties to these agreements, including, in some cases, for the purpose of allocating risk among the parties thereto, and should not be deemed to be a representation, warranty or covenant to any other persons or investors.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

To the extent required by Item 2.03 of Form 8-K, the information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference.

**Item 3.02. Unregistered Sales of Equity Securities**

To the extent required by Item 3.02 of Form 8-K, the information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference.

**Item 8.01. Other Events.**

On October 15, 2020, the Company issued a press release attached as Exhibit 99.1 of this Current Report on Form 8-K.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

| Exhibit No. | Description |
|---|---|
| 10.1* | Securities Purchase Agreement, dated as of October 14, 2020, by and between Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P., as purchasers. |
| 10.2 | Form of Convertible Promissory Note. |
| 10.3* | Registration Rights Agreement, dated as of October 14, 2020, by and between Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P., as investors. |
| 10.4† | Letter Agreement, dated as of October 14, 2020, by and between Evofem Biosciences, Inc., Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. |
| 99.1 | Press Release dated October 15, 2020. |

* Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule upon request by the SEC.

† Pursuant to Item (6)(10) of Regulation S-K, certain confidential portions of this exhibit were omitted by means of marking such portions with brackets ("[***]") because the identified confidential portions (i) are not material and (ii) would be competitively harmful if publicly disclosed.

**SIGNATURES**

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

**EVOFEM BIOSCIENCES, INC.**

Date: October 15, 2020

By: /s/ Justin J. File

Justin J. File
Chief Financial Officer

**Exhibit 10.1**

# SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (the "Agreement") is entered into as of October 14, 2020 (the "Effective Date") by and among Evofem Biosciences, Inc., a Delaware corporation (the "Company"), and the purchasers who execute a counterparty signature page hereto (each, a "Purchaser", and collectively, the "Purchasers").

## RECITALS

WHEREAS, the Purchasers are willing, pursuant to the terms and conditions of this Agreement, to purchase from the Company unsecured convertible promissory notes in substantially the form attached hereto as Exhibit A (each as amended and restated, supplemented or otherwise modified from time to time, the "Notes") in an aggregate principal amount of $25,000,000; and

WHEREAS, the Notes are subject to conversion into Common Stock of the Company on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## AGREEMENT

### 1. DEFINITIONS.

1.1 Certain Defined Terms. As used in this Agreement, the following terms shall have the following respective meanings:

"30-Day VWAP" means the average of the VWAP for each Trading Day in a period of 30 consecutive Trading Days.

"Affiliate" of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person and (b) any officer or director of such Person. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 20% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, no Purchaser shall be deemed an Affiliate of the Company.

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

"Change of Control" means (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the total value or total combined voting power of the Company's

then-outstanding securities entitled to vote generally in the election of Directors; (ii) a merger, consolidation, sale, exchange or other transaction or series of related transactions (collectively, the "Transaction") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect beneficial ownership of more than 50% of the total combined voting power of the outstanding securities entitled to vote generally in the election of directors; or (iii) the sale, exchange, transfer, license or other disposition of all or substantially all of the assets of the Company. For the avoidance of doubt, in no event shall the license of (a) the right to make or have made Phexxi in any country, or (b) the right to sell, have sold or import Phexxi outside of the United States, in and of itself, be deemed to constitute a Change of Control.

"Commission" or the "SEC" means the United States Securities and Exchange Commission.

"Common Stock" means the Common Stock of the Company, par value $0.0001 per share.

"Equity Securities" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity securities, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in, or equivalents (regardless of how designated) of, a Person (other than an individual), whether voting or non-voting, and (b) all debt or equity securities convertible into or exchangeable for any security described in clause (a) or any other security described in this clause (b) and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any such security, whether or not presently convertible, exchangeable or exercisable.

"GAAP" means generally accepted accounting principles as in effect in the United States of America.

"Governmental Entity" means any national, federal, state, municipal, local, territorial, foreign or other government or any department, commission, board, bureau, agency, regulatory authority, self-regulatory organization or instrumentality thereof, or any court, judicial, administrative or arbitral body or public or private tribunal.

"Indebtedness" of any Person means without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under capital leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the fair market value of such property), (f) all obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, (g) all obligations for which such Person is obligated pursuant to any interest rate swap, interest rate cap, interest rate collar or other interest rate hedging agreement or derivative

agreements or arrangements and, (h) all guarantees or other contingent obligations of such Person in respect of any of the foregoing.

"Lien" means any mortgage, deed of trust, or pledge, security interest, hypothecation, assignment, assigned deposit, arrangement, encumbrance, encroachment, lien (statutory or otherwise), claim, option, reservation or defect of any kind, or preference, or priority, or other security agreement or preferential arrangement of any kind of or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing statement under the UCC, or under the comparable law of any other jurisdiction).

"Material Adverse Effect" means any (i) adverse effect on the issuance, delivery or validity of the Notes or on the ability of the Company to perform its obligations under the Transaction Documents, or (ii) material adverse effect on the condition (financial or otherwise), prospects, properties, assets, liabilities, business or operations of the Company or any of its Subsidiaries taken as a whole, in each case.

"Material Contract" means all written and oral contracts, agreements, deeds, mortgages, leases, subleases, licenses, instruments, notes, commitments, commissions, undertakings, arrangements and understandings: (i) which by their terms involve, or would reasonably be expected to involve, aggregate payments by or to the Company or any Subsidiary during any twelve month period in excess of $1,000,000, (ii) the breach of which by the Company or any Subsidiary or the termination of which would reasonably be expected to have a Material Adverse Effect, or (iii) that have been required to be filed as exhibits by the Company with the Commission since December 31, 2019 pursuant to Items 601(b)(1), 601(b)(2), 601(b)(4), 601(b)(9) or 601(b)(10) of Regulation S-K promulgated by the Commission.

"Note Purchase Amount" means $25,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

"Phexxi" means the Company's product with the tradename of Phexxi™ (lactic acid, citric acid, and potassium bitartrate).

"Requisite Purchasers" means Purchasers holding a majority of the Outstanding Balance, in the aggregate, of all Notes issued under this Agreement.

"Senior Agent" means Baker Bros. Advisors LP.

"Senior Debt Notes" means those certain senior secured convertible promissory notes issued pursuant to the terms of the Senior Debt Purchase Agreement.

"Senior Debt Purchase Agreement" means that certain Securities Purchase and Security Agreement, dated April 23, 2020, by and between the Company, its wholly-owned domestic subsidiaries as guarantors, the Senior Purchasers, as purchasers, and the Senior Agent, as designated agent.

"Senior Purchasers" means those certain affiliates of Baker Bros. Advisors LP who purchased Senior Debt Notes pursuant to the Senior Debt Purchase Agreement.

"Side Letter" means that certain Side Letter Agreement between the Company and the signatories thereto, dated as of the date hereof.

"Stockholder Approval" means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity), including Nasdaq Stock Market Rule 5635, from the stockholders of the Company with respect to the issuance of shares of Common Stock upon conversion of the Notes.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled (as determined in accordance with GAAP), or both, by such Person.

"Trading Day" means a day on which trading in the Common Stock generally occurs on a Trading Market; provided, that if the Common Stock is not so listed or admitted for trading, "Trading Day" means a Business Day.

"Trading Market" has the meaning set forth in the definition of "VWAP."

"Transaction Documents" means this Agreement and the Notes.

"UCC" means the Uniform Commercial Code as in effect on the date hereof in the relevant jurisdiction and as amended from time to time hereafter.

"VWAP" means, for any particular date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market"), the daily volume weighted average price of the Common Stock for such date (or the nearest preceding Trading Day) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding Trading Day) on OTCQB or OTCQX, as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Requisite Purchasers, the reasonable documented fees and expenses of which shall be paid by the Company.

## 2. NOTE PURCHASE.

2.1 Upon the terms and subject to the conditions herein contained, the Company agrees to sell to each Purchaser, and each Purchaser agrees to purchase from the Company at the Closing (as defined below), Notes, in consideration for the amounts set forth on each Purchaser's signature page attached hereto.

2.2 At or prior to the Closing Date (as defined below), each Purchaser will pay the purchase price set forth on such Purchaser's signature pages attached hereto (the "Purchase Price") by wire transfer of immediately available funds in accordance with wire instructions provided by the Company to the Purchasers at least two days prior to the Closing Date. On or before the Closing Date, the Company will issue and deliver the Notes against delivery of the Purchase Price. The foregoing notwithstanding, if the Purchaser has indicated to the Company at the time of execution of this Agreement a need to settle on a "delivery versus payment" basis, then the Company shall either deliver to such Purchaser (or such Purchaser's designated custodian) the original Notes, whereupon following receipt of such instruments, then the Purchaser shall then promptly wire the Purchase Price as provided in this Section 2.2.

2.3 Closing. Subject to the satisfaction of the closing conditions set forth in Section 9, the closing with respect to the transactions contemplated in Section 2 hereof (the "Closing"), shall take place remotely via the exchange of documents and signatures on the second Trading Day after the Effective Date (the "Closing Date"), or at such other time as the Company and Purchasers may agree.

## 3. TERM; INTEREST; REPAYMENT; REDEMPTION; SUBORDINATION.

3.1 Term. The Notes and all accrued and unpaid interest thereon and any and all other sums payable to the Purchasers hereunder shall be due and payable in full on the earliest to occur of: (a) the fifth anniversary of the Closing Date, (b) at the election of the Purchasers, the date of the consummation of a Change of Control, and (c) the date of any acceleration of the Notes in accordance with Section 8 (the "Maturity Date"). Subject to Section 3.3, the Notes may not be prepaid prior to the fifth anniversary of the Closing Date without the prior written consent of the Purchasers.

3.2 Interest; Repayment. Interest on the unpaid principal balance of the Notes (such balance as increased as provided in this Section 3.2, the "Outstanding Balance") will accrue from the applicable Closing Date at the rate of 7.5% per annum, calculated on the basis of a 360 day year and thirty (30) days per month. Accrued interest shall accrete on a quarterly basis in arrears to the Outstanding Balance. To the extent not previously converted pursuant to Section 4 hereof, the Company will repay the Outstanding Balance plus all accrued and unpaid interest thereon on the Maturity Date.

3.3 Optional Prepayment. The Company shall have the right to prepay the Outstanding Balance, at the Company's election, upon the consummation of a Change of Control transaction.

3.4 Subordination.

(a) Notwithstanding anything to the contrary contained herein, the rights and obligations of the Purchasers hereunder, including the Purchasers' rights to receive payments hereunder, shall be unsecured and are subordinate and junior in right of payment to the prior payment and performance of the Secured Obligations (as defined in the Senior Debt Purchase Agreement) in all respects (other than unasserted contingent obligations).

(b) The Purchasers shall hold, on behalf of and for the benefit of the Senior Agent, any payment that any Purchaser receives in respect of any Note in violation of this Section 3.4 and shall promptly pay over such payment to the Senior Agent for application to the Secured Obligations (as defined in the Senior Debt Purchase Agreement) in accordance with the terms of the Senior Debt Purchase Agreement. Prior to the payment in full in cash of the Secured Obligations (as defined in the Senior Debt Purchase Agreement), the Company shall (i) promptly notify the Senior Agent of any payment to any Purchaser in respect of any Note and (ii) promptly notify the Purchasers of any payment to any Purchaser in respect of any Note in violation of this Section 3.4. Prior to the payment in full in cash of the Secured Obligations (as defined in the Senior Debt Purchase Agreement) other than unasserted contingent obligations, no Purchaser shall sue, or initiate or participate with any others in any suit, action or proceeding against, to enforce payment of or collect any payments owing by the Company to any Purchaser under the Notes that are not permitted to be made to any Purchaser by operation of this Section 3.4(b); provided, that nothing in this Section 3.4(b) shall limit the Purchasers from participating in a bankruptcy or insolvency proceeding pertaining to the Company. No amounts paid to the Senior Agent under the Senior Debt Purchase Agreement by the Company or turned over to the Senior Agent by any Purchaser pursuant to this Section 3.4(b) shall reduce the aggregate amount payable under this Note.

(c) The subordination provisions set forth in this Section 3.4 are for the benefit of the Senior Agent and the Senior Purchasers. No right of the Senior Agent to enforce the subordination provisions herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any Purchaser or by any noncompliance by the Company or any Purchaser with the terms of this Agreement. No provision of this Section 3.4 may be amended or otherwise modified in any manner adverse to the Senior Agent and the Senior Purchasers without the prior written consent of the Senior Agent. The Senior Agent shall be a third party beneficiary of the subordination provisions set forth in this Section 3.4.

**4. CONVERSION**.

4.1 Optional Conversion. Subject to the limitations set forth in Sections 4.4 and 4.5, at the option of each Purchaser, each Purchaser shall have the right to convert all or any portion of the Notes held by such Purchaser at any time into Common Stock at a conversion price equal to $3.65 per share (the "Conversion Price").

4.2 Automatic Conversion. The Outstanding Balance shall automatically convert into shares of Common Stock at the Conversion Price immediately following the earliest of (a) the time at which the 30-day VWAP of a share of the Common Stock is $10.00, or (b) the time at

which the Company achieves cumulative net sales from the sales of Phexxi (determined in accordance with GAAP) of $100,000,000; provided, however, that clause (b) above be of no further force or effect as of and after July 1, 2022.

4.3 Conversion Mechanics. If a Purchaser elects to convert any portion of a Note pursuant to Section 4.1, or if the Notes are automatically converted pursuant to Section 4.2, such Purchaser shall (a) tender to the Company a conversion notice in substantially the form attached as Exhibit A to the Note (a "Conversion Notice"), and (b) surrender to the Company the Note to be converted, which shall be tendered to the Company within two Trading Days from the delivery of the Conversion Notice. The Company shall deliver the Common Stock to a Purchaser by the later of (x) two Trading Days after delivery of the Conversion Notice, or (y) delivery of the Note that is the subject of the Conversion Notice (the "Share Delivery Date").

4.4 No Fractional Shares. Upon the conversion of a Note, in lieu of any fractional shares to which the holder of the Note would otherwise be entitled, the Company shall pay the Note holder cash equal to such fraction multiplied by the Conversion Price.

4.5 Beneficial Ownership Conversion Limits. Notwithstanding Section 4.1 or Section 4.2, the Purchaser shall not have the right to convert all or any portion of the Notes held by such Purchaser pursuant to Section 4.1 nor shall any Note be automatically converted pursuant to Section 4.2, to the extent that after giving effect to such conversion the Purchaser (together with its Affiliates and any other Persons acting as a group together with the Purchaser or any of the Purchaser's Affiliates (such Persons, collectively, the "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Purchaser and its Affiliates and Attribution Parties shall not include the number of shares of Common Stock that would be issuable upon exercise or conversion of the unexercised or unconverted portion of any other securities of the Company in each case to the extent subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Purchaser or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 4.5, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, it being acknowledged by the Purchaser that the Company is not representing to the Purchaser that such calculation is in compliance with Section 13(d) of the Exchange Act and the Purchaser is solely responsible for any schedules required to be filed in accordance therewith. A determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4.5, in determining the number of outstanding shares of Common Stock, a Purchaser may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the SEC, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of the Purchaser, the Company shall, within one Trading Day, confirm orally and in writing to the Purchaser the number of shares of Common Stock then outstanding. In any case, the number of

outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company by the Purchaser or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Purchaser. The "Beneficial Ownership Limitation" shall initially be 4.99% of the number of shares of the Common Stock outstanding immediately prior to, and immediately after giving effect to, the conversion of all or any portion of the Notes. The Purchaser, upon written notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions in this Section 4.5, provided, that any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. Further and to the extent required by applicable Nasdaq rules, the Beneficial Ownership Limitation may not exceed 19.99% unless the Stockholder Approval has been previously obtained.

**5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**. Except as otherwise set forth in the SEC Reports (as defined below), the Company hereby represents and warrants to the Purchasers as of the Closing Date as follows:

5.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under, and by virtue of, the laws of its jurisdiction of formation and has all requisite corporate power and authority to own its properties and assets and to carry on its business as now conducted and as presently proposed to be conducted. The Company is qualified to do business as a foreign corporation in each jurisdiction where failure to be so qualified would have a material adverse effect on the financial condition, business, or operations of the Company taken as a whole.

5.2 Corporate Power and Authority; Valid Issuance of Shares.

(a) The Company has all requisite corporate power and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Company of the Transaction Documents and the Side Letter and the consummation of the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of the Side Letter and the Transaction Documents and the consummation by the Company of the transactions contemplated hereby and thereby, have been duly authorized by the Company's board of directors or a duly authorized committee thereof and no further consent or authorization of the Company, its board of directors or its stockholders is required. This Agreement and the Side Letter has been duly executed and delivered by the Company, and the other instruments referred to herein to which it is a party and any Transaction Document to which it is a party will be duly executed and delivered by the Company, and each such instrument or Transaction Document constitutes or will constitute a legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) The shares of Common Stock underlying the Notes (collectively, the "Shares") have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, the Shares will be validly issued, fully paid and non-assessable, and shall be free and clear of all encumbrances (other than restrictions on transfer under the Transaction Documents arising under applicable federal and state securities laws), and will not be subject to preemptive rights or other similar rights of stockholders of the Company.

(c) The Notes have been duly and validly authorized by all necessary corporate action, have been duly and validly executed and delivered, and constitute valid and binding obligations of the Company.

5.3 Consents. Neither the execution, delivery or performance of this Agreement by the Company, nor the consummation by it of the obligations and transactions contemplated hereby (including, without limitation, the issuance, the reservation for issuance and the delivery of the Shares and the provision to the Purchaser of the rights contemplated by the Transaction Documents) requires any consent of, authorization by, exemption from, filing with or notice to any Governmental Entity or any other Person, other than filings required under applicable U.S. federal and state securities laws.

5.4 No Conflicts.

(a) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby (including, without limitation, the issuance, the reservation for issuance and the delivery of the Shares and the provision to the Purchaser of the rights contemplated by the Transaction Documents) will not (i) result in a violation of the certificate of incorporation, as amended, the by-laws, as amended, or any equivalent organizational document of the Company or any Subsidiary (the "Charter Documents") or require the approval of the Company's stockholders, (ii) violate, conflict with or result in the breach of the terms, conditions or provisions of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give rise to any right of termination, acceleration or cancellation under, any Material Contract, (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, U.S. federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any Subsidiary or by which any property or asset of the Company or any Subsidiary is bound or affected, (iv) result in a violation of or require stockholder approval under any rule or regulation of The Nasdaq Stock Market that has not been so obtained, or (v) except as set forth in this Agreement, result in the creation of any encumbrance upon any of the Company's or any of its Subsidiary's assets.

(b) Neither the Company nor any Subsidiary is (i) in violation of its Charter Documents, (ii) in default (and no event has occurred which, with notice or lapse of time or both, would cause the Company or any Subsidiary to be in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture or instrument to which the Company or any Subsidiary is a party, nor has the Company or any Subsidiary received written

notice of a claim that it is in default under, or that it is in violation of, any Material Contract (whether or not such default or violation has been waived), (iii) in violation of, or in receipt of written notice that it is in violation of, any law, ordinance or regulation of any Governmental Entity, except where the violation would not result in a Material Adverse Effect, and (iv) in violation of any order of any Governmental Entity having jurisdictional over the Company or any Subsidiary or any of the Company's or any Subsidiary's properties or assets.

5.5 Capitalization.

(a) As of the Effective Date, the authorized capital stock of the Company consists of 305,000,000 shares of capital stock, of which 300,000,000 are designated as Common Stock and 5,000,000 are designated as preferred stock, $0.0001 par value per share ("Preferred Stock"). As of September 15, 2020: (i) 81,280,286 shares of Common Stock were issued and outstanding; (ii) 8,985,285 shares of Common Stock were issuable (and such number was reserved for issuance) upon exercise of options to purchase Common Stock (the "Options") outstanding as of such date; (iii) 10,426,107 shares of Common Stock were issuable (and such number was reserved for issuance) upon exercise of warrants to purchase Common Stock (the "Outstanding Warrants") outstanding as of such date; (iv) 1,000,000 shares of Series A Preferred Stock were issuable (and such number was reserved for issuance) upon exercise of certain rights issued pursuant to that certain Rights Agreement dated March 24, 2020 (the "Rights Agreement"), which rights provide the holder thereof with additional rights to subscribe for additional shares of common stock under certain circumstances in accordance with the terms of the Rights Agreement (the "Rights") and (v) the Senior Debt Notes in an aggregate principal amount of $25,000,000.

(b) As of September 15, 2020, except for: (i) the Options, (ii) the Outstanding Warrants, (iii) the Rights, and (iv) the Senior Debt Notes, there were no options, warrants or other rights to acquire Equity Securities from the Company.

5.6 Subsidiaries. Except as set forth on Exhibit 21.1 to the Company's most recent Annual Report on Form 10-K, the Company does not have any Subsidiaries, and each such Subsidiary is wholly owned (directly or indirectly) by the Company, provided that the Purchasers acknowledge and agree that the Company has dissolved and wound down or will dissolve and wind down the following dormant Subsidiaries: Evofem Limited, LLC, Evofem Ltd, Evolution Pharma, and Evofem North America, Inc.

5.7 Material Contracts. Each Material Contract is the legal, valid and binding obligation of the Company or a Subsidiary, as the case may be, enforceable against the Company or such Subsidiary, as the case may be, in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. The Company and each Subsidiary, as the case may be, is in compliance with all material terms of the Material Contracts to which it is party, and there has not occurred any breach, violation or default or any event that, with the lapse of time, the giving of notice or the election of any Person, or any combination thereof, would constitute a breach, violation or default by the Company or any Subsidiary under any such Material Contract or, to

the knowledge of the Company and each Subsidiary, by any other Person to any such contract except where such breach, violation or default would not have a Material Adverse Effect. Neither the Company nor any Subsidiary has been notified that any party to any Material Contract intends to cancel, terminate, not renew or exercise an option under any Material Contract, whether in connection with the transactions contemplated hereby or otherwise.

5.8 The Nasdaq Stock Market. The Common Stock is listed on The Nasdaq Capital Market ("Nasdaq") and, at the time of the issuance, the Shares will be listed for trading on Nasdaq. To the Company's knowledge, there are no proceedings to revoke or suspend such listing or the listing of the Shares. The Company is in compliance with the requirements of Nasdaq for continued listing of the Common Stock thereon and any other Nasdaq listing and maintenance requirements, and the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby (including the issuance of the Shares) will not result in any noncompliance by the Company with any such requirements.

5.9 SEC Reports; Financial Statements; Shell Company Status.

(a) The Company's Common Stock is registered under Section 12 of the Exchange Act. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2019 (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Exchange Act and, in each case, to the rules promulgated thereunder, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements and the related notes of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present the consolidated financial position of the Company as of and for the dates thereof and the consolidated results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. There is no transaction, arrangement, or other relationship between the Company or any Subsidiary and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in SEC Reports and is not so disclosed and would have or reasonably be expected to result in a Material Adverse Effect.

(c) The Company is not, and has never been, an issuer identified in Rule 144(i)(1) under the Securities Act.

5.10 Disclosure Controls and Procedures; Internal Controls Over Financial Reporting.

(a) The Company has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) that are effective in all material respects to ensure that material information relating to the Company, including any consolidated Subsidiaries, is made known to its principal executive officer and principal financial officer by others within those entities. The Company's certifying officers have evaluated the effectiveness of the Company's disclosure controls and procedures as of the end of the period covered by the most recently filed quarterly or annual periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed quarterly or annual periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date.

(b) The Company maintains internal control over financial reporting (as such term is defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and such internal control over financial reporting is effective. The Company presented in its most recently filed annual report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the Company's internal control over financial reporting based on their evaluations as of the end of the period covered by such report. Since the Evaluation Date, there have been no significant changes in the Company's internal control over financial reporting or, to the Company's knowledge, in other factors that could significantly affect the Company's internal control over financial reporting.

5.11 Absence of Litigation. There is no claim, action, suit, arbitration, investigation or other proceeding pending against, or to the knowledge of the Company and each Subsidiary, threatened against or affecting, the Company, any Subsidiary or any of the Company's or any Subsidiary's properties or, to the knowledge of the Company and each Subsidiary, any of its respective officers or directors before any Governmental Entity, in each case other than legal proceedings that are not reasonably expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty relating to the Company or any Subsidiary. There has not been, and to the knowledge of the Company and each Subsidiary, there is not pending or contemplated, any investigation by the Commission of the Company or any Subsidiary or any current or former director or officer of the Company or any Subsidiary. The Company has not received any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act and, to the Company's knowledge, the SEC has not issued any such order.

5.12 Due Authorization; Consents. All corporate action on the part of the Company and its officers, directors and stockholders necessary for (a) the authorization, execution and delivery of, and the performance of all obligations of the Company under the Transaction Documents and the Side Letter, (b) the authorization, issuance, execution and delivery of the Notes by the Company and (c) the authorization, issuance, reservation for issuance and delivery by the Company of all of the Equity Securities issuable upon conversion of the Outstanding Balance (and the securities issuable upon conversion thereof) has been taken. The Transaction Documents and the Side Letter constitute valid and binding obligations of the Company, enforceable in accordance with their respective terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally and to general equitable principles. All consents, approvals and authorizations of, and registrations, qualifications and filings with, any federal or state governmental agency, authority or body, or any third party, required in connection with the execution, delivery and performance of the Transaction Documents and the Side Letter and the consummation of the transactions contemplated hereby and thereby have been obtained; provided, however, that with respect to any required filings under Regulation D or any other federal or state securities filings, the Company will make such filings within fifteen Business Days after the Effective Date.

5.13 Valid Issuance of Stock. The outstanding shares of the capital stock of the Company have been duly and validly issued, fully paid and non-assessable, and such shares of such capital stock, and all outstanding options and other securities of the Company have been issued in full compliance with the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the registration and qualification requirements of all applicable state securities laws, or in compliance with applicable exemptions therefrom, and all other provisions of applicable federal and state securities laws, including, without limitation, anti-fraud provisions.

5.14 Compliance with Laws.

(a) Except as would not result in a Material Adverse Effect: (i) the Company is and has been in compliance with statutes, laws, ordinances, rules and regulations applicable to the Company for the ownership, testing, development, manufacture, packaging, processing, use, labeling, storage, or disposal of any product manufactured by or on behalf of the Company or out-licensed by the Company (a "Company Product"), including without limitation, the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301, et seq., the Public Health Service Act, 42 U.S.C. § 262, similar laws of other Governmental Entities and the regulations promulgated pursuant to such laws (collectively, "Applicable Laws"); (ii) the Company possesses all licenses, certificates, approvals, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws and/or for the ownership of its properties or the conduct of its business as it relates to a Company Product and as described in the SEC Reports (collectively, "Authorizations") and such Authorizations are valid and in full force and effect and the Company is not in violation of any term of any such Authorizations; (iii) the Company has not received any written notice of adverse finding, warning letter or other written correspondence or notice from the U.S. Food and Drug Administration (the "FDA") or any other Governmental Entity alleging

or asserting noncompliance with any Applicable Laws or Authorizations relating to a Company Product; (iv) the Company has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Entity or third party alleging that any Company Product, operation or activity related to a Company Product is in violation of any Applicable Laws or Authorizations or has any knowledge that any such Governmental Entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding, nor, to the Company's knowledge, has there been any noncompliance with or violation of any Applicable Laws by the Company that would reasonably be expected to require the issuance of any such written notice or result in an investigation, corrective action, or enforcement action by the FDA or similar Governmental Entity with respect to a Company Product; (v) the Company has not received written notice that any Governmental Entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations or has any knowledge that any such Governmental Entity has threatened or is considering such action with respect to a Company Product; and (vi) the Company has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission).

(b) To the Company's knowledge, neither the Company nor any of its directors, officers, employees or agents, has made, or caused the making of, any false statements on, or material omissions from, any other records or documentation prepared or maintained to comply with the requirements of the FDA or any other Governmental Entity.

(c) The clinical studies and tests conducted by the Company or on behalf of the Company, have been and, if still pending, are being conducted in all material respects pursuant to all Applicable Laws and Authorizations; the descriptions of the results of such clinical studies and tests contained in the SEC Reports are accurate and complete in all material respects and fairly present the data derived from such clinical studies and tests; the Company is not aware of any clinical studies or tests, the results of which the Company believes reasonably call into question the research, nonclinical or clinical study or test results described or referred to in the SEC Reports when viewed in the context in which such results are described; and the Company has not received any written notices or correspondence from any Governmental Entity requiring the termination, suspension or material modification of any clinical study or test conducted by or on behalf of the Company.

5.15 Intellectual Property Matters. The Company owns, possesses, licenses or has other rights to use, on reasonable terms, all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, technology, know-how and other intellectual property (collectively, the "Intellectual Property") necessary for the conduct of the Company's business as now conducted or as proposed in the SEC Reports to be conducted (the "Company Intellectual Property"). To the knowledge of the Company, there are no rights of third parties to any Company Intellectual Property, other than as

licensed by the Company and pursuant to the Senior Debt Notes. To the knowledge of the Company, there is no infringement by third parties of any Company Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's rights in or to any Company Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any Company Intellectual Property. There is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of others. The Company is not aware of any facts required to be disclosed to the USPTO which have not been disclosed to the USPTO and which would preclude the grant of a patent in connection with any patent application of the Company Intellectual Property or could form the basis of a finding of invalidity with respect to any issued patents of the Company Intellectual Property.

5.16 Absence of Changes. Since the Evaluation Date: (a) there has not been any Material Adverse Effect or any event or events that individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; (b) there has not been any dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on any class of capital stock, (c) neither the Company nor any Subsidiary has sustained any material loss or interference with the Company's or any Subsidiary's business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor disturbance or dispute or any action, order or decree of any court or arbitrator or governmental or regulatory authority, and (d) neither the Company nor any Subsidiary has incurred any material liabilities except in the ordinary course of business.

5.17 Application of Takeover Protections. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Charter Documents or the laws of its state of incorporation (including Section 203 of the Delaware General Corporation Law) that is or could become applicable to each Purchaser as a result of such Purchaser and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation as a result of the Company's issuance of the Shares and such Purchaser's ownership of the Shares.

5.18 Compliance with Other Instruments. The authorization, execution and delivery of the Transaction Documents, the execution and delivery of the Side Letter, the issuance and delivery of the Notes, and the performance of all obligations hereunder and thereunder, will not constitute or result in a breach, default or violation of: (a) any law or regulation applicable to the Company, (b) any term or provision of the Company's current certificate of incorporation or bylaws (or any comparable organization document of the Company), or (c) any material agreement or instrument by which the Company is bound or to which its properties or assets are subject that could reasonably be expected to result in a Material Adverse Effect.

5.19 Investment Company Act. The Company is not an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.20 Ownership of Properties.

(a) The Company and each of its Subsidiaries has valid and legal title to, or valid leasehold interests in, all property necessary or used in the ordinary conduct of its business, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the financial condition, business, or operations of the Company taken as a whole.

(b) The Company owns, or is licensed or otherwise has the right to use, all intellectual property necessary to conduct its business as currently conducted except for such intellectual property the failure of which to own or have a license or other right to use would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect on the financial condition, business, or operations of the Company taken as a whole. To the knowledge of the Company, (a) the conduct and operations of the businesses of the Company do not, and the anticipated products and intellectual property applications of the Company will not, infringe upon, misappropriate, dilute or violate any intellectual property owned by any other Person and (b) no other Person has contested any right, title or interest of the Company in any Company Intellectual Property or any anticipated products and applications derived or expected to be derived therefrom.

(c) The property of the Company and its Subsidiaries is subject to no Liens other than in connection with the Senior Debt Notes.

5.21 Disclosure; Remedies.

(a) The Company understands and confirms that the Purchaser will rely on the foregoing representations in effecting transactions in securities of the Company. No representation or warranty by the Company contained in this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that the Purchaser does not make and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 6 hereof.

(b) To the extent that the Company makes a material misrepresentation under Section 5 and, within one year from the applicable Closing, a Purchaser provides written notice of such material misrepresentation, then such Purchaser may elect to rescind the purchase of the Note(s) purchased within that one-year period, whereupon such Purchaser will tender the Note(s) to the Company in consideration for the applicable Purchase Price. The foregoing rescission right shall be in addition to any other rights or remedies that the Purchaser may have under the Transaction Documents or under applicable law, provided that if such Purchaser elects the

foregoing rescission remedy and is refunded the Purchase Price, then such Purchaser may not assert any other remedies under the Transaction Documents.

**6. REPRESENTATIONS AND WARRANTIES OF PURCHASERS**. Each Purchaser, severally but not jointly, represents and warrants to the Company as follows as of the Closing Date as follows:

6.1 Investigation; Economic Risk. Each Purchaser acknowledges that it has had an opportunity to discuss the business, affairs and current prospects of the Company with its officers. Each Purchaser further acknowledges having had access to information about the Company that it has requested. Each Purchaser acknowledges that it is able to fend for itself in the transactions contemplated by this Agreement and has the ability to bear the economic risks of its investment pursuant to this Agreement. Each Purchaser further acknowledges that it has obtained its own attorneys, business advisors and tax advisors as to legal, business and tax advice (or has decided not to obtain such advice) and has not relied on the Company for such advice.

6.2 Purchase for Own Account. Each Note issued to each Purchaser and the securities issuable upon conversion thereof will be acquired by such Purchaser for its own account, not as a nominee or agent, and not with a view to or in connection with the sale or distribution of any part thereof.

6.3 Exempt from Registration; Restricted Securities. Each Purchaser understands that the sale of the Notes will not be registered under the Securities Act on the grounds that the sale provided for in this Agreement is exempt from registration under of the Securities Act, and that the reliance on such exemption is predicated in part on each Purchaser's representations set forth in this Agreement. Each Purchaser understands that the Notes and the securities issuable upon conversion thereof are restricted securities within the meaning of Rule 144 under the Securities Act, and must be held indefinitely unless they are subsequently registered or an exemption from such registration is available.

6.4 Accredited Investor. Each Purchaser is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities and Exchange Commission.

6.5 Foreign Purchasers. If a Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), such Purchaser hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to purchase the Notes a or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Notes a, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any government or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Notes or any Equity Securities which the Notes may be converted into pursuant to the terms hereof. The Company's offer and sale and Purchaser's acquisition of and payment for and continued beneficial ownership of the Notes or any Equity Securities which the Notes may be converted into pursuant to the terms hereof will not violate any applicable securities or other laws of such Purchaser's jurisdiction.

6.6 No Disqualification Events. No (i) Purchaser, (ii) any of their directors, executive officers, other officers that may serve as a director or officer of any company in which a Purchaser invests, general partners or managing members, nor (iii) any beneficial owner of the Company's voting Equity Securities (in accordance with Rule 506(d) of the Securities Act held by a Purchaser is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act ("Disqualification Events")), except for Disqualification Events covered by Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed reasonably in advance of a Closing in writing in reasonable detail to the Company.

**7. COVENANTS**. The following covenants shall apply so long as at least $3,000,000 of principal under the Notes remains outstanding:

7.1 Affirmative Covenants. The Company covenants, for so long as this Agreement is in effect:

(a) the Company will, at all times, maintain sufficient authorized and unissued shares of Common Stock in order to permit the full conversion of the Notes (in each case, without regard to the Beneficial Ownership Limitations);

(b) promptly after the occurrence thereof, the Company will notify the Purchasers of the occurrence of any Event of Default or any event which would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the financial condition, business, or operations of the Company taken as a whole;

(c) the Company promptly will promptly deliver such additional information regarding the business, financial or corporate affairs of the Company or any Subsidiary thereof, or compliance with the terms of the Transaction Documents, as any Purchaser may from time to time reasonably request, provided that the Company shall not be required to deliver any information that (i) the Company is separately obligated to deliver to a Purchaser pursuant to the Side Letter or (ii) constitutes material non-public information unless Purchaser agrees to enter into a non-disclosure agreement that provides that Purchaser shall maintain the same as confidential until such time as the same is no longer material non-public information;

(d) the Company shall, upon the request of the Purchasers, enter into a Registration Rights Agreement, in substantially the form of Exhibit B attached hereto (the "Registration Rights Agreement"); in the event the Registration Rights Agreement is executed, the Purchasers shall have the registration rights set forth in the Registration Rights Agreement and the Company shall comply in all respects with all of its obligations thereunder;

(e) by no later than June 30, 2022, the Company shall have recognized cumulative net sales from sales of Phexxi (determined in accordance with GAAP) of at least $100,000,000;

(f) unless previously made public, as soon as available, but not later than 210 days after the end of each fiscal year, the Company will deliver to each Purchaser annual audited (unless the Purchaser agrees in its reasonable discretion that such financial statements may be

unaudited) and certified consolidated balance sheets and related statements of income and stockholders' equity, prepared in accordance with GAAP, together with a comparison in reasonable detail to the prior year's audited financial statements; and

(g) the Company shall comply with such other covenants and obligations arising under the Transaction Documents.

7.2 Negative Covenants. Neither the Company nor any Subsidiary shall, without the prior written consent of the Requisite Purchasers, take any of the following actions:

(a) create, incur, assume or suffer to exist any Indebtedness or any guarantees or other contingent obligations with respect thereto that, in each case, is senior to the Notes in terms of right of repayment other than the Senior Debt Notes; or

(b) the entry into any royalty financing or synthetic royalty financing arrangement with respect to Phexxi providing for the sale by the Company of a direct or interest in Phexxi revenues in excess of 10% of the cumulative net sales from sales of Phexxi in the United States (determined in accordance with GAAP).

**8. DEFAULT**.

8.1 For purposes of this Agreement, the term "Event of Default" shall mean any of the following:

(a) the Company shall fail to pay any principal of or interest on any Note when the same shall be due and payable;

(b) the Company fails to comply with its obligation to convert the Notes as described in this Agreement and such default continues for a period of three (3) Business Days;

(c) (i) the Company shall default under any agreement under which any Indebtedness in an aggregate principal amount then outstanding of $150,000 or more is created in a manner entitling the holder of such Indebtedness or a trustee to accelerate the maturity of such Indebtedness and such default shall remain uncured for a period of at least sixty (60) days or (ii) the Company shall fail to make any payment when due (after any applicable notice or grace period) under any Indebtedness in an aggregate principal amount then outstanding of $150,000 or more and such failure shall remain uncured for a period of at least sixty (60) days;

(d) any representation or warranty made by the Company under or in connection with this Agreement shall prove to have been incorrect in any material respect when made;

(e) the Company shall fail to perform or observe any term, covenant or agreement contained in any Transaction Document and such failure shall remain uncured for a period of at least sixty (60) days;

(f) the filing of a petition in bankruptcy or under any similar insolvency law by the Company, the making of an assignment for the benefit of creditors, or if any involuntary petition in bankruptcy or under any similar insolvency law is filed against the Company and such petition is not dismissed within sixty (60) days after the filing thereof; or

(g) any material provision of any Transaction Document, at any time after its execution and delivery and for any reason other than satisfaction in full of all the Notes, other than unasserted contingent obligations, ceases to be in full force and effect; or the Company or any other Person contests in any manner the validity or enforceability of any material provision of any Transaction Document; or the Company denies that it has any or further liability or obligation under any Transaction Document or purports to revoke, terminate or rescind any material provision of any Transaction Document.

8.2 After the occurrence and during the continuance of an Event of Default, the Requisite Purchasers may, at their option, accelerate repayment of the Outstanding Balance payable in which case the Outstanding Balance and all accrued and unpaid interest thereon and all other amounts due hereunder and under the Notes shall be due and payable immediately.

**9. CONDITIONS PRECEDENT**. This Agreement shall become effective and binding upon the parties hereto only on the Effective Date if the following conditions precedent have been satisfied:

(a) The Purchasers shall have received (i) a counterpart of this Agreement signed on behalf of each party hereto, (ii) a Note payable to each Purchaser signed by the Company, and (iii) the Side Letter signed on behalf of each party thereto;

(b) The Purchasers shall have received certified copies of the resolutions of the Board of Directors of the Company approving this Agreement, the transactions contemplated hereby and each Note to which it is or is to be a party;

(c) The Purchasers shall have received such other documents as any Purchaser shall have reasonably requested in connection with the Transaction Documents and the Side Letter.

**10. MISCELLANEOUS**.

10.1 Disclosure; Publicity. Prior to public disclosure of this Agreement and the transactions contemplated herein (including in any Current Report on Form 8-K and any proxy statement), the Company shall provide the Purchasers with such draft disclosure and provide the Purchasers an opportunity to review and comment on such disclosure, which comments the Company will incorporate where reasonably requested.

10.2 Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of New York without regard to provisions regarding choice of laws. Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive

jurisdiction of any New York State court or Federal court of the United States of America sitting in New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Transaction Documents and/or the Side Letter to which it is a party, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the fullest extent permitted by law, in such Federal court. Each of the Company and the Purchasers irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to the Side Letter or any of the Transaction Documents or the actions of any Purchaser in the negotiation, administration, performance or enforcement thereof.

10.3 Successors and Assigns.

(a) Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto. Without the prior written consent of the Requisite Purchasers, the Company may not assign any of its rights or obligations under the Transaction Documents, and any such purported assignment shall be void. Each Purchaser, so long as no Event of Default has occurred and is continuing, with the consent of the Company (not to be unreasonably withheld), may assign or grant a participation in its Note or its rights and obligations hereunder or under any Note; provided, that (i) no such consent shall be required in connection with any assignment to another Purchaser or an Affiliate of a Purchaser , (ii) with respect to any assignment, such Purchaser or any registered assign, as applicable, shall provide to the Company the relevant documentation effecting the assignment and, for the avoidance of doubt, no such assignment shall be effective until recorded in the Register in accordance with Section 10.3(b) and (iii) any assignee shall agree to be bound by the terms of this Agreement and any other Transaction Document, as applicable.

(b) The Company shall maintain a copy of the assignment documentation provided to it by any Purchaser (or any registered assign) and a register for the recordation of the names and addresses of the Purchasers, and the principal amounts (and stated interest) of each Note owing to each Purchaser (or any registered assign) pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Company and each Purchaser (and registered assign) shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Purchaser (or registered assign) at any reasonable time and from time to time upon reasonable prior notice.

10.4 Entire Agreement. The Transaction Documents and the Side Letter constitute the entire understanding and agreement between the parties with regard to the subjects hereof and thereof.

10.5 Payment of Fees and Expenses. Each of the Company and the Purchasers shall bear its own expenses and legal fees incurred on its behalf with respect to this Agreement and the transactions contemplated hereby; provided, that the Company shall reimburse the Purchasers for reasonably incurred and documented fees and expenses of the Purchasers in connection with the negotiation and preparation of the Transaction Documents and Side Letter, including the

reasonable and documented fees and expenses of counsel to the Purchasers, in any event not to exceed an aggregate of $75,000.

10.6 Certain Adjustments. All share and per-share values, including the Conversion Price, set forth in the Transaction Documents shall be automatically adjusted to reflect any stock dividends, stock splits, reclassifications, combinations, subdivisions, distributions or similar recapitalization events affecting such securities that occur after the Effective Date.

10.7 Notices. All notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be deemed delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service, by e-mail or by facsimile) to the address, e-mail address or facsimile telephone number set forth beneath the name of such party on its signature page to this Agreement (or to such other address, e-mail address or facsimile telephone number as such party will have specified in a written notice given to the other parties hereto). Notice shall be deemed given when sent electronically (via email or facsimile), provided that a confirming copy of such notice shall be sent in print form, unless the sender receives an acknowledgement of receipt of the electronic notice (e.g., reply email). In the even that notice is given to the Company, a courtesy copy, which shall not constitute notice, shall also be provided to Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 3580 Carmel Mountain Road, Suite 300, San Diego, California, Attention: Adam C. Lenain.

10.8 Amendments and Termination. Any term of this Agreement and any other Transaction Document may be amended only with the written consent of the Company and the Requisite Purchasers. However, no amendment may, without the consent of all affected Purchasers (a) reduce the percentage of Purchasers required to take or approve any action hereunder or thereunder; (b) reduce the amount or change the time of payment of any amount owing or payable with respect to any Note or change the rate of interest or the manner of calculation of interest payable with respect to any Note; (c) modify the manner of payment or the order of priorities in which payments or distributions hereunder will be made as between the Purchasers and the Company or as among the Purchasers; (d) alter or modify in any respect, or waive, the provisions with respect to the conversion of the Notes; or (e) consent to any assignment of the Company's rights under the Transaction Documents.

10.9 Titles and Subtitles. The titles of the sections and clauses of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

10.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. Delivery by facsimile or e-mail of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

10.11 Severability. Should any provision of this Agreement be determined to be illegal or unenforceable, such determination shall not affect the remaining provisions of this Agreement.

10.12 Allocation of Payments. The Purchasers acknowledge that the Notes are *pari passu* obligations against each of the other Notes. Each payment of interest or principal on the

Notes shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid balances of principal outstanding thereunder. If any Purchaser shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest under any of his, her or its Notes or other obligations hereunder in an amount in excess of his, her or its pro rata share thereof as provided herein, then such Purchaser shall forthwith pay such excess to the Company which amount the Company shall thereupon pay to the Purchasers on a pro rata basis.

10.13 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Transaction Document, the interest paid or agreed to be paid under the Transaction Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If any Purchaser shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Notes or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Purchasers exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

10.14 Certain Tax Matters. Any and all payments by or on account of any obligation of the Company under the Notes or this Agreement shall be made without deduction or withholding for any taxes, levies, imposts, duties, deductions, withholdings or assessments, fees or other charges imposed by any governmental authority, including any interest, additions to tax or penalties applicable thereto ("Taxes"), except as required by applicable law. If the Company is required by applicable law to withhold or deduct any Taxes from any such payment, then the Company shall withhold or deduct such Taxes, the Company shall timely pay the full amount withheld or deducted to the relevant taxing authority in accordance with applicable law, and the sum payable by the Company shall be increased as necessary so that after deduction or withholding has been made for any such Tax (other than any such Tax that is an income Tax), including such deductions or withholdings applicable to additional sums payable under this Section 10.14, the applicable recipient receive an amount equal to the sum it would have received had no such deduction or withholding been made. Notwithstanding the foregoing, the increase of the sum payable described in the immediately preceding sentence shall not be required with respect to payments by or on account of any obligation of the Company under the Notes or this Agreement for Taxes withheld or deducted from such payments (A) to the extent such Taxes result from the failure of the applicable recipient to provide to the Company (i) a valid properly executed Internal Revenue Service Form W-9 (if such recipient is a U.S. person for U.S. federal income tax purposes) or (ii) a valid properly executed appropriate Internal Revenue Service Form W-8 (if such recipient is not a U.S. person for U.S. federal income tax purposes) establishing a complete exemption from U.S. federal tax withholding to the extent it is legally entitled to do so or (B) in the case of a Purchaser (or registered assign) that is not a U.S. person for U.S. federal income tax purposes, to the extent such Taxes are U.S. federal withholding Taxes imposed on amounts payable to or for the account of such person with respect to an applicable interest in a Note pursuant to a law in effect on the date on which (i) such person

acquires such interest in the Note or (ii) such person changes its lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to such person's assignor immediately before such person became a party hereto or to such person immediately before it changed its lending office. The Company agrees to pay any and all stamp, court or documentary, intangible, recording, filing or similar Taxes that arise in respect of this Agreement or the Note.

[*Signature page follows.*]

**IN WITNESS WHEREOF**, the parties have executed this Securities Purchase Agreement to be effective as of the date first above written.

**EVOFEM BIOSCIENCES, INC.**, as Company

By: /s/ Justin J. File

Name: Justin J. File

Title: Chief Financial Officer

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

Email: jfile@evofem.com

**ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND, LP**,
as a Purchaser

**By: Adjuvant Capital GP, L.P., its General Partner**

**By: Adjuvant Capital Management, LLC, its General Partner**

By: /s/ Jenny Yip

Name: Jenny Yip
Title: Co-President

Address: 445 Fifth Ave, #20D
New York, NY 10016

Email: jy@adjuvantcapital.com

**Note Principal Purchased at Closing:**

$ 20,853,960.00

ADJUVANT GLOBAL HEALTH
TECHNOLOGY FUND, DE, LP,
as a Purchaser

**By: Adjuvant Capital GP, L.P., its General Partner**

**By: Adjuvant Capital Management, LLC, its General Partner**

By: /s/ Jenny Yip

Name: Jenny Yip
Title: Co-President

Address: 445 Fifth Ave, #20D
New York, NY 10016

Email: jy@adjuvantcapital.com

**Note Principal Purchased at Closing:**

$ 4,146,040.00

# EXHIBIT A

# FORM OF NOTE

# EXHIBIT B

# FORM OF REGISTRATION RIGHTS AGREEMENT

**Exhibit 10.2**

**THE OBLIGATIONS EVIDENCED BY THIS CONVERTIBLE PROMISSORY NOTE ARE EXPRESSLY SUBORDINATED TO THE SECURED OBLIGATIONS (AS DEFINED IN THAT CERTAIN SECURITIES PURCHASE AND SECURITY AGREEMENT, DATED AS OF APRIL 23, 2020 (THE "SENIOR DEBT PURCHASE AGREEMENT"), BY THE COMPANY (AS DEFINED BELOW), THE PURCHASERS (AS DEFINED THEREIN, THE "SENIOR PURCHASERS") AND BAKER BROS. ADVISORS LP, AS AGENT (THE "SENIOR AGENT")) IN ACCORDANCE WITH THE TERMS OF THE PURCHASE AGREEMENT (AS DEFINED BELOW). THE PURCHASER OF THIS CONVERTIBLE PROMISSORY NOTE, BY ITS ACCEPTANCE HEREOF, SHALL BE BOUND BY THE SUBORDINATION PROVISIONS OF THE PURCHASE AGREEMENT.**

**CONVERTIBLE PROMISSORY NOTE**

**EVOFEM BIOSCIENCES, INC.**

| | |
|---|---|
| $[ ] | New York, New York |
| No. [ ] | [ ] |

FOR VALUE RECEIVED, the undersigned, Evofem Biosciences, Inc., a Delaware corporation (the "**Company**"), hereby unconditionally promises to pay to [ ] or its registered assigns (the "**Purchaser**") at the address specified in the Purchase Agreement (as hereinafter defined) in lawful money of the United States and in immediately available funds, the principal sum of DOLLARS AND ZERO CENTS ($ .00), together with interest as set forth in the Purchase Agreement until the date on which the principal amount is paid in full, converted in whole or cancelled in accordance with the terms of the Purchase Agreement. Amounts evidenced hereby shall be paid in the amounts and on the dates specified in Section 3 of the Purchase Agreement.

This Note: (a) is one of a series of similar Notes issued pursuant to that certain Securities Purchase Agreement (the "Purchase Agreement"), dated as of October 14, 2020, by and among the Company and the purchasers from time to time party thereto and (b) is subject in all respects to the terms and conditions set forth in the Purchase Agreement. This Note is convertible as provided in Section 4 of the Purchase Agreement. This Note is an unsecured obligation of the Company.

Upon the occurrence and during the continuance of any one or more of the Events of Default, all obligations under the Purchase Agreement, as evidenced by this Note, shall become, or may be declared to be, immediately due and payable, all as provided in the Purchase Agreement.

All parties now and hereafter liable with respect to this Note, whether as maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

Unless otherwise defined herein, capitalized terms used herein but not shall have the meanings given to them in the Purchase Agreement.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE PURCHASE AGREEMENT, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AND IN ACCORDANCE WITH THE PURCHASE AGREEMENT.**

**THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.**

* * *

IN WITNESS WHEREOF, the Company has caused this Note to be executed as of the date first above written.

**Evofem Biosciences, Inc.**,
a Delaware corporation

By: _____
Name:
Title:

**[SIGNATURE PAGE TO CONVERTIBLE NOTE]**

**Exhibit A**

## CONVERSION NOTICE

To convert only part of this Note, state the principal amount to be converted:

$_____

The Equity Interest issuable on conversion of this Note shall be delivered to the following DWAC Account Number or a physical certificate shall be delivered to the Holder in accordance with the following delivery instructions:

Check One: [ ] DWAC Delivery [ ] Book Entry [ ] Physical Certificate Delivery

_____

_____

_____

If you want the stock certificate representing the Equity Interests issuable upon conversion made out in another person's name, fill in the form below:

_____

(Insert other person's soc. sec. or tax I.D. no.)

_____

_____

_____

(Print or type other person's name, address and zip code)

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

*Signature of Authorized Signatory of Investing Entity*: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

**Exhibit 10.3**

# REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "**Agreement**") is made as of October 14, 2020, by and between Evofem Biosciences, Inc., a Delaware corporation (the "**Company**"), and the persons listed on the attached Schedule A who are signatories to this Agreement (collectively, the "**Investors**"). Unless otherwise defined herein, capitalized terms used in this Agreement have the respective meanings ascribed to them in Section 1.

## RECITALS

**WHEREAS**, the Company and the Investors wish to provide for certain arrangements with respect to the registration of the Registrable Securities (as defined below) by the Company under the Securities Act (as defined below).

**NOW, THEREFORE,** in consideration of the mutual promises and covenants set forth herein, and other consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1
## DEFINITIONS

1.1 Certain Definitions. In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the following terms have the respective meanings set forth below:

(a) "**Board**" shall mean the Board of Directors of the Company.

(b) "**Commission**" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(c) "**Common Stock**" shall mean the common stock of the Company, par value $0.0001 per share.

(d) "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(e) "**Other Securities**" shall mean securities of the Company, other than Registrable Securities (as defined below).

(f) "**Person**" shall mean any individual, partnership, corporation, company, association, trust, joint venture, limited liability company, unincorporated organization, entity or division, or any government, governmental department or agency or political subdivision thereof.

(g) "**Registrable Securities**" shall mean the shares of Common Stock issued or issuable upon the conversion of the Notes.

(h) The terms "**register,**" "**registered**" and "**registration**" shall refer to a registration effected by preparing and filing a Registration Statement in compliance with the Securities Act, and such Registration Statement becoming effective under the Securities Act.

(i) "**Registration Expenses**" shall mean all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, reasonable legal expenses (not to exceed $20,000) of one special counsel for the Investors (if different from the Company's counsel and if such counsel is reasonably approved by the Company) in connection with the preparation and filing of the Resale Registration Shelf (as defined below), and reasonable legal expenses of one special counsel for Investors (not to exceed $20,000) (if different from the Company's counsel and if such counsel is reasonably approved by the Company) per underwritten public offering, blue sky fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses.

(j) "**Registration Statement**" means any registration statement of the Company filed with, or to be filed with, the SEC under the Securities Act with respect to the Registrable Securities, including the related prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material or documents incorporated by reference in such registration statement as may be necessary to comply with applicable securities laws, other than a registration statement (and related prospectus) filed on Form S-4 or Form S-8 or any successor forms thereto.

(k) "**Rule 144**" shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

(l) "**Securities Act**" shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

(m) "**Selling Expenses**" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities, the fees and expenses of any legal counsel (except as provided in the definition of "Registration Expenses") and any other advisors any of the Investors engage and all similar fees and commissions relating to the Investors' disposition of the Registrable Securities.

## SECTION 2
## RESALE REGISTRATION RIGHTS

2.1 Resale Registration Rights.

(a) Following the date of conversion of Notes with an Outstanding Balance of at least $5 million and within the thirty (30) day period immediately following the demand of

any Investor, the Company shall file with the Commission a Registration Statement on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance with the Securities Act) covering the resale of the Registrable Securities by the Investors (the "**Resale Registration Shelf**"), and the Company shall file such Resale Registration Shelf as promptly as reasonably practicable following such demand, and in any event within sixty (60) days of such demand. Such Resale Registration Shelf shall include a "final" prospectus, including the information required by Item 507 of Regulation S-K of the Securities Act, as provided by the Investors in accordance with Section 2.7. Notwithstanding the foregoing, before filing the Resale Registration Shelf, the Company shall furnish to the Investors a copy of the Resale Registration Shelf and afford the Investors an opportunity to review and comment on the Resale Registration Shelf. The Company's obligation pursuant to this Section 2.1(a) is conditioned upon the Investors providing the information contemplated in Section 2.7.

(b) The Company shall use its reasonable best efforts to cause the Resale Registration Shelf and related prospectuses to become effective as promptly as practicable after filing. The Company shall use its reasonable best efforts to cause such Registration Statement to remain effective under the Securities Act until the earlier of the date (i) all Registrable Securities covered by the Resale Registration Shelf have been sold or may be sold freely without limitations or restrictions as to volume or manner of sale pursuant to Rule 144 or (ii) all Registrable Securities covered by the Resale Registration Shelf otherwise cease to be Registrable Securities pursuant to Section 2.9 hereof. The Company shall promptly, and within two (2) business days after the Company confirms effectiveness of the Resale Registration Shelf with the Commission, notify the Investors of the effectiveness of the Resale Registration Shelf.

(c) Notwithstanding anything contained herein to the contrary, the Company shall not be obligated to effect, or to take any action to effect, a registration pursuant to Section 2.1(a):

(i) if the Company has and maintains an effective Registration Statement on Form S-3 that provides for the resale of an unlimited number of securities by selling stockholders (a "**Company Registration Shelf**");

(ii) during the period forty-five (45) days prior to the Company's good faith estimate of the date of filing of a Company Registration Shelf; or

(iii) if the Company has caused a Registration Statement to become effective pursuant to this Section 2.1 during the prior twelve (12) month period.

(d) If the Company has a Company Registration Shelf in place at any time in which the Investors make a demand pursuant to Section 2.1(a), the Company shall file with the Commission, as promptly as practicable, and in any event within fifteen (15) business days after such demand, a "final" prospectus supplement to its Company Registration Shelf covering the resale of the Registrable Securities by the Investors (the "**Prospectus**"); provided, however, that the Company shall not be obligated to file more than one Prospectus pursuant to this Section 2.1(d) in any six month period to add additional Registrable Securities to the Company

Registration Shelf that were acquired by the Investors other than directly from the Company or in an underwritten public offering by the Company. The Prospectus shall include the information required under Item 507 of Regulation S-K of the Securities Act, which information shall be provided by the Investors in accordance with Section 2.7. Notwithstanding the foregoing, before filing the Prospectus, the Company shall furnish to the Investors a copy of the Prospectus and afford the Investors an opportunity to review and comment on the Prospectus.

(e) Deferral and Suspension. At any time after being obligated to file a Resale Registration Shelf or Prospectus, or after any Resale Registration Shelf has become effective or a Prospectus filed with the Commission, the Company may defer the filing of or suspend the use of any such Resale Registration Shelf or Prospectus, upon giving written notice of such action to the Investors with a certificate signed by the Principal Executive Officer of the Company stating that in the good faith judgment of the Board, the filing or use of any such Resale Registration Shelf or Prospectus covering the Registrable Securities would be seriously detrimental to the Company or its stockholders at such time or render the Company unable to comply with requirements under the Securities Act or Exchange Act and that the Board concludes, as a result, that it is in the best interests of the Company and its stockholders to defer the filing or suspend the use of such Resale Registration Shelf or Prospectus at such time. The Company shall have the right to defer the filing of or suspend the use of such Resale Registration Shelf or Prospectus for a period of not more than one hundred twenty (120) days from the date the Company notifies the Investors of such deferral or suspension; provided that the Company shall not exercise the right contained in this Section 2.1(e) more than once in any twelve month period. In the case of the suspension of use of any effective Resale Registration Shelf or Prospectus, the Investors, immediately upon receipt of notice thereof from the Company, shall discontinue any offers or sales of Registrable Securities pursuant to such Resale Registration Shelf or Prospectus until advised in writing by the Company that the use of such Resale Registration Shelf or Prospectus may be resumed. In the case of a deferred Prospectus or Resale Registration Shelf filing, the Company shall provide prompt written notice to the Investors of (i) the Company's decision to file or seek effectiveness of the Prospectus or Resale Registration Shelf, as the case may be, following such deferral and (ii) in the case of a Resale Registration Shelf, the effectiveness of such Resale Registration Shelf. In the case of either a suspension of use of, or deferred filing of, any Resale Registration Shelf or Prospectus, the Company shall not, during the pendency of such suspension or deferral, be required to take any action hereunder (including any action pursuant to Section 2.2 hereof) with respect to the registration or sale of any Registrable Securities pursuant to any such Resale Registration Shelf, Company Registration Shelf or Prospectus.

(f) Other Securities. Subject to Section 2.2(e) below, any Resale Registration Shelf or Prospectus may include Other Securities, and may include securities of the Company being sold for the account of the Company; provided that such Other Securities are excluded first from such Registration Statement in order to comply with any applicable laws or request from any Government Entity, Nasdaq or any applicable listing agency. For the avoidance of doubt, no Other Securities may be included in an underwritten offering pursuant to Section 2.2 without the consent of the Investors.

2.2 Sales and Underwritten Offerings of the Registrable Securities.

(a) Notwithstanding any provision contained herein to the contrary, the Investors, collectively, shall, and subject to the limitations set forth in this Section 2.2, be permitted one underwritten public offering per calendar year, but no more than three underwritten public offerings in total, to effect the sale or distribution of Registrable Securities.

(b) If the Investors intend to effect an underwritten public offering pursuant to a Resale Registration Shelf or Company Registration Shelf to sell or otherwise distribute Registrable Securities, they shall so advise the Company and provide as much notice to the Company as reasonably practicable (and in any event not less than fifteen (15) business days prior to the Investors' request that the Company file a prospectus supplement to a Resale Registration Shelf or Company Registration Shelf).

(c) In connection with any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities, the Investors shall be entitled to select the underwriter or underwriters for such offering, subject to the consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed.

(d) In connection with any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities, the Company shall not be required to include any of the Registrable Securities in such underwriting unless the Investors (i) enter into an underwriting agreement in customary form with the underwriter or underwriters, (ii) accept customary terms in such underwriting agreement with regard to representations and warranties relating to ownership of the Registrable Securities and authority and power to enter into such underwriting agreement and (iii) complete and execute all questionnaires, powers of attorney, custody agreements, indemnities and other documents as may be requested by such underwriter or underwriters. Further, the Company shall not be required to include any of the Registrable Securities in such underwriting if (Y) the underwriting agreement proposed by the underwriter or underwriters contains representations, warranties or conditions that are not reasonable in light of the Company's then-current business or (Z) the underwriter, underwriters or the Investors require the Company to participate in any marketing, road show or comparable activity that may be required to complete the orderly sale of shares by the underwriter or underwriters.

(e) If the total amount of securities to be sold in any offering initiated by the Investors pursuant to this Section 2.2 involving an underwriting of shares of Registrable Securities exceeds the amount that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities (subject in each case to the cutback provisions set forth in this Section 2.2(e)), that the underwriters and the Company determine in their sole discretion shall not jeopardize the success of the offering. If the underwritten public offering has been requested pursuant to Section 2.2(a) hereof, the number of shares that are entitled to be included in the registration and underwriting shall be allocated in the

following manner: (a) first, shares of Company equity securities that the Company desires to include in such registration shall be excluded and (b) second, Registrable Securities requested to be included in such registration by the Investors shall be excluded on a pro rata basis. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round down the number of shares allocated to any of the Investors to the nearest 100 shares.

2.3 Fees and Expenses. All Registration Expenses incurred in connection with registrations pursuant to this Agreement shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Investors shall be borne by the Investors.

2.4 Registration Procedures. In the case of each registration of Registrable Securities effected by the Company pursuant to Section 2.1 or Section 2.2 hereof, as applicable, the Company shall keep the Investors advised as to the initiation of each such registration and as to the status thereof. The Company shall use its reasonable best efforts, within the limits set forth in this Section 2.4 to:

(a) prepare and file with the Commission such amendments and supplements to such Registration Statement and the prospectuses used in connection with such Registration Statement as may be necessary to keep such Registration Statement effective and current and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement;

(b) furnish to the Investors such numbers of copies of a prospectus, including preliminary prospectuses, in conformity with the requirements of the Securities Act, and such other documents as the Investors may reasonably request in order to facilitate the disposition of Registrable Securities;

(c) use its reasonable best efforts to register and qualify the Registrable Securities covered by such Registration Statement under such other securities or blue sky laws of such jurisdictions in the United States as shall be reasonably requested by the Investors, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(d) in the event of any underwritten public offering, and subject to Section 2.2(d), enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering and take such other usual and customary action as the Investors may reasonably request in order to facilitate the disposition of such Registrable Securities;

(e) notify the Investors at any time when a prospectus relating to a Registration Statement covering any Registrable Securities is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein

not misleading in the light of the circumstances then existing. The Company shall use its reasonable best efforts to amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(f) provide a transfer agent and registrar for all Registrable Securities registered pursuant to such Registration Statement and, if required, a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) if requested by an Investor, use reasonable best efforts to cause the Company's transfer agent to remove any restrictive legend from any Registrable Securities within two business days following such request to the extent the Company determines with the advice of counsel that such restrictive legend is then eligible for removal;

(h) cause to be furnished, at the request of the Investors, on the date that Registrable Securities are delivered to underwriters for sale in connection with an underwritten offering pursuant to this Agreement, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, and (ii) a letter or letters from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and

(i) cause all such Registrable Securities included in a Registration Statement pursuant to this Agreement to be listed on each securities exchange or other securities trading markets on which Common Stock is then listed.

2.5 The Investors Obligations.

(a) Discontinuance of Distribution. The Investors agree that, upon receipt of any notice from the Company of the occurrence of any event of the kind described in Section 2.4(e) hereof, the Investors shall immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement covering such Registrable Securities until the Investors' receipt of the copies of the supplemented or amended prospectus contemplated by Section 2.4(e) hereof or receipt of notice that no supplement or amendment is required and that the Investors' disposition of the Registrable Securities may be resumed. The Company may provide appropriate stop orders to enforce the provisions of this Section 2.5(a).

(b) Compliance with Prospectus Delivery Requirements. The Investors covenant and agree that they shall comply with the prospectus delivery requirements of the Securities Act as applicable to them or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement filed by the Company pursuant to this Agreement.

(c) Notification of Sale of Registrable Securities. The Investors covenant and agree that they shall notify the Company following the sale of Registrable Securities to a third party as promptly as reasonably practicable, and in any event within thirty (30) days, following the sale of such Registrable Securities.

2.6 Indemnification.

(a) To the extent permitted by law, the Company shall indemnify the Investors, and, as applicable, their officers, directors, and constituent partners, legal counsel for each Investor and each Person controlling the Investors, with respect to which registration, related qualification, or related compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each Person who controls any underwriter within the meaning of the Securities Act against all claims, losses, damages, or liabilities (or actions in respect thereof) to the extent such claims, losses, damages, or liabilities arise out of or are based upon (i) any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such registration, qualification, or compliance, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification, or compliance; and the Company shall pay as incurred to the Investors, each such underwriter, and each Person who controls the Investors or underwriter, any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action; provided, however, that the indemnity contained in this Section 2.6(a) shall not apply to amounts paid in settlement of any such claim, loss, damage, liability, or action if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld); and provided, further, that the Company shall not be liable in any such case to the extent that any such claim, loss, damage, liability, or expense arises out of or is based upon any violation by such Investor of the obligations set forth in Section 2.5 hereof or any untrue statement or omission contained in such prospectus or other document based upon written information furnished to the Company by the Investors, such underwriter, or such controlling Person and stated to be for use therein.

(b) To the extent permitted by law, each Investor (severally and not jointly) shall, if Registrable Securities held by such Investor are included for sale in the registration and related qualification and compliance effected pursuant to this Agreement, indemnify the Company, each of its directors, each officer of the Company who signs the applicable Registration Statement, each legal counsel and each underwriter of the Company's securities covered by such a Registration Statement, each Person who controls the Company or such underwriter within the meaning of the Securities Act against all claims, losses, damages, and liabilities (or actions in respect thereof) arising out of or based upon (i) any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, or related document, or (ii) any omission (or alleged omission) to state therein a material fact

required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by such Investor of Section 2.5 hereof, the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law applicable to such Investor and relating to action or inaction required of such Investor in connection with any such registration and related qualification and compliance, and shall pay as incurred to such persons, any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case only to the extent that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in (and such violation pertains to) such Registration Statement or related document in reliance upon and in conformity with written information furnished to the Company by such Investor and stated to be specifically for use therein; provided, however, that the indemnity contained in this Section 2.6(b) shall not apply to amounts paid in settlement of any such claim, loss, damage, liability, or action if settlement is effected without the consent of such Investor (which consent shall not unreasonably be withheld); provided, further, that such Investor's liability under this Section 2.6(b) (when combined with any amounts such Investor is liable for under Section 2.6(d)) shall not exceed such Investor's net proceeds from the offering of securities made in connection with such registration.

(c) Promptly after receipt by an indemnified party under this Section 2.6 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under this Section 2.6, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; provided, however, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld; provided further, however, that if either party reasonably determines that there may be a conflict between the position of the Company and the Investors in conducting the defense of such action, suit, or proceeding by reason of recognized claims for indemnity under this Section 2.6, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 2.6, but the omission so to notify the indemnifying party shall not relieve such party of any liability that such party may have to any indemnified party otherwise than under this Section 2.6.

(d) If the indemnification provided for in this Section 2.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that

resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. In no event, however, shall (i) any amount due for contribution hereunder be in excess of the amount that would otherwise be due under Section 2.6(a) or Section 2.6(b), as applicable, based on the limitations of such provisions and (ii) a Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) be entitled to contribution from a Person who was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control; provided, however, that the failure of the underwriting agreement to provide for or address a matter provided for or addressed by the foregoing provisions shall not be a conflict between the underwriting agreement and the foregoing provisions.

(f) The obligations of the Company and the Investors under this Section 2.6 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement or otherwise.

2.7 Information. The Investors shall furnish to the Company such information regarding the Investors and the distribution proposed by the Investors as the Company may reasonably request and as shall be reasonably required in connection with any registration referred to in this Agreement. The Investors agree to, as promptly as practicable (and in any event prior to any sales made pursuant to a prospectus), furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by the Investors not misleading. The Investors agree to keep confidential the receipt of any notice received pursuant to Section 2.4(e) and the contents thereof, except as required pursuant to applicable law. Notwithstanding anything to the contrary herein, the Company shall be under no obligation to name the Investors in any Registration Statement if the Investors have not provided the information required by this Section 2.7 with respect to the Investors as a selling security holder in such Registration Statement or any related prospectus.

2.8 Rule 144 Requirements. With a view to making available to the Investors the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the Commission that may at any time permit the Investors to sell Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act at all times after the date hereof;

(b) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act;

(c) prior to the filing of the Registration Statement or any amendment thereto (whether pre-effective or post-effective), and prior to the filing of any prospectus or prospectus supplement related thereto, to provide the Investors with copies of all of the pages thereof (if any) that reference the Investors; and

(d) furnish to any Investor, so long as the Investor owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested by an Investor in availing itself of any rule or regulation of the Commission which permits an Investor to sell any such securities without registration.

2.9 Termination of Status as Registrable Securities. The Registrable Securities shall cease to be Registrable Securities upon the earliest to occur of the following events: (i) such Registrable Securities have been sold pursuant to an effective Registration Statement; (ii) such Registrable Securities have been sold by the Investors pursuant to Rule 144 (or other similar rule), (iii) such Registrable Securities may be resold by the Investor holding such Registrable Securities without limitations as to volume or manner of sale pursuant to Rule 144; or (iv) ten (10) years after the date of this Agreement.

## SECTION 3
## MISCELLANEOUS

3.1 Amendment. No amendment, alteration or modification of any of the provisions of this Agreement shall be binding unless made in writing and signed by each of the Company and the Investors.

3.2 Injunctive Relief. It is hereby agreed and acknowledged that it shall be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that, in the event of any such failure, an aggrieved Person shall be irreparably damaged and shall not have an adequate remedy at law. Any such Person shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including, without limitation, specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

3.3 Notices. All notices required or permitted under this Agreement must be in writing and sent to the address or facsimile number identified below. Notices must be given: (a) by personal delivery, with receipt acknowledged; (b) by facsimile followed by hard copy delivered by the methods under clause (c) or (d); (c) by prepaid certified or registered mail, return receipt requested; (d) by prepaid reputable overnight delivery service; or (e) by email

transmission. Notices shall be effective upon receipt. Either party may change its notice address by providing the other party written notice of such change. Notices shall be delivered as follows:

If to the Investors: At such Investor's address as set forth on Schedule A hereto

If to the Company: Evofem Biosciences, Inc.Attn: General Counsel
12400 High Bluff Drive, Suite 600
San Diego, CA

with a copy to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Attention: Adam C. Lenain
3580 Carmel Mountain Road, Suite 300
San Diego, CA

3.4 Governing Law; Jurisdiction; Venue; Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the law of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(b) Each of the Company and the Investors irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement and the transactions contemplated herein, or for recognition or enforcement of any judgment, and each of the Company and the Investors irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court. Each of the Company and the Investors hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the Company and the Investors irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement and the transactions contemplated herein in any court referred to in Section 3.4(b) hereof. Each of the Company and the Investors hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) EACH OF THE COMPANY AND THE INVESTORS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT

OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF THE COMPANY AND THE INVESTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT EACH OF THE COMPANY AND THE INVESTORS HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

3.5 Successors, Assigns and Transferees. Any and all rights, duties and obligations hereunder shall not be assigned, transferred, delegated or sublicensed by any party hereto without the prior written consent of the other parties; provided, however, that the Investors shall be entitled to transfer Registrable Securities to one or more of their affiliates and, solely in connection therewith, may assign their rights hereunder in respect of such transferred Registrable Securities, in each case, so long as such Investor is not relieved of any liability or obligations hereunder, without the prior consent of the Company. Any transfer or assignment made other than as provided in the first sentence of this Section 3.5 shall be null and void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, permitted assigns, heirs, executors and administrators of the parties hereto. The Company shall not consummate any recapitalization, merger, consolidation, reorganization or other similar transaction whereby stockholders of the Company receive (either directly, through an exchange, via dividend from the Company or otherwise) equity (the "Other Equity") in any other entity (the "Other Entity") with respect to Registrable Securities hereunder, unless prior to the consummation thereof, the Other Entity assumes, by written instrument, the obligations under this Agreement with respect to such Other Equity as if such Other Equity were Registrable Securities hereunder.

3.6 Entire Agreement. This Agreement, together with any exhibits hereto, constitute the entire agreement between the parties relating to the subject matter hereof and all previous agreements or arrangements between the parties, written or oral, relating to the subject matter hereof are superseded.

3.7 Waiver. No failure on the part of either party hereto to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either party hereto in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver thereof; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

3.8 Severability. If any part of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, such declaration shall not affect the remainder of the Agreement and the invalidated provision shall be revised in a manner that shall render such provision valid while preserving the parties' original intent to the maximum extent possible.

3.9 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All

references in this Agreement to sections, paragraphs and exhibits shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits attached hereto.

3.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties that execute such counterparts (including by facsimile or other electronic means), and all of which together shall constitute one instrument.

3.11 Term and Termination. The Investors' rights to demand the registration of the Registrable Securities under this Agreement, as well as the Company's obligations under Section 2.2 hereof, shall terminate automatically once all Registrable Securities cease to be Registrable Securities pursuant to the terms of Section 2.9 of this Agreement.

[*Remainder of Page Intentionally Left Blank; Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement effective as of the day, month and year first above written.

**EVOFEM BIOSCIENCES, INC.,**
a Delaware Corporation

By: /s/ Justin J. File

Name: Justin J. File

Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Registration Rights Agreement effective as of the day, month and year first above written.

**ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND, L.P.**
By: Adjuvant Capital GP, L.P., its General Partner
By: Adjuvant Capital Management, LLC, its General Partner

By: /s/ Jenny Yip

Name: Jenny Yip

Title: Co-President

**ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND DE, L.P.**
By: Adjuvant Capital GP, L.P., its General Partner
By: Adjuvant Capital Management, LLC, its General Partner

By: /s/ Jenny Yip

Name: Jenny Yip

Title: Co-President

[Signature Page to Registration Rights Agreement]

**Exhibit 10.4**

**[Pursuant to Item 601(b)(10) of Regulation S-K, certain confidential portions of this exhibit have been omitted by means of marking such portions with brackets ("[***]") because the identified confidential portions (i) are not material and (ii) would be competitively harmful if publicly disclosed.]**

October 14, 2020

Evofem Biosciences, Inc.
12400 High Bluff Drive
Suite 600
San Diego, California 92130

Re: Global Health Agreement

Ladies and Gentlemen:

This global health agreement ("Global Health Agreement") is entered into by and among Evofem Biosciences, Inc., a Delaware corporation (the "Company"), Adjuvant Global Health Technology Fund, L.P. and Adjuvant Global Health Technology Fund DE, L.P. (together with Adjuvant Global Health Technology Fund, L.P. and their transferees, successors, and assigns, "Adjuvant") in connection with the commitment by Adjuvant to purchase up to $25,000,000 aggregate principal amount of Convertible Promissory Notes of the Company (the "Notes"), convertible into shares of common stock, par value $0.0001 per share ("Common Stock"), of the Company (the "Investment"). The Notes will be issued pursuant to the terms and condition of that certain Securities Purchase Agreement of even date herewith (the "Purchase Agreement") (such date, the "Closing Date"). Adjuvant is making the Investment in conjunction with the terms of this Global Health Agreement, the Purchase Agreement, that certain Registration Rights Agreement, and that certain Convertible Promissory Note, each such documents as amended from time to time (collectively, including this Global Health Agreement, the "Investment Documents").

1. Background

(a) The Company is a Delaware corporation committed to developing and commercializing innovative products to address unmet needs in women's sexual and reproductive health. The Company exists to advance the lives of women by developing innovative solutions, such as hormone-free, woman-controlled contraception and protection from certain sexually transmitted infections ("STIs"). The Company's first commercial product, Phexxi™ (lactic acid, citric acid and potassium bitartrate), is a vaginal pH modulator approved in the United States. The Company is also advancing EVO100 into Phase 3 clinical trials for the prevention of urogenital transmission of both *Chlamydia trachomatis* infection (chlamydia) and *Neisseria gonorrhoeae* infection (gonorrhea) in women.

(b) Adjuvant is an investment fund that was formed for the purpose of accelerating the development of affordable vaccines, therapeutics, diagnostics, medical devices, and other technologies to reduce the burden of disease in developing countries in furtherance of its mission to help marginalized people lead more healthy, productive lives. Adjuvant has determined that the Investment will offer significant potential to improve global health in Low-Income Economies and Lower-Middle Income Economies (as defined by the World Bank Group's lending group classifications[1], "LMICs") in accordance with Adjuvant's charitable purpose.

[1] World Bank Country and Lending Groups (https://datahelpdesk.worldbank.org/knowledgebase/articles/906519)

(c) Adjuvant's investors include one or more private foundations that made investments in Adjuvant in the form of program-related investments ("PRIs") under Section 4944(c) of the Internal Revenue Code of 1986, as amended (the "Code"). As part of the PRI requirements in connection with such investments, Adjuvant is required to include certain terms and conditions in the governing documents of its investments. Such terms and conditions are set forth in the Investment Documents.

2. PRI Requirements

In consideration of Adjuvant making the Investment on the terms and conditions stated in the Investment Documents, and for other good and valuable consideration, the undersigned hereby irrevocably agree to the program-related investment requirements ("PRI Requirements") as follows:

(a) Purposes and Use of Funds

(i) The charitable purpose of the Investment is to ensure that safe, effective, high-quality contraceptives and STI-prevention products are made available for use in public health programs and by private purchasers in LMICs (the "Global Health Objective"). The Company agrees to make the products listed below (the "Global Access Products") accessible to women in LMICs, to the extent such access can be achieved on terms that are commercially viable for the Company:

(1) Phexxi for the prevention of pregnancy; and

(2) EVO100 for the prevention of chlamydia and gonorrhea, if approved.

(ii) The proceeds from the Investment will be used by the Company in the following manner:

(1) [***] for clinical development of EVO100 for the prevention of sexually transmitted infections;

(2) [***] for Phexxi cost of goods reduction efforts, including the transfer of manufacturing operations to ex-U.S. contract manufacturing organizations; and

(3) [***] for LMIC regulatory and market entry activities.

Any unused proceeds from the Investment will be reallocated by the JSC (as defined below).

(iii) The Company acknowledges and understands that the purpose of Adjuvant making the Investment is to advance the Global Heath Objective.

(b) Global Access Commitments

(i) The Company shall take the following steps in order to advance the Global Health Objective (the "Global Access Commitments"):

(1) establish a joint steering committee (the "JSC"), within 90 days of the Closing Date, comprised of up to [***] relevant global health experts (as mutually agreed between Adjuvant and the Company), up to [***] senior Company employees, and up to [***] Adjuvant team members to advise on the clinical development, [***];

(2) pursue the necessary international and local product registrations (*e.g.*, WHO PQ, CE mark, TFDA[2] registration) for the Global Access Products in Target LMICs, in order to submit [***] registration dossiers for the Global Access Products [***] in Target LMICs;

(3) make the Global Access Products available [***];

(4) create a [***]; and

(5) commit to [***].

(ii) The Global Access Commitments will remain in effect for ten (10) years following the Closing Date (the "Global Access Term"). The Global Access Commitments shall remain in place upon a change of control of the Company, provided, however, that the potential acquirer (the "Acquirer") shall be granted the following rights with respect to the Global Access Commitments:

(1) the right to [***];

(2) the right to [***];

(3) the right to[***]; and

(4) the right to [***].

(c) [***]. In the event that the Company (or a third-party designee) is in material breach of the Global Access Commitments in respect of a Global Access Product [***].

(d) *Intentionally Omitted.*

(a) Required Reporting

(i) In addition to any and all reports required to be delivered to Adjuvant under the Investment Documents, the Company shall furnish, or cause to be furnished, to Adjuvant (by way of its investment adviser, Adjuvant Capital, L.P.) and, if requested, to the Bill and Melinda Gates Foundation (the "Foundation") or any PRI investor of Adjuvant, the following reports and certifications (the "PRI Reports"), to the extent such information is then publicly available, for as long as Adjuvant is a shareholder in the Company (such period, the "Reporting Period"):

[2] Tanzania Food & Drug Administration (illustrative)

(1) within 5 days after the filing of the Company's annual report on Form 10-K per applicable Securities and Exchange Commission ("SEC") rules and regulations for each fiscal year of the Company, a report, signed by an officer of the Company, (a) certifying that the requirements of the Investment, as set forth in the Investment Documents, were met during the immediately preceding year, (b) describing the use of the proceeds of the Investment during such period, and (c) evaluating the Company's progress toward achieving the purposes of the Investment and the activities and the use of the funds towards such purposes; and

(2) within 5 days after the filing of the Company's annual report on Form 10-K per applicable SEC rules and regulations for each fiscal year of the Company during which Adjuvant owns all or a portion of the Investment, the Company shall furnish, or cause to be furnished, full and complete financial reports related to the Investment of the type ordinarily required by the Company's commercial and public investors under similar circumstances, including but not limited to the use of Adjuvant's funds.

(ii) The Company shall also provide Adjuvant with any other information about the use of funds, activities, operations, and financial condition of the Company as may be reasonably requested by Adjuvant, the Foundation or any other PRI investor of Adjuvant and as may be necessary to discharge any expenditure responsibility, within the meaning of Sections 4945(d)(4) and 4945(h) of the Code, including, but not limited to, the information required to satisfy the applicable PRI reporting requirements.

(iii) Within 60 days after the expiration of the Reporting Period, a final report, signed by an officer of the Company, (a) certifying that the requirements of the Investment, as set forth in the Investment Documents, were met during the term of the Investment, (b) describing the material activities of the Company with respect to the Investment and generally the use of proceeds made during the entire period in which the Investment was outstanding, and (c) evaluating the progress toward achieving the purposes of the Investment.

(a) Maintenance of Charitable Objectives; Events of Non-Compliance. The Company shall utilize the proceeds of the Investment solely for the purposes set forth in the Investment Documents and, in particular, to advance the objectives described in Section 2 of this Global Health Agreement and in particular in a manner consistent with the terms and provisions of this Global Health Agreement. If the Company fails to operate in accordance with such purposes or has failed to comply with the provisions of this Global Health Agreement, including the requirements regarding the use of the proceeds of the Investment (an "Event of Non-Compliance"), it shall notify Adjuvant in writing within 30 days of the occurrence of such Event of Non-Compliance and shall describe the steps the Company shall take to rectify the situation within a reasonable period of time of at least 30 days following the date of the notification. Notwithstanding the foregoing sentence, if Adjuvant believes an Event of Non-Compliance has occurred, it shall notify the Company in writing of such Event of Non-Compliance. Such notification shall clearly specify the basis for Adjuvant's determination and request that the Company rectify the specified Event of Non-Compliance within at least 30 days following the date of the notification.

(b) Discontinuation of Financing; Repayment. If the Company fails to cure an Event of Non-Compliance within the applicable time period, Adjuvant shall not pay any further funds to the Company pursuant to the Investment Documents. If the Company fails to cure an Event of Non-Compliance within the applicable time period, the Company shall repay to Adjuvant the portion of the Investment that was used for the purpose(s) constituting such Event of Non-Compliance, to the extent legally permitted.

(c) Prohibited Uses. The Company shall not expend any proceeds of the Investment to carry on propaganda or otherwise to attempt to influence legislation (within the meaning of Section 4945(d)(1) of the Code), to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code, or to make any grant that does not comply with the requirements of Section 4945(d)(3) or (4) of the Code. Adjuvant and the Company agree that the proceeds of the Investment are not earmarked to be used for any activity, appearance or communication prohibited hereunder. Adjuvant and the Company further agree that no agreement or understanding exists between them whereby Adjuvant may cause the selection of any individual or organization as a recipient of payments made from the proceeds of the Investment. The parties understand that the Investment is not intended to benefit, and will not benefit, any person having a personal or private interest in Adjuvant.

(d) Transfer. In the event of any transfer of the Notes and/or Common Stock, Adjuvant may, upon the prior approval of the Company, which shall not be unreasonably withheld, assign to any such transferee also the rights set forth in this Global Health Agreement. The Company shall have no right to transfer or assign its obligations under this Global Health Agreement without the prior written consent of Adjuvant, which shall not be unreasonably withheld, provided, however that the Company may transfer or assign its obligations under this Global Health Agreement, without Adjuvant's consent, to any purchaser of all or substantially all of the Company's assets, or to any successor by way of merger, consolidation or similar transaction, provided that such purchaser agrees to be bound by the terms of this Global Health Agreement, subject to the rights granted to an Acquirer with respect to the Global Access Commitments as set forth in Sections 2(b)(ii)(1)-(4) of this Global Health Agreement. Notwithstanding the foregoing or anything in this Global Health Agreement to the contrary, Adjuvant may not assign the rights set forth in Section 4 of this Global Health Agreement.

(e) Public Reports. Subject to the Company's consent, which shall not be unreasonably withheld, Adjuvant may include information about the Company in its periodic public reports to the extent such information is not considered confidential under the terms of the Investment Documents.

(f) Access to Records. The Company shall maintain books and records adequate to support the information in the PRI Reports and to provide the information ordinarily required by commercial investors under similar circumstances, and the Company shall make such books and records available to Adjuvant at reasonable times and under reasonable circumstances for inspection by Adjuvant. Such books and records shall be maintained and made available to Adjuvant as long as Adjuvant is a shareholder in the Company and for six years after Adjuvant ceases to be a shareholder in the Company. The Company shall meet with Adjuvant and any of its investors or

representatives at the sole expense of Adjuvant or such investor, at mutually convenient times at the reasonable request of Adjuvant or the investor, subject to any applicable confidentiality restrictions, *inter alia* to the extent reasonably necessary to monitor compliance with the terms of the Investment and the Environmental, Social and Governance Policies and Practices and Exclusion List, as set forth on Exhibit 1, and the covenants for AML/CFT/ UN Security Council Resolutions & Sanctionable Practices, as set forth on Exhibit 2. Notwithstanding anything to the contrary in this Section 2(k), upon five (5) business day's prior notice (provided no notice is required if an Event of Default, as defined in the Purchase Agreement, has occurred and is continuing), the Purchaser or its agents shall have the right to audit and copy the Company's books and records during the Company's regular business hours but solely to the extent necessary to verify compliance with this Global Health Agreement.

(g) Promotion of Terrorist Activities. In compliance with the provisions of the USA Patriot Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, as amended, and U.S. Executive Order 13224, the Company represents that it will not promote or support terrorist activities and that it will not provide any proceeds of the Investment to any entity or individual that promotes or engages in such activities.

(h) Environmental, Social and Governance Requirements. The Company acknowledges the environmental, social and governance requirements of Adjuvant set forth on Exhibit 1 and agrees to observe the referenced International Finance Corporation ("IFC") performance standards.

(i) Anti-Corruption Requirements. The Company shall comply with the anti-corruption requirements set forth on Exhibit 2.

(j) Requirement to Provide to Adjuvant. Any reports, access or other information to which Adjuvant is entitled under the terms of this Global Health Agreement shall, upon request, be provided to Adjuvant's managing member or investment adviser, or any other designees or representatives of Adjuvant.

1. Confidential Information. Adjuvant acknowledges and agrees that all non-public information Adjuvant receives from the Company is private and confidential ("Confidential Information"). Confidential Information includes, but is not limited to, non-public business, operational or financial results and projections, product development initiatives, trade secrets, business methods or processes, expansion plans and revenue and expense information; non-public information disclosed pursuant to this Global Health Agreement; and information which a reasonable person should know is confidential. Adjuvant agrees that it will not, directly or indirectly, disclose any Confidential Information to any third party, or use any Confidential Information for any purpose other than to evaluate the terms of the Investment, except with Company's prior written (which shall include communications by email) consent. With respect to Confidential Information, Adjuvant shall ensure that all Adjuvant employees or contractors ("Adjuvant Personnel") performing work in connection with the Investment and/or this Global Health Agreement agree to and comply with terms of confidentiality agreements no less restrictive than the those set forth in this Global Health Agreement. Adjuvant shall be responsible for any breaches of confidentiality or security by any Adjuvant Personnel. In addition to the foregoing limitations and obligations, Adjuvant agrees to not disclose Confidential Information to any individuals, including any Adjuvant

Personnel, for which disclosure is not reasonably necessary to assist in furtherance of the purposes of this Global Health Agreement and/or evaluating the terms of the Investment. Adjuvant shall notify Company in writing of any loss or unauthorized or inadvertent use or disclosure of or access to the Confidential Information as promptly as practicable following Adjuvant's discovery of such loss, use, disclosure or access and shall promptly take measures to minimize the effect of such loss, use, disclosure or access and to prevent its recurrence. As between Adjuvant and the Company, Confidential Information shall at all times belong solely and exclusively to Company.

(a) Exceptions. Notwithstanding anything in this Global Health Agreement to the contrary, the Confidential Information shall not include any information that (i) is or becomes generally known to the public other than as a result of a disclosure in breach by Adjuvant of this Global Health Agreement; (ii) is lawfully in the possession of Adjuvant or Adjuvant Personnel prior to its receipt from Company; (iii) is received by Adjuvant from a third party who has the right to make such disclosure and is not under a confidentiality obligation to Company with respect to the information and which third party rightfully, to Adjuvant's knowledge, acquired such information; or (iv) has been or is independently developed by Adjuvant or Adjuvant Personnel without reference to the Confidential Information, the Global Health Agreement or the Investment.

(b) Mandatory Disclosure. Notwithstanding anything to the contrary herein, Adjuvant may disclose Confidential Information of Company if disclosure is requested or required by any legal, governmental or regulatory agency, authority or process or by any subpoena, summons, order or other judicial process, but, to the extent permissible under applicable law, only after giving advance written notice to Company to reasonably allow for an opportunity for Company at its sole expense to secure an appropriate protective order or other measure limiting disclosure. Adjuvant, to the extent practicable and permissible under applicable law, shall cooperate with Company, at Company's sole cost and expense, in Company's reasonable, lawful efforts to resist, limit or delay disclosure. Disclosure of any of the Confidential Information under the circumstances described in the preceding sentence shall not be deemed to render such Confidential Information as non-confidential and Adjuvant's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure.

(c) Return of Information. Adjuvant shall, to the extent practicable and permissible under applicable law and in accordance with Adjuvant's document retention policies, at any time upon written demand by Company, promptly return to Company or destroy (at Adjuvant's sole discretion) any and all Confidential Information together with any copies or reproductions thereof. Any Confidential Information retained by Adjuvant following a written demand from the Company to return Confidential Information shall continue to be governed by the restrictions and protections of this Global Health Agreement.

(d) Certain Remedies. Adjuvant recognizes, acknowledges and agrees that any breach by Adjuvant, Adjuvant Personnel or any approved subcontractor of any of the provisions contained in this Global Health Agreement may cause Company immediate, material and irreparable injury and damage, and there may be no adequate remedy at law for such breach. Accordingly, in the event of a breach of any of the provisions of this Global Health Agreement by Adjuvant, in addition to any other remedies it may have at law or in equity, all of the rights and remedies of Company being

cumulative, Company shall be entitled immediately to seek enforcement of this Global Health Agreement in a court of competent jurisdiction by means of a decree of specific performance, an injunction and any other form of equitable relief. This provision is not a waiver of any other rights or remedies which Company may have under this Global Health Agreement, including the right to recover money damages.

2. Observer Right. So long as the Purchasers own at least 50% of the Notes issued on the Closing Date pursuant to the Purchase Agreement (or an equivalent number of shares of underlying Common Stock issuable upon conversion thereof), then the Company shall invite a representative of the Purchasers to attend all meetings of the Board in a non-voting observer (the "Observer") capacity and, in this respect, shall give such representative copies of all notices, minutes, consents and other materials that it provides to the Board; provided, however, that such representative shall agree to hold in confidence and trust with respect to all information so provided (in a manner consistent with the confidentiality obligations of a director of a Delaware corporation) and shall execute the Company's standard observer rights letter.

3. Miscellaneous

(a) Entire Agreement; Modification. The terms and conditions set forth in this Global Health Agreement are in addition to the provisions stated in any other documents executed between Adjuvant and the Company and the terms and conditions of this Global Health Agreement shall – with regard to the PRI Requirements set forth in Section 2 of this Global Health Agreement, including the Global Access Commitments – prevail over any discrepancies with provisions in any such other document, including without limitation the Investment Documents. All references to Sections shall be deemed to refer to sections of this Global Health Agreement unless otherwise specifically stated herein. No change, modification or waiver of any term or condition of this Global Health Agreement shall be valid unless it is in writing, it is signed by the party to be bound, and it expressly refers to this Global Health Agreement.

(b) Authority; Governing Law; Jurisdiction. Each of the signatories below covenants, represents and warrants that it has all power and authority necessary to enter into this Global Health Agreement, that its execution of this Global Health Agreement has been duly authorized by all necessary action and that, on execution, it will be fully binding and enforceable in accordance with its terms, and that no other consents or approvals of any other person or third parties are required or necessary for this Global Health Agreement to be so binding. This Global Health Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of law provisions. Each party irrevocably agrees, as far as legally permissible, that the state and federal courts of Delaware shall have exclusive jurisdiction to hear and determine any suit action or proceedings and to settle any disputes which may arise out of or in connection with this agreement and, for such purposes, irrevocably submits to the jurisdiction of such court.

(c) Counterparts. This Global Health Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be deemed to be and constitute one and the same instrument.

[*Remainder of page intentionally left blank.*]

**IN WITNESS WHEREOF**, the parties have caused to be executed this Global Health Agreement effective as of October 14, 2020.

**ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND, L.P.**
By: Adjuvant Capital GP, L.P., its General Partner
By: Adjuvant Capital Management, LLC, its General Partner

By: /s/ Jenny Yip
Name: Jenny Yip
Title: Co-President

**ADJUVANT GLOBAL HEALTH TECHNOLOGY FUND DE, L.P.**
By: Adjuvant Capital GP, L.P., its General Partner
By: Adjuvant Capital Management, LLC, its General Partner

By: /s/ Jenny Yip
Name: Jenny Yip
Title: Co-President

**Evofem Biosciences, Inc.**

By: /s/ Justin J. File
Name: Justin J. File
Title: Chief Financial Officer

**EXHIBIT 1**

# Adjuvant Investee ES&G Requirements

**1. In connection with any proposed investment:**

i. Before any investment, Adjuvant will review and investigate information available in the public domain regarding any adverse impact on local communities or the environment or adverse environmental or social performance associated with the financed project(s) and use that information provisionally to designate the proposed investment a Category A, Category B or a Category C Client/Activity (as defined below). In addition, Adjuvant will perform an ES&G due diligence including a review of regulatory and applicable legal environmental and governance compliance and compliance with the IFC Performance Standards on Environmental and Social Sustainability (Effective January 1, 2012) of the proposed investee. Due diligence findings will be documented in an Environmental, Social and Governance due diligence report ("ES&G Due Diligence Report"). In the event that there are any items that require corrective action, a corrective action plan will be provided to the Company. Based on this due diligence, the initial categorization shall be either confirmed or revised to reflect the nature of the proposed investment.

ii. In connection with any capital call (or other application of Adjuvant capital) for the proposed investment, Adjuvant will confirm (a) the categorization of the operations of the Company (whether proposed or existing), (b) the rationale for such categorization, and (c) that Adjuvant has applied the ES&G Management System in accordance with the ES&G Requirements with respect to the proposed investment.

iii. In addition, upon request by any member of the Limited Partner Advisory Committee, Adjuvant shall promptly (but in any event within two business days of such request, and prior to making the relevant investment), provide copies of the ES&G Due Diligence Report, and/or any proposed corrective action plan, prepared in connection with the proposed investment.

iv. Adjuvant will only make an investment in a company (including a new or follow-on investment in an existing portfolio company) if: (i) any identified adverse impact or performance has been resolved in accordance with the ES&G Requirements and these ES&G provisions; or (ii) the company has agreed on a corrective action plan to so resolve the identified adverse impacts or performance within a reasonable timeline (including appropriate conditions precedent for the proposed investment), and the investment documentation includes appropriate remedies if the proposed Industry Partner fails to implement that plan.

**2. Definitions.**

| | |
|---|---|
| "Applicable ES&G Law" | All applicable statutes, laws, ordinances, rules and regulations including, but not limited to, any license, permit or other governmental authorisation imposing liability or setting standards of conduct concerning any environmental, social, labour, health and safety or security risks of the type contemplated by the Performance Standards., |
| "Authority" | Any national, supranational, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity. |
| "Category A Activity" | Any activity of an Industry Partner which is likely to have significant adverse environmental or social risks and/or impacts that are diverse, irreversible or unprecedented. |
| "Category A Client" | An Industry Partner that carries or intends to carry out a Category A Activity. |
| "Category B Activity" | adverse environmental or social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures. |
| "Category B Client" | An Industry Partner that carries or intends to carry out a Category B Activity. |
| "Category C Activity" | Any activity of an Industry Partner which is likely to have minimal or no adverse environmental or social risks and/or impacts. |
| "Category C Client" | An Industry Partner that carries or intends to carry out a Category C Activity. |
| "ES&G Due Diligence Report" | The environmental social and governance due diligence report prepared by the Investment Manager in connection with a proposed Investment by the Company. |
| "ES&G Performance Report" | A written report prepared by the Investment Manager evaluating the social and environmental performance of the Company and the portfolio companies for the previous fiscal year, describing in reasonable detail (i) implementation and operation of the ES&G Management System, (ii) the environmental and social performance of the portfolio companies, and (iii) as applicable, compliance by portfolio companies with any applicable portfolio company action plans. |
| "ES&G Requirements" | The social and environmental obligations to be undertaken by the portfolio companies to ensure compliance with: (i) the Exclusion List; (ii) Applicable ES&G Laws; (iii) the Performance Standards, and (iv) any other requirements established by the ES&G Management System. |
| "Exclusion List" | The list of prohibited activities set forth below. |
| "Performance Standards" | IFC's Performance Standards On Social & Environmental Sustainability, dated January 1, 2012. |

## 3. Adjuvant Exclusion List.

Adjuvant will apply the following exclusions:

- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB's, wildlife or products regulated under CITES.
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine).
- Production or trade in tobacco.
- Gambling, casinos and equivalent enterprises.
- Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where IFC considers the radioactive source to be trivial and/or adequately shielded.
- Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
- Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.
- Production or activities involving harmful or exploitative forms of forced labor / harmful child labor.
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in wood or other forestry products other than from sustainably managed forests.
- Production, trade in or use of prostitution.
- Production, trade in or use of pornography.

# EXHIBIT 2

# IFC Anti-Corruption Guidelines

*Compliance with United Nations Security Council Resolutions*. Adjuvant shall ensure that the Company maintains and complies with internal policies and controls for the purpose of ensuring that the Company will not enter into any transaction (i) with, or for the benefit of, any of the persons or entities named on lists from time to time promulgated by or (ii) related to any activity from time to time prohibited by the United Nations Security Council or its committees pursuant to any resolution issued under Chapter VII of the United Nations Charter.

*Sanctionable Practices*. The Company shall not engage in (nor authorize or permit any of their affiliates or any other person acting on their behalf to engage in), any Sanctionable Practice defined as any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice, or Obstructive Practice, as those terms are defined in and interpreted in accordance with the IFC Anti-Corruption Definitions attached hereto as Exhibit A;

*Policy Reporting Requirements.* The Company commits that, should it become aware of any violation of the Policy Undertakings described in this Exhibit, it shall promptly notify Adjuvant.

Furthermore, the Company agrees that should IFC notify Adjuvant of its concern that there has been a violation of the Policy Undertakings described in this Exhibit, the Company shall cooperate in good faith with Adjuvant and IFC and its representatives in determining whether such a violation has occurred, and shall respond promptly and in reasonable detail to any notice from IFC, and shall furnish documentary support for such response upon IFC's request.

*Investment Guidelines on Policy Requirements.* The Company shall not make or hold any investments in any entity that (A) is sanctioned pursuant to United Nations Security Council resolutions issued under Chapter VII of the United Nations Charter; or (B) is on the World Bank Listing of Ineligible Firms (see www.worldbank.org/debarr or any successor website or location).

*Divestment of Investments Violating Investment Guideline on Policy Requirements*. If Adjuvant becomes aware that the Company is in breach of the Policy Requirements defined under the investment, Adjuvant may be required to use reasonable efforts to dispose of the Investment on commercially reasonable terms, taking into account liquidity, market constraints and fiduciary responsibilities.

**Definitions.**

"AML/CFT" means anti-money laundering and combating the financing of terrorism;

"Policy Undertakings" means the undertakings contained in paragraphs 37(a) (AML/CFT), 37(b) (Compliance with United Nations Security Council Resolutions), 37(c) (Sanctionable Practices),

37(d) (Policy Reporting Requirements), Section 37(h) (Policy Restrictions on Transfers of Interest by Members) and 37(i) (Investment Guidelines on Policy Undertakings) hereof;

"World Bank Listing of Ineligible Firms" means the list, as updated from time to time, of persons or entities ineligible to be awarded a World Bank Group-financed contract or otherwise sanctioned by the World Bank Group Sanctions Board for the periods indicated on the list because they were found to have violated the fraud and corruption provisions of the World Bank Group anticorruption guidelines and policies. The list may be found at http://www.worldbank.org/debarr or any successor website.

# EXHIBIT A

# IFC ANTI-CORRUPTION DEFINITIONS

The purpose of this Exhibit A is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices", "Collusive Practices" and "Obstructive Practices" in the context of IFC operations.

## 1. Corrupt Practices

A "Corrupt Practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

### Interpretation

a) Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of Corrupt Practices.

b) It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.

c) In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.

d) Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

e) The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

## 2. Fraudulent Practices

A "Fraudulent Practice" is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

### Interpretation

a) An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of this agreement.

b) Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, Multilateral Insurance Guarantee Agency ("MIGA"), or Partial Risk Guarantee ("PRG") operations. Similarly, other illegal behavior is not condoned, but will not be considered as a Fraudulent Practice for purposes of this agreement.

## 3. Coercive Practices

A "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

### Interpretation

a) Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

b) Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

## 4. Collusive Practices

A "Collusive Practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

### Interpretation

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

## 5. Obstructive Practices

An "Obstructive Practice" is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of IFC's access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

### Interpretation

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

### General Interpretation

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

**Exhibit 99.1**

# Evofem Biosciences Secures $25 Million Strategic Investment from Adjuvant Capital

SAN DIEGO, CA, October 15, 2020 - Evofem Biosciences, Inc., (NASDAQ: EVFM) announced today that it has sold $25 million of unsecured convertible promissory notes to funds affiliated with Adjuvant Capital, LP ("Adjuvant Capital"). The notes are convertible into shares of Evofem common stock at a conversion price of $3.65 per share. Proceeds from the sale of the notes will be used to support EVOGUARD, Evofem's planned Phase 3 clinical trial of EVO100 for the prevention of urogenital chlamydia and gonorrhea in women, and to expand global market access for Phexxi™ (lactic acid, citric acid, potassium bitartrate) vaginal contraceptive gel.

"Adjuvant's goal is to accelerate the availability of the most impactful healthcare technologies through strategic investments in innovative companies with strong management teams. Our cornerstone women's health investment in Evofem is strongly aligned with our vision to expand access to contraceptives globally," said Jenny Yip, Managing Partner at Adjuvant Capital. "We are excited to forge this unique alliance with Evofem Biosciences, an emerging leader in women's health that is developing and commercializing products with potential to address pressing unmet global health needs."

"Our success will be measured by our ability to execute," said Saundra Pelletier, Evofem's Chief Executive Officer. "This is strengthened through committed partnerships with investors like Adjuvant who understand that Evofem Biosciences, Phexxi, and our mission to deliver innovation to women are unique, necessary, and have the potential to transform women's health in the United States and around the world."

Phexxi, a non-hormonal vaginal contraceptive gel, was approved in May 2020 by the U.S. Food and Drug Administration (FDA). The Company launched Phexxi in the United States on September 8, 2020, and intends to commercialize Phexxi outside the United States (subject to the requisite regulatory approvals) with global biopharmaceutical partners.

Evofem is on track to initiate the pivotal Phase 3 clinical trial EVOGUARD in the fourth quarter of 2020 to evaluate the safety and efficacy of EVO100 for the prevention of urogenital *Chlamydia trachomatis* and *Neisseria gonorrhea* in women. EVOGUARD builds on the positive and statistically significant outcomes of AMPREVENCE, Evofem's double-blinded, placebo-controlled Phase 2b clinical trial of EVO100 completed in 2019.

Rates of infection for *Chlamydia trachomatis* and *Neisseria gonorrhea* climbed in 2018 for the fifth consecutive year in the United States.[1] Globally, an estimated 95 million women are likely to contract chlamydia or gonorrhea by 2025.[2] Gonorrhea is increasingly becoming antibiotic resistant, making it much harder, or sometimes impossible, to treat.[3] There are no FDA-approved prescription products for the prevention of either of these dangerous infections.

EVO100 has been granted Fast Track Designation for the prevention of chlamydia in women by the FDA, and is an FDA-designated Qualified Infectious Disease Product (QIDP) for the prevention of gonorrhea in women.

**About Adjuvant Capital**

Adjuvant is a New York- and San Francisco-based life sciences investor built to accelerate the development of new technologies for the world's most pressing public health challenges. Backed by prominent healthcare investors such as Novartis, Merck, the International Finance Corporation, and the Bill & Melinda Gates Foundation, Adjuvant draws upon its global network of scientists, public health experts, biopharmaceutical industry veterans, and development finance professionals to identify new investment opportunities. Adjuvant invests in companies developing promising new vaccines, therapeutics, diagnostics and medical devices for historically overlooked indications such as malaria, cholera, Lassa fever, and postpartum hemorrhage, with a commitment to make these interventions accessible to those who need them most in low- and middle-income countries. For more information, visit www.adjuvantcapital.com.

**About Evofem Biosciences**

Evofem Biosciences, Inc., (NASDAQ: EVFM) is a commercial-stage biopharmaceutical company committed to developing and commercializing innovative products to address unmet needs in women's sexual and reproductive health, including hormone-free, woman-controlled contraception and protection from certain sexually transmitted infections (STIs). The Company's first commercial product, Phexxi™ (lactic acid, citric acid and potassium bitartrate), is the first and only hormone-free, prescription vaginal gel approved in the United States for the prevention of pregnancy. The Company is also advancing EVO100 into a Phase 3 clinical trial for the prevention of urogenital transmission of both *Chlamydia trachomatis* and *Neisseria gonorrhoeae* in women. For more information, please visit www.evofem.com.

Phexxi™ is a trademark of Evofem Biosciences, Inc.

**Forward-Looking Statements**

This press release includes "forward-looking statements," within the meaning of the safe harbor for forward-looking statements provided by Section 21E of the Securities Exchange Act of 1934, as amended; and the Private Securities Litigation Reform Act of 1995, including, without limitation, statements related to the potential commercial success and impact of Phexxi and EVO100, Evofem's plans to commercialize Phexxi or to commercialize and develop any of its product candidates and Evofem's ability to progress EVO100 through clinical development and the timing of these activities. Various factors could cause actual results to differ materially from those discussed or implied in the forward-looking statements, and you are cautioned not to place undue reliance on these forward-looking statements, which are current only as of the date of this press release. Each of these forward-looking statements involves risks and uncertainties. Important factors that could cause actual results to differ materially from those discussed or implied in the forward-looking statements, or that could impair the value of Evofem Biosciences' assets and business, are disclosed in Evofem's SEC filings, including its Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC on March 12, 2020, its Quarterly Report on Form 10-Q for the quarter ended March 31 filed with the SEC on May 6, 2020 and August 4, 2020, and its Current Report on Form 8-K filed with the SEC on June 2, 2020. All forward-looking statements are expressly qualified in their entirety by such factors. Evofem does not undertake any duty to update any forward-looking statement except as required by law. The information contained in this release from third party sources has been obtained from sources Evofem believes to be reliable, but the accuracy and completeness of this information is not guaranteed. Evofem has not independently verified any of the data from third-party sources.

**References**

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