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): **December 12, 2022 (December 6, 2022)**

PROSOMNUS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-41567**	**88-2978216**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

5860 West Las Positas Blvd., Suite 25
Pleasanton, California, 94588
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(844) 537-5337**

LAAA Merger Corp.
667 Madison Avenue
New York, NY 10065
(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:

☐ 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))

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. ☐

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	OSA	The Nasdaq Stock Market LLC
Warrants, each whole warrant exercisable for one share of Common Stock for $11.50 per share	OSAAW	The Nasdaq Stock Market LLC

Introductory Note

On December 6, 2022, Lakeshore Acquisition I Corp. ("**Lakeshore**") consummated a series of transactions that resulted in the combination (the "**Business Combination**") of Lakeshore with ProSomnus Holdings, Inc., a Delaware Corporation ("**ProSomnus Holdings**") pursuant to the previously announced Agreement and Plan of Merger, dated May 9, 2022, by and among Lakeshore, LAAA Merger Sub, Inc. ("**Merger Sub**"), RedOne Investment Limited ("**Sponsor**"), as purchaser representative, HGP II, LLC, as representative of ProSomnus' stockholders, and ProSomnus Holdings, following the approval at the extraordinary general meeting of the shareholders of Lakeshore held on December 2, 2022 (the "**Special Meeting**"). Pursuant to the Merger Agreement, Lakeshore merged with and into LAAA Merger Corp. ("**Surviving Pubco**"), Merger Sub merged with and into ProSomnus Holdings, and Surviving Pubco changed its name to ProSomnus, Inc. Unless otherwise defined herein, capitalized terms used in this Current Report on Form 8-K have the same meaning as set forth in the final prospectus and definitive proxy statement (the "**Proxy Statement/Prospectus**") filed with the Securities and Exchange Commission (the "**SEC**") on November 15, 2022 by Lakeshore and LAAA Merger Corp.

Simultaneous with the closing of the Business Combination, Surviving Pubco also completed a series of private financings, issuing and selling 1,025,000 shares of its common stock in a private placement to certain PIPE investors (the "**Equity PIPE Offering**"), entering into non-redemption agreements with holders of an aggregate of approximately 0.395 million public shares of common stock of Lakeshore, and issuing an aggregate of $16.96 million principal value senior secured convertible notes and an aggregate of $17.45 million principal value subordinated secured convertible notes to certain investors pursuant to previously announced Senior Securities Purchase Agreement and Subordinated Securities Purchase Agreement, each dated August 26, 2022.

Item 1.01. Entry into Material Definitive Agreement.

Merger Agreement

As disclosed under the section titled "*Proposal No. 3—The Acquisition Merger Proposal*" of the Proxy Statement/Prospectus, on May 9, 2022, the parties entered into an Agreement and Plan of Merger, dated as of May 9, 2022, by and among Lakeshore, Merger Sub, Sponsor, as purchaser representative, HGP II, LLC, as representative of ProSomnus' stockholders, and ProSomnus Holdings.

Accordingly, (a) Lakeshore merged with and into Surviving Pubco, which had been formed as a Delaware corporation solely for the purpose of facilitating the Business Combination, and changed its name to ProSomnus, Inc., and (b) Merger Sub, a wholly-owned subsidiary of Surviving Pubco, merged with and into ProSomnus Holdings. Except where context provides otherwise, the term "**ProSomnus**" refers to Surviving Pubco and its consolidated subsidiaries, including ProSomnus Holdings and ProSomnus Sleep Technologies, Inc., and after giving effect to the Business Combination.

Item 2.01 of this Current Report discusses the consummation of the Business Combination and events contemplated by the Merger Agreement which took place on December 6, 2022 (the "Closing"), and is incorporated herein by reference.

Lock-up Agreement

On December 6, 2022, Surviving Pubco and ProSomnus entered into a Lock-Up Agreement (the "**Lock-up Agreement**") with HGP II, LLC on behalf of the stockholders of ProSomnus Holdings (such stockholders, the "**Company Holders**"), pursuant to which each Company Holder agreed not to, during the Lock-up Period (as defined below), offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the shares issued in connection with the Business Combination (the "**Lock-up Shares**") (other than certain shares held by non-insiders issued in connection with the conversion of subordinated debt), enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such shares, whether any of these transactions are to be settled by delivery of any such shares, in cash, or otherwise. As used herein, "**Lock-Up Period**" means the period commencing on the closing date of the Merger and ending on the earlier of: (i) six months after the Closing; and (ii) with respect to Lock-up Shares not held by a Significant Company Stockholder (as defined in the Merger Agreement) only, if the volume weighted average price of Surviving Pubco Common Stock equals or exceeds $12.50 per share for any 20 trading days within any 30 consecutive trading days beginning 90 days after the Closing. In connection with the Closing, the parties waived the lockup restrictions on approximately 1.9 million shares held by certain ProSomnus non-affiliates.

The foregoing description of the Lock-Up Agreement is subject to and qualified in its entirety by reference to the full text of the Lock-Up Agreement, a copy of which is included as Exhibit 10.6 hereto, and the terms of which are incorporated by reference.

Indemnification Agreements

On December 6, 2022, Surviving Pubco entered into indemnification agreements, dated as of the Closing Date, with each of Surviving Pubco's directors and executive officers. Each indemnification agreement provides for indemnification and advancements by ProSomnus of certain expenses and costs relating to claims, suits or proceedings arising from his or her service to ProSomnus or, at our request, service to other entities, as officers or directors to the maximum extent permitted by applicable law.

The foregoing description of the indemnification agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the indemnification agreement, a form of which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Non-Competition Agreements

On December 6, 2022, Surviving Pubco, ProSomnus Holdings and each of Leonard Liptak, Sung Kim, Melinda Hungerman and Laing Rikkers entered into non-competition and non-solicitation agreements (the "**Non-Competition and Non-Solicitation Agreements**"), pursuant to which such persons and their affiliates agreed not to compete with Surviving Pubco during the two-year period following the Closing and, during such two-year restricted period, not to solicit employees or customers or clients of such entities. The Non-Competition and Non-Solicitation Agreements also contain customary non-disparagement and confidentiality provisions.

The foregoing description of the Non-Competition and Non-Solicitation Agreements is subject to and qualified in its entirety by reference to the full text of the form of the Non-Competition and Non-Solicitation Agreements, a copy of which is included as Exhibit 10.15 hereto, and the terms of which are incorporated by reference.

Registration Rights Agreements

In connection with the Business Combination, on December 6, 2022, Surviving Pubco, Lakeshore's initial shareholders and certain existing stockholders of ProSomnus enter into a registration rights agreement to provide for the registration of the PubCo Common Stock received by them in the Acquisition Merger and the Reincorporation Merger. The initial shareholders and the ProSomnus stockholders are entitled to (i) make four written demands for registration under the Securities Act of all or part of their shares and (ii) "piggy-back" registration rights with respect to registration statements filed following the consummation of the Business Combination. Surviving PubCo will bear the expenses incurred in connection with the filing of any such registration statements.

The foregoing description of the Registration Rights Agreement is subject to and qualified in its entirety by reference to the full text of the form of the Registration Rights Agreement, a copy of which is included as Exhibit 10.4 hereto, and the terms of which are incorporated by reference.

In connection with the Convertible Notes offering described in more detail below, on December 6, 2022, Surviving Pubco entered into another Registration Rights Agreement for the benefit of the debt holders, to provide for the registration of the Surviving Pubco Common Stock underlying such Convertible Notes and warrants received in connection with the Convertible Notes offering.

The foregoing description of the Convertible Notes Registration Rights Agreement is subject to and qualified in its entirety by reference to the full text of the form of such Registration Rights Agreement, a copy of which is included as Exhibit 10.5 hereto, and the terms of which are incorporated by reference.

Convertible Notes

Senior Convertible Notes

On December 6, 2022, Surviving Pubco entered into that certain Senior Indenture by and between ProSomnus, Inc., ProSomnus Holdings, ProSomnus Sleep Technologies, and Wilmington Trust, National Association, as Trustee and Collateral Agent, and Senior Secured Convertible Notes Due December 6, 2025 ("**Senior Convertible Notes**"), with an aggregate principal amount of $16.96 million, pursuant to the previously disclosed Senior Securities Purchase Agreement, dated August 26, 2022.

The foregoing description of the Senior Indenture and Senior Convertible Notes is subject to and qualified in its entirety by reference to the full text of the Senior Indenture, and the form of Senior Convertible Note contained therein, a copy of which is included as Exhibit 10.9 hereto, and the terms of which are incorporated by reference.

Subordinated Convertible Notes

On December 6, 2022, Surviving Pubco entered into that certain Subordinated Indenture by and between ProSomnus, Inc., ProSomnus Holdings, ProSomnus Sleep Technologies, and Wilmington Trust, National Association, as Trustee and Collateral Agent, and Subordinated Secured Convertible Notes Due April 6, 2026 ("**Subordinated Convertible Notes**"), with an aggregate principal amount of $17.45 million, pursuant to the previously disclosed Subordinated Securities Purchase Agreement, dated August 26, 2022.

The foregoing description of the Subordinated Indenture and Subordinated Convertible Notes is subject to and qualified in its entirety by reference to the full text of the Subordinated Indenture, and the form of Subordinated Convertible Note contained therein, a copy of which is included as Exhibit 10.10 hereto, and the terms of which are incorporated by reference.

In addition, in connection with the Convertible Notes offerings, Surviving Pubco issued to the holders of Convertible Notes warrants to purchase an aggregate of 1.91 million shares of Surviving Pubco Common Stock at an exercise price of $11.50 per share, issued an aggregate of 250,000 bonus shares, 26,713 PIPE fee shares, and 50,000 commitment fee shares, and entered into the Convertible Notes Registration Rights Agreement described above.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The disclosure set forth in the "Introductory Note" and "Merger Agreement" above is incorporated into this Item 2.01 by reference.

Pursuant to the terms of the Merger Agreement, the total consideration for the Business Combination and related transactions (the "Merger Consideration") was approximately $113 million. In connection with the Special Meeting, holders of 2,380,246 shares of Lakeshore ordinary shares sold in its initial public offering exercised their right to redeem those shares for cash prior to the redemption deadline of November 30, at a price of $10.238 per share, for an aggregate payment from Lakeshore's trust account of approximately $24.37 million. Effective December 6, 2022, Lakeshore's units ceased trading, and the Surviving Pubco's common stock and warrants began trading on the Nasdaq Global Market and Nasdaq Capital Market, respectively, under the symbols "OSA" and "OSAAW," respectively.

After taking into account the aggregate payment in respect of the redemption, Lakeshore's trust account had a balance immediately prior to the Closing of approximately $4.92 million. Such balance in the trust account, together with approximately $10.250 million in proceeds from the PIPE Financing (as defined below) and approximately $30 million in proceeds from the Convertible Notes offering, were used to pay transaction expenses and other liabilities of Lakeshore, pay certain transaction expenses of ProSomnus, and pay off approximately $11.53 million in debt of ProSomnus at Closing, with the remaining being deposited in ProSomnus' cash account.

As discussed in the Introductory Note above, in connection with the Business Combination, certain ProSomnus equityholders received 11,300,000 shares of Surviving Pubco common stock as Merger Consideration and the contingent right to receive Earn-Out Shares as set forth in the Merger Agreement.

As a result of the Reincorporation Merger and the Business Combination, holders of Lakeshore ordinary shares automatically received common stock of Surviving Pubco, and holders of Lakeshore warrants automatically received warrants of Surviving Pubco with substantively identical terms. At the Closing of the Business Combination, 1,054,390 ordinary shares of Lakeshore owned by the Sponsor, which we refer to as the founder shares, automatically converted into an equal number of shares of Surviving Pubco common stock, and 196,256 Private Placement Warrants held by the Sponsor, each exercisable for one ordinary share of Lakeshore at $11.50 per share, automatically converted into warrants to purchase one share of Surviving Pubco common stock at $11.50 per share with substantively identical terms.

In addition, as disclosed above, immediately prior to the Closing of the Business Combination, Surviving Pubco issued and sold 1,025,000 shares of common stock (the "**PIPE Shares**") to the PIPE Investors for gross proceeds of $10,250,000. Surviving Pubco has agreed to file a registration statement registering the resale of the PIPE Shares within 30 days of the Closing and to have such registration statement effective as soon as practicable, but in any event within 60 days (or 90 days if the SEC notifies Surviving Pubco that it will review the registration statement). Also, at the Closing, the Sponsor transferred 574,035 of its founder shares and Surviving Pubco issued an aggregate of approximately 571,183 shares of common stock to certain PIPE investors.

As of the Closing: public stockholders own approximately 3.0% of the outstanding shares of Surviving Pubco common stock; the Sponsor and its affiliates own approximately 6.6% of the outstanding shares of common stock; ProSomnus Holding's former security holders collectively own approximately 70.4% of the outstanding shares of Common Stock; underwriters, vendors and convertible debt holders own approximately 6.5% and approximately 13.5% of the outstanding shares of Common Stock are held by the PIPE investors.

FORM 10 INFORMATION

Item 2.01(f) of Form 8-K states that if the predecessor registrant was a shell company, as Lakeshore was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, Surviving Pubco is providing the information below that would be included in a Form 10 if Surviving Pubco were to file a Form 10. Please note that the information provided below relates to ProSomnus as the combined company after the consummation of the Business Combination, unless otherwise specifically indicated or the context otherwise requires.

Forward-Looking Statements

This Current Report on Form 8-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include, but are not limited to, statements about future financial and operating results, our plans, objectives, expectations and intentions with respect to future operations, products and services; and other statements identified by words such as "will likely result," "are expected to," "will continue," "is anticipated," "estimated," "believe," "intend," "plan," "projection," "outlook" or words of similar meaning. These forward-looking statements include, but are not limited to, statements regarding ProSomnus' industry and market sizes, future opportunities for ProSomnus and ProSomnus' estimated future results. Such forward-looking statements are based upon the current beliefs and expectations of our management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond our control. Actual results and the timing of events may differ materially from the results anticipated in these forward-looking statements.

In addition to factors previously disclosed in prior reports filed with the SEC, including the Proxy Statement/Prospectus, the following factors, among others, could cause actual results and the timing of events to differ materially from the anticipated results or other expectations expressed in the forward-looking statements: a delay or failure to realize the expected benefits from the Business Combination; risks relating to the uncertainty of the projected financial information with respect to ProSomnus; risks related to ProSomnus's limited operating history, the roll-out of ProSomnus's business and the timing of expected business milestones; ProSomnus's ability to implement its business plan and scale its business, which includes the recruitment of healthcare professionals to prescribe and dentists to deliver ProSomnus oral devices; the understanding and adoption by dentists and other healthcare professionals of ProSomnus oral devices for mild-to-moderate OSA; expectations concerning the effectiveness of OSA treatment using ProSomnus oral devices and the potential for patient relapse after completion of treatment; the potential financial benefits to dentists and other healthcare professionals from treating patients with ProSomnus oral devices and using ProSomnus's monitoring tools; ProSomnus's potential profit margin from sales of ProSomnus oral devices; ProSomnus's ability to properly train dentists in the use of the ProSomnus oral devices and other services it offers in their dental practices; ProSomnus's ability to formulate, implement and modify as necessary effective sales, marketing, and strategic initiatives to drive revenue growth; ProSomnus's ability to expand internationally; the viability of ProSomnus's intellectual property and intellectual property created in the future; acceptance by the marketplace of the products and services that ProSomnus markets; government regulations and ProSomnus's ability to obtain applicable regulatory approvals and comply with government regulations, including under healthcare laws and the rules and regulations of the U.S. Food and Drug Administration; the extent of patient reimbursement by medical insurance in the United States and internationally, and the risk that Surviving Pubco may not be able to develop and maintain effective internal controls.

Actual results, performance or achievements may differ materially, and potentially adversely, from any projections and forward-looking statements and the assumptions on which those forward-looking statements are based. There can be no assurance that the data contained herein is reflective of future performance to any degree. You are cautioned not to place undue reliance on forward-looking statements as a predictor of future performance as projected financial information and other information are based on estimates and assumptions that are inherently subject to various significant risks, uncertainties and other factors, many of which are beyond our control. All information set forth herein speaks only as of the date hereof in the case of information about Surviving Pubco or the date of such information in the case of information from persons other than Surviving Pubco, and Surviving Pubco disclaims any intention or obligation to update any forward looking statements as a result of developments occurring after the date of this Current Report on Form 8-K. Forecasts and estimates regarding Surviving Pubco's industry and end markets are based on sources Surviving Pubco believes to be reliable, however there can be no assurance these forecasts and estimates will prove accurate in whole or in part. Annualized, pro forma, projected and estimated numbers are used for illustrative purpose only, are not forecasts and may not reflect actual results.

Business

The business of ProSomnus is described in the Proxy Statement/Prospectus in the section titled "*Business of ProSomnus*" and that information is incorporated herein by reference.

Risk Factors

The risks associated with Surviving Pubco are described in the Proxy Statement/Prospectus in the section titled "*Risk Factors*," which is incorporated herein by reference.

Financial Information

Reference is made to the disclosure set forth in Item 9.01 of this Current Report on Form 8-K concerning the financial information of Surviving Pubco. Reference is further made to the disclosure contained in the Proxy Statement/Prospectus in the sections titled "*Selected Financial Information of ProSomnus,*" "*ProSomnus's Management's Discussion and Analysis of Financial Condition and Results of Operations*," and "*Unaudited Pro Forma Condensed Combined Financial Information*" which are incorporated herein by reference. In addition, the Unaudited Pro Forma Condensed Combined Financial Information for the period ended September 30, 2022 is included as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by reference.

Properties

The facilities of Surviving Pubco are described in the Proxy Statement/Prospectus in the section titled "*Business of ProSomnus – Properties*," which is incorporated herein by reference.

Management's Discussion and Analysis of Financial Condition and Results of Operations

The disclosure contained under the heading "*ProSomnus's Management's Discussion and Analysis of Financial Condition and Results of Operations*" in the Proxy Statement/Prospectus is incorporated herein by reference. In addition, the Management's Discussion and Analysis of Financial Condition and Results of Operations for the period ended September 30, 2022 is included as Exhibit 99.3 to this Current Report on Form 8-K and is incorporated herein by reference.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of shares of Surviving Pubco's common stock upon the completion of the Business Combination by:

- each person known by Surviving Pubco to be the beneficial owner of more than 5% of any class of Surviving Pubco's common stock;
- each of Surviving Pubco's officers and directors;
- all executive officers and directors of Surviving Pubco.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days.

In the table below, percentage ownership is based on 16,048,174 shares of common stock outstanding as of December 6, 2022, including 11,300,000 shares issued as Merger Consideration, 1,025,000 shares of common stock issued in connection with the PIPE financing, and reflects the valid redemption of 2,380,246 ordinary shares by public stockholders of Lakeshore. The table below includes the common stock underlying the Private Warrants held or to be held by Sponsor because these securities exercisable within sixty (60) days. This table also assumes that there are no issuances of equity securities in connection with the Closing, including equity awards that may be issued under the 2022 Equity Incentive Plan following the Business Combination, and excludes any Earnout Shares.

Unless otherwise indicated, Surviving Pubco believes that all persons named in the table have sole voting and investment power with respect to all shares of Common Stock beneficially owned by them. Unless otherwise noted, the business address of each of the following entities or individuals is 5860 West Las Positas Blvd., Suite 25, Pleasanton, CA 94588.

Name and Address of Beneficial Owner [1]	Number of Shares Beneficially Owned	% of Class
Directors and Named Executive Officers		
Leonard Liptak	465,706	2.9%
Laing Rikkers[1]	345,290	2.15
Sung Kim	107,316	*
Melinda Hungerman	191,536	1.2
William Johnson	67,426	*
Leonard Hedge	70,255	*
Jason Orchard	--	*
Steven Pacelli	--	*
Heather Rider	--	*
All executive officers and directors as a group (9 individuals)	1,247,529	7.8%
Greater than Five Percent Holders:		
HealthpointCapital, LLC[2]	6,660,239	41.5%

* Less than 1%

(1) Ms. Rikkers serves on the investment committee at HealthpointCapital, LLC, but does not have beneficial ownership over shares held by the HPC Funds. Ms. Rikkers disclaims beneficial ownership of shares held by the HPC Funds, except to the extent of any pecuniary interest therein.

(2) Includes interests to be acquired by funds ("HPC Funds") managed by HealthpointCapital, LLC and/or its affiliates ("HPC") in connection with the Business Combination. Does not include any interests that could be acquired in connection with a PIPE or Equity Investment. Voting and dispositive power over the shares is held by an investment committee at HealthpointCapital, LLC, composed of more than three individuals, one of whom is Ms. Rikkers and none of whom have beneficial ownership over the shares. Ms. Rikkers disclaims beneficial ownership of such shares held by the HPC Funds, except to the extent of any pecuniary interest therein. HPC's address is 3708 Ashford Place, Greenville, NC 27858.

Directors and Executive Officers

Surviving Pubco's directors and executive officers after the Closing are described in the Proxy Statement/Prospectus in the section titled "*Directors, Executive Officers and Corporate Governance after the Business Combination*," which is incorporated herein by reference.

Executive Compensation

The compensation of the named executive officers of Lakeshore before the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled "*Executive Officer and Director Compensation—Lakeshore Named Executive Officer and Director Compensation*," which is incorporated herein by reference. The compensation of the named executive officers of ProSomnus before the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled "*Executive Officer and Director Compensation—ProSomnus Named Executive Officer and Director Compensation*," which is incorporated herein by reference.

The information set forth in this Current Report on Form 8-K under Item 5.02 is incorporated in this Item 2.01 by reference.

At the Special Meeting, Lakeshore's shareholders approved the 2022 Equity Incentive Plan. A description of the material terms of the 2022 Equity Incentive Plan is set forth in the section of the Proxy Statement/Prospectus titled "*Proposal No. 6—The Incentive Plan Proposal*," which is incorporated herein by reference. This summary is qualified in its entirety by reference to the complete text of the 2022 Equity Incentive Plan, a copy of which is attached as an Exhibit 10.2 to this Current Report on Form 8-K.

Certain Relationships and Related Transactions, and Director Independence

The certain relationships and related party transactions of Lakeshore and ProSomnus are described in the Proxy Statement/Prospectus in the section titled "*Certain Transactions*" and are incorporated herein by reference.

Reference is made to the disclosure regarding director independence in the section of the Proxy Statement/Prospectus titled "*Directors, Executive Officers and Corporate Governance after the Business Combination – Director Independence*," which is incorporated herein by reference.

The information set forth under Item 5.02 "*Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers—Employment Agreements*" of this Current Report on Form 8-K is incorporated into this Item 2.01 by reference.

The information set forth in the section titled "*Registration Rights Agreements*" in Item 1.01 of this Current Report on Form 8-K are incorporated herein by reference.

Legal Proceedings

Reference is made to the disclosure regarding legal proceedings in the sections of the Proxy Statement/Prospectus titled "*Lakeshore's Business — Legal Proceedings*," and "*ProSomnus's Business—Legal Proceedings*" which are incorporated herein by reference.

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Surviving Pubco's common stock began trading on the Nasdaq Global Market under the symbol "OSA" and its warrants began trading on the Nasdaq Capital Market under the symbol "OSAAW" on December 6, 2022. Lakeshore has not paid any cash dividends on its ordinary shares to date. The payment of cash dividends by Surviving Pubco in the future will be dependent upon Surviving Pubco's revenues and earnings, if any, capital requirements and general financial condition subsequent to completion of the Business Combination. The payment of any dividends subsequent to the Business Combination will be within the discretion of the board of directors of Surviving Pubco.

Information regarding Lakeshore's common stock, rights and units and related stockholder matters are described in the Proxy Statement/Prospectus in the section titled "*Securities and Dividends*" and such information is incorporated herein by reference.

Recent Sales of Unregistered Securities

Reference is made to the disclosure set forth under Item 3.02 of this Current Report on Form 8-K concerning the issuance of Surviving Pubco's common stock in connection with the Business Combination and the PIPE financing, which is incorporated herein by reference.

Description of Registrant's Securities to be Registered

The description of Surviving Pubco's securities is contained in the Proxy Statement/Prospectus in the sections titled "*Description of PubCo's Securities*."

Indemnification of Directors and Officers

The description of the indemnification arrangements with Surviving Pubco's directors and officers is contained in the Proxy Statement/Prospectus in the section titled "*Description of Securities – Limitation on Liability and Indemnification of Directors and Officers"* and the disclosure under Item 1.01 "*Entry into Material Definitive Agreement—Indemnification Agreements*" of this Current Report on Form 8-K, which is incorporated herein by reference.

Financial Statements and Supplementary Data

The information set forth under Item 9.01 of this Current Report on Form 8-K is incorporated herein by reference.

Financial Statements and Exhibits

The information set forth under Item 9.01 of this Current Report on Form 8-K is incorporated herein by reference.

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

Reference is made to the disclosure set forth under Item 1.01 of this Current Report on Form 8-K concerning the Convertible Notes offering, which is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The PIPE Financing

On December 6, 2022, the Company closed its previously announced PIPE financing, selling 1,025,000 shares of common stock to investors for gross proceeds of $10,250,000. In connection with the PIPE financing, the Sponsor transferred 574,035 founders shares and the Company issued 571,183 additional shares to the PIPE investors.

Debt Financing

In connection with the closing of the previously announced Convertible Debt offering, the Company issued 326,706 shares of common stock to certain Convertible Debt holders.

Underwriter and Vendor Shares

At the closing of the Business Combination, the Company issued an aggregate of 716,223 shares of common stock to Craig-Hallum, Roth Capital Partners, and Gordon Pointe Capital, in partial satisfaction of fees due to such parties in connection with the Business Combination.

Item 3.03. Material Modification to Rights of Security Holders.

The shareholders of Lakeshore approved the Amended and Restated Certificate of Incorporation (as defined below) at the Special Meeting. In connection with the Closing, Surviving Pubco adopted the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws (defined below) effective as of the Closing Date. Reference is made to the disclosure described in the Proxy Statement/Prospectus in the section titled "*Proposal No. 2—The Charter Proposals*," which is incorporated herein by reference.

The full text of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, which are included as Exhibits 3.1 and 3.2 hereto, respectively, to this Current Report on Form 8-K, are incorporated herein by reference.

Item 4.01. Change in the Registrant's Certifying Accountant.

On December 12, 2022, following the adoption of a unanimous written consent of the board of directors of ProSomnus, Inc., the board approved the engagement of Marcum LLP ("Marcum") as the Company's independent registered public accounting firm to audit the Company's consolidated financial statements for the year ending December 31, 2022. Accordingly, on December 12, 2022, UHY LLP ("UHY"), Lakeshore's independent registered public accounting firm prior to the Business Combination, and SingerLewak LLP ("SingerLewak"), ProSomnus Holdings' independent registered public accounting firm prior to the Business Combination, were dismissed and notified that they will not be engaged to audit Pubco's consolidated financial statements for the year ending December 31, 2022.

Disclosures Regarding UHY

The audit report of UHY on Lakeshore's financial statements as of December 31, 2021, and for the period from January 6, 2021 (date of inception) to December 31, 2021, did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to uncertainties, audit scope, or accounting principles except for an explanatory paragraph in such report regarding substantial doubt about Lakeshore's ability to continue as a going concern.

During the period from January 6, 2021 (date of inception) through December 31, 2021, and the subsequent interim periods through December 12, 2022, there were no disagreements with UHY on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of UHY, would have caused UHY to make a reference in connection with their opinion to the subject matter of the disagreement or reportable events as defined in Item 304(a)(1)(v) of Regulation S-K ("Regulation S-K") under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Company has provided UHY with a copy of the foregoing disclosures in this Item 4.01 in response to Item 304(a) of Regulation S-K under the Exchange Act, and has requested that UHY furnish the Company with a letter addressed to the Commission stating whether it agrees with the statements made by the Company in this Item 4.01 in response to Item 304(a) of Regulation S-K under the Exchange Act and, if not, stating the respects in which it does not agree. A letter from UHY is attached hereto as Exhibit 16.1.

Disclosures Regarding SingerLewak

The report of SingerLewak on ProSomnus Holdings' financial statements as of December 31, 2021 and 2020 and for the years ended December 31, 2021 and 2020 did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to audit scope or accounting principles.

During the fiscal years ended December 31, 2021 and 2020 and the subsequent interim period through December 12, 2022, there were no "disagreements" (as such term is defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) with SingerLewak on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which disagreements, if not resolved to the satisfaction of SingerLewak, would have caused SingerLewak to make reference thereto in its report on ProSomnus Holdings' financial statements for such periods. During the fiscal years ended December 31, 2021 and 2020 and the subsequent interim period through December 12, 2022, there have been no "reportable events" (as such term is defined in Item 304(a)(1)(v) of Regulation S-K), except that SingerLewak advised ProSomnus Holdings of material weaknesses in its internal control over financial reporting related to accounting for certain complex transactions and a lack of expertise for such accounting issues, which resulted in misstatements that were corrected prior to the completion and issuance of its audited financial statements.

The Company provided SingerLewak with a copy of the foregoing disclosures and has requested that SingerLewak furnish the Company with a letter addressed to the SEC stating whether it agrees with the statements made by the Company set forth above. A copy of SingerLewak's letter, dated December 12, 2022, is filed as Exhibit 16.2 to this Current Report on Form 8-K.

Item 5.01. Changes in Control of Registrant.

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled "*Proposal No. 3—The Acquisition Merger Proposal,*" which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report on Form 8-K, which is incorporated herein by reference.

As of the Closing: public stockholders own approximately 3.0% of the outstanding shares of Surviving Pubco common stock; the Sponsor and its affiliates own approximately 6.6% of the outstanding shares of common stock; ProSomnus Holding's former security holders collectively own approximately 70.4% of the outstanding shares of Common Stock; underwriters, vendors and convertible debt holders own approximately 6.5% and approximately 13.5% of the outstanding shares of Common Stock are held by the PIPE investors, assuming no Warrants are exercised.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Election of Directors and Appointment of Officers

The following persons are serving as executive officers and directors following the Closing. For information concerning the executive officers and directors, see the disclosure in the Proxy Statement/Prospectus in the sections titled "*Current Directors, Executive Officers and Corporate Governance of Lakeshore*," and "*Directors, Executive Officers and Corporate Governance After the Business Combination,*" and "*Certain Transactions*," which are incorporated herein by reference.

Name	Age	Position
Leonard Liptak[6]	48	Chief Executive Officer; Director
Laing Rikkers[5]	52	Executive Chair
Sung Kim	41	Chief Technology Officer
Melinda Hungerman	58	Chief Financial Officer
Leonard Hedge[2][3][4]	52	Director
William Johnson[1][2][6]	65	Director
Jason Orchard[1][5]	46	Director
Steven Pacelli[1][3][4]	51	Director
Heather Rider[2][3][5]	63	Director

(1) Member of the audit committee.
(2) Member of the compensation committee.
(3) Member of the nominating and corporate governance committee.
(4) Class A Director.
(5) Class B Director.
(6) Class C Director.

Each director will hold office until his or her term expires at the next annual meeting of stockholders for such director's class or until his or her death, resignation, removal or the earlier termination of his or her term of office.

Effective upon Closing, each of Bill Chen and Laura Li resigned as officers of Lakeshore. Effective upon Closing, each of Bill Chen, H. David Sherman, Jianzhong Lu and Yan Zhu resigned as directors of Lakeshore.

2022 Equity Incentive Plan

At the Special Meeting, Lakeshore shareholders considered and approved the 2022 Equity Incentive Plan and reserved an amount of shares of common stock equal to 15% of the number of shares of common stock of Surviving Pubco following the Business Combination for issuance thereunder. The 2022 Equity Incentive Plan was approved by the Lakeshore and LAA Merger Corp. board of directors on December 6, 2022. The 2022 Equity Incentive Plan became effective immediately upon the Closing of the Business Combination.

A more complete summary of the terms of the 2022 Equity Incentive Plan is set forth in the Proxy Statement/Prospectus in the section titled "*Proposal No. 6—The Incentive Plan Proposal.*" That summary and the foregoing description are qualified in their entirety by reference to the text of the 2022 Equity Incentive Plan, which is filed as Exhibit 10.2 hereto and incorporated herein by reference.

Employment Agreements

As a result of the Business Combination, Surviving Pubco (through its subsidiaries) is now party to employment agreements with each of Surviving Pubco's executive officers: Len Liptak (Chief Executive Officer), Laing Rikkers (Executive Chair), Mindy Hungerman (Chief Financial Officer) and Sung Kim (Chief Technology Officer).

The employment agreements all provide for at-will employment that may be terminated by the Company for death or disability and with or without cause, by the executive with or without good reason, or mutually terminated by the parties. Mr. Liptak's employment agreement provides for 12 months' severance payment upon termination by the Company without cause or termination by Mr. Liptak for good reason, subject to execution of a release of claims. The employment agreements for Ms. Rikkers, Ms. Hungerman and Mr. Kim provide for 6 months' severance payment upon termination by the Company without cause or termination by the executive for good reason, subject to execution of a release of claims. The executive agreements provide for a base salary of $500,000, $250,000, $270,000 and $300,000 for Mr. Liptak, Ms. Rikkers, Ms. Hungerman and Mr. Kim, respectively, possible annual performance bonuses of 75%, 75%, 50% and 50% of base salary, respectively, and equity grants under the equity incentive plan of 1.7%, 1.7%, 0.5% and 1.7%, respectively. Additional equity grants will be made if and when determined by the Company's Compensation Committee.

This summary is qualified in its entirety by reference to the text of the employment agreements, which are included as Exhibits 10.11, 10.12, 10.13 and 10.14 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in Item 3.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

On December 6, 2022, the Boards of Lakeshore and LAAA Merger Corp. adopted a new Code of Business Conduct and Ethics that applies to all of its employees, officers and directors, including its Chief Executive Officer, Chief Financial Officer and other executive and senior financial officers. The full text of Surviving Pubco's Code of Business Conduct and Ethics is available on our website at prosomnus.com under "Governance." In addition, a copy of the Code of Ethics will be provided without charge upon request to us in writing at 5860 West Las Positas Blvd., Suite 25, Pleasanton, CA 94588.

The adoption of the Code of Business Conduct and Ethics did not relate to or result in any waiver, explicit or implicit, of any provision of the previous Code of Conduct. Any waivers under the Code of Business Conduct and Ethics will be disclosed on a Current Report on Form 8-K or as otherwise permitted by the rules of the SEC and Nasdaq (or other stock exchange on which ProSomnus securities are then listed).

Item 5.06. Change in Shell Company Status.

As a result of the Business Combination, Lakeshore ceased being a shell company. Reference is made to the disclosure in the Proxy Statement/Prospectus in the sections titled "*Proposal No. 1 – The Reincorporation Merger Proposal*" and "*Proposal No. 3 – The Acquisition Merger Proposal*," which is incorporated herein by reference. The information contained in Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.06.

Item 9.01. Financial Statement and Exhibits.

(a) Financial statements of businesses acquired.

Information responsive to Item 9.01(a) of Form 8-K is set forth in the financial statements included in the Proxy Statement/Prospectus beginning on page F-1, which are incorporated herein by reference, and the unaudited financial statements of ProSomnus Holdings Inc. as of September 30, 2022, and for the three and nine months ended September 30, 2022, together with the notes thereto, are set forth in Exhibit 99.1 and are incorporated herein by reference.

(b) Pro forma financial information.

The unaudited pro forma financial statements are filed as Exhibit 99.2 to this Current Report on Form 8-K and incorporated herein by reference.

(d) Exhibits

Exhibit No.	Description
2.1†	Agreement and Plan of Merger, dated effective May 9, 2022, by and among Lakeshore Acquisition I Corp., LAAA Merger Sub, Inc., RedOne Investments Limited, as representative of the purchaser, HGP II LLC, as representative of the sellers, and ProSomnus Holdings, Inc. (previously filed as Exhibit 2.1 of Form 8-K filed by Lakeshore Acquisition I Corp. with the SEC on May 10, 2022).
3.1*	Amended and Restated Certificate of Incorporation of ProSomnus, Inc.
3.2*	Amended and Restated Bylaws of ProSomnus, Inc.
4.1*	Specimen Common Stock Certificate
4.2	Specimen Warrant Certificate (included in Exhibit 4.3, as amended by Exhibit 4.4).
4.3	Warrant Agreement between Continental Stock Transfer & Trust Company and Lakeshore Acquisition I Corp. (previously filed as Exhibit 4.1 of Form 8-K filed by Lakeshore Acquisition I Corp. with the SEC on June 16, 2021).
10.1*	Form of Subscription Agreement for the PIPE investment
10.2*+	2022 Equity Incentive Plan for ProSomnus, Inc.
10.3*	Form of Indemnification Agreement between ProSomnus, Inc. and certain of its officers and directors
10.4*	Registration Rights Agreement, dated December 6, 2022, by and between ProSomnus, Inc. and parties thereto
10.5*	Registration Rights Agreement, dated December 6, 2022, by and between ProSomnus, Inc. and certain holders of Convertible Notes
10.6*	Form of Lockup by certain ProSomnus equityholders
10.7	Private Placement Securities Subscription Agreements, by and between Lakeshore Acquisition I Corp. and the purchasers of its founder shares and private placement warrants, dated as of June 10, 2021 (previously filed as Exhibit 10.5 of Form 8-K filed by Lakeshore Acquisition I Corp. with the SEC on June 10, 2021).
10.8	Letter Agreement, dated June 10, 2021, by and among Lakeshore Acquisition I Corp. (previously filed as Exhibit 10.1 of Form 8-K filed by Lakeshore Acquisition I Corp. with the SEC on June 10, 2021).
10.9*	Indenture for Senior Secured Convertible Notes due 2025, dated December 6, 2022 by and between ProSomnus, Inc. and Wilmington Trust, National Association, as trustee and collateral agent
10.10*	Indenture for Subordinated Secured Convertible Notes due 2026, dated December 6, 2022 by and between ProSomnus, Inc. and Wilmington Trust, National Association, as trustee and collateral agent
10.11*+	Employment Agreement between ProSomnus Holdings, Inc. and Len Liptak, dated May 5, 2022
10.12*+	Employment Agreement between ProSomnus Holdings, Inc. and Laing Rikkers, dated May 4, 2022
10.13*+	Employment Agreement between ProSomnus Holdings, Inc. and Mindy Hungerman, dated May 4, 2022

10.14*+	Employment Agreement between ProSomnus Holdings, Inc. and Sung Kim, dated May 5, 2022
16.1*	Letter from UHY LLP to the Securities and Exchange Commission, dated December 12, 2022.
16.2*	Letter from SingerLewak to the Securities and Exchange Commission, dated December 12, 2022.
21.1*	Subsidiaries of the Registrant
99.1*	Unaudited financial statements of ProSomnus Holdings Inc. as of and for the three and nine month periods ending September 30, 2022
99.2*	Unaudited Pro Forma Condensed Combined Financial Statements.
99.3*	Management's Discussion and Analysis of Financial Condition and Results of Operations of ProSomnus Holdings, Inc. for the three and nine month periods ending September 30, 2022

* Filed herewith

\+ Indicates a management or compensatory plan.

† Schedules to this exhibit have been omitted pursuant to Item 601(b)(2) of Registration S-K. The Registrant hereby agrees to furnish a copy of any omitted schedules to the SEC upon request.

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.

ProSomnus, Inc.

Dated: December 12, 2022

By: /s/ Len Liptak
Len Liptak
Chief Executive Officer

Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

LAAA MERGER CORP.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

LAAA Merger Corp., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), hereby certifies as follows:

The Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 3, 2022.

This Amended and Restated Certificate of Incorporation restates, integrates and further amends the Corporation's Amended and Restated Certificate of Incorporation.

This Amended and Restated Certificate of Incorporation was duly adopted by written consent of the directors and stockholders of the Corporation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

The text of the Corporation's Amended and Restated Certificate of Incorporation, is hereby further amended and restated to read in full as follows:

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

PROSOMNUS, INC.

FIRST: The name of the corporation is ProSomnus, Inc. (the "**Corporation**").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity or carry on any business for which corporations may be organized under the Delaware General Corporation Law or any successor statute.

FOURTH:

A.

Designation and Number of Shares.

The total number of shares of all classes of stock which the Corporation shall have the authority to issue is 101,000,000 shares, consisting of 100,000,000 shares of common stock, par value $0.0001 per share (the "**Common Stock**"), and 1,000,000 shares of preferred stock, par value $0.0001 per share (the "**Preferred Stock**").

The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock designation.

B.

Preferred Stock.

1. Shares of Preferred Stock may be issued in one or more series at such time or times and for such consideration as the Board of Directors of the Corporation (the "**Board of Directors**") may determine.

2. Authority is hereby expressly granted to the Board of Directors to fix from time to time, by resolution or resolutions providing for the establishment and/or issuance of any series of Preferred Stock, the designation and number of the shares of such series and the powers, preferences and rights of such series, and the qualifications, limitations or restrictions thereof, to the fullest extent such authority may be conferred upon the Board of Directors under the Delaware General Corporation Law. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law.

C.

Common Stock.

1. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor if, as and when determined by the Board of Directors in their sole discretion, subject to provisions of law, any provision of this Restated Certificate of Incorporation, as amended from time to time, and subject to the relative rights and preferences of any shares of Preferred Stock authorized, issued and outstanding hereunder. The term "**Restated Certificate of Incorporation**" as used herein shall mean the Amended and Restated Certificate of Incorporation of the Corporation as amended from time to time.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held; *provided*, *however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation (including any certificate of designation relating to Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Restated Certificate of Incorporation (including any certificate of designation relating to Preferred Stock).

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Restated Certificate of Incorporation or the Bylaws of the Corporation as in effect from time to time, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

B. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation so provide.

C. Subject to the rights of the holders of shares of any series of Preferred Stock then outstanding, any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and not by written consent.

D. Special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For the purposes of this Restated Certificate of Incorporation, the term "**Whole Board**" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

SIXTH:

A. Subject to the rights of the holders of shares of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board.

B. Subject to the rights of the holders of shares of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances, the Board of Directors of the Corporation shall be divided into three classes, with the term of office of the first class to expire at the first annual meeting of stockholders following the initial classification of directors, the term of office of the second class to expire at the second annual meeting of stockholders following the initial classification of directors, and the term of office of the third class to expire at the third annual meeting of stockholders following the initial classification of directors. At each annual meeting of stockholders, directors elected to succeed those directors whose terms expire, other than directors elected by the holders of shares of any series of Preferred Stock under specified circumstances, shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election and until their successors are duly elected and qualified. The Board of Directors is authorized to assign members of the Board already in office to such classes as it may determine at the time the classification of the Board of Directors pursuant to this Restated Certificate of Incorporation becomes effective. Subject to the rights of the holders of shares of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office even though less than a quorum, or by a sole remaining director, and not by stockholders, and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires or until such director's successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

C. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

D. Subject to the rights of the holders of shares of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time only for cause and only by the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote at an election of directors, voting together as a single class.

SEVENTH: The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the Whole Board. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; *provided*, that in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Restated Certificate of Incorporation, the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the Bylaws of the Corporation; *provided*, *however*, that if the Board of Directors recommends that stockholders approve such adoption, amendment or repeal, such adoption, amendment or repeal shall only require, in addition to any vote of the holders of any class or series of the capital stock of the Corporation required by law or by the Restated Certificate of Incorporation, the affirmative vote of the holders of the majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

EIGHTH:

A. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "**Indemnitee**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; *provided*, *however*, that, except as provided in Paragraph C of this Article EIGHTH with respect to proceedings to enforce rights to indemnification or an advancement of expenses or as otherwise required by law, the Corporation shall not be required to indemnify or advance expenses to any such Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

B. In addition to the right to indemnification conferred in Paragraph A of this Article EIGHTH, an Indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition; *provided*, *however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Paragraph B or otherwise.

C. If a claim under Paragraph A or B of this Article EIGHTH is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expenses of prosecuting or defending such suit. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article EIGHTH or otherwise shall be on the Corporation.

D. The rights to indemnification and to the advancement of expenses conferred in this Article EIGHTH shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Restated Certificate of Incorporation as amended from time to time, the Corporation's Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

E. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

F. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article EIGHTH with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

G. The rights conferred upon Indemnitees in this Article EIGHTH shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee, agent or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article EIGHTH that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit, eliminate or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to any such amendment, alteration or repeal.

H. If any word, clause, provision or provisions of this Article EIGHTH shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article EIGHTH (including, without limitation, each portion of any section of this Article EIGHTH containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article EIGHTH (including, without limitation, each such portion of any section of this Article EIGHTH containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

NINTH: No director shall be personally liable to the Corporation or its stockholders for any monetary damages for breaches of fiduciary duty as a director; *provided* that this provision shall not eliminate or limit the liability of a director, to the extent that such liability is imposed by applicable law, (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 or successor provisions of the Delaware General Corporation Law; or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. All references in this Article NINTH to a director shall also be deemed to refer to any such director acting in his or her capacity as a Continuing Director (as defined in Article ELEVENTH).

TENTH: The Corporation reserves the right to amend or repeal any provision contained in this Restated Certificate of Incorporation in the manner prescribed by the Delaware General Corporation Law and all rights conferred upon stockholders are granted subject to this reservation; *provided* that in addition to the vote of the holders of any class or series of stock of the Corporation required by law or by this Restated Certificate of Incorporation, the affirmative vote of the holders of shares of voting stock of the Corporation representing at least seventy-five percent (75%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision inconsistent with, Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, this Article TENTH and Articles ELEVENTH and TWELFTH of this Restated Certificate of Incorporation.

ELEVENTH: The Board of Directors is expressly authorized to cause the Corporation to issue rights pursuant to Section 157 of the Delaware General Corporation Law and, in that connection, to enter into any agreements necessary or convenient for such issuance, and to enter into other agreements necessary and convenient to the conduct of the business of the Corporation. Any such agreement may include provisions limiting, in certain circumstances, the ability of the Board of Directors of the Corporation to redeem the securities issued pursuant thereto or to take other action thereunder or in connection therewith unless there is a specified number or percentage of Continuing Directors then in office. Pursuant to Section 141(a) of the Delaware General Corporation Law, the Continuing Directors shall have the power and authority to make all decisions and determinations, and exercise or perform such other acts that any such agreement provides that such Continuing Directors shall make, exercise or perform. For purposes of this Article ELEVENTH and any such agreement, the term "**Continuing Directors**" shall mean (1) those directors who were members of the Board of Directors of the Corporation at the time the Corporation entered into such agreement and any director who subsequently becomes a member of the Board of Directors, if such director's nomination for election to the Board of Directors is recommended or approved by the majority vote of the Continuing Directors then in office or (2) such members of the Board of Directors designated in, or in the manner provided in, such agreement as Continuing Directors.

TWELFTH:

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation, to the Corporation or the Corporation's stockholders, (iii) any action or proceeding asserting a claim against the Corporation or any current or former director, officer or other employee of the Corporation arising out of or pursuant to any provision of the Delaware General Corporation Law or this Certificate of Incorporation or the Bylaws of the Corporation (in each case, as they may be amended from time to time), (iv) any action or proceeding to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws (including any right, obligation, or remedy thereunder); (v) any action or proceeding as to which the Delaware General Corporation Law confers jurisdiction to the Court of Chancery of the State of Delaware; or (vi) any action asserting a claim governed by the internal affairs doctrine against the Corporation or any director, officer or other employee of the Corporation, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants. This Section A of Article TWELFTH shall not apply to actions brought to enforce a duty or liability created by the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any claim for which the federal courts have exclusive jurisdiction.

B. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article TWELFTH.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of the Certificate of Incorporation of this Corporation, and which has been duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law, has been duly executed by its duly authorized Chief Executive Officer this day of December 6, 2022.

By:

Name: Len Liptak
Title: Chief Executive Officer

Exhibit 3.2

PROSOMNUS, INC.

AMENDED AND RESTATED BYLAWS

(Effective as of December 6, 2022)

ARTICLE I - STOCKHOLDERS

Section 1. Annual Meeting.

An annual meeting of the stockholders of ProSomnus, Inc. (the "Corporation"), for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors of the Corporation (the "Board of Directors") shall fix. The Board of Directors may, in its sole discretion, determine that the meeting shall be postponed, rescheduled or canceled and, if held, shall not be held at any place but instead shall be held solely by means of remote communication as provided under the General Corporation Law of the State of Delaware (as hereafter amended from time to time, the "Delaware General Corporation Law").

Section 2. Special Meetings.

Special meetings of the stockholders of the Corporation may be called only by the Board of Directors pursuant to a resolution adopted by a majority of the Authorized Board or by the Chairman of the Board of the Corporation (the "Chairman of the Board"). For the purposes of these Restated Bylaws (hereinafter referred to herein as these "Bylaws"), the term "Authorized Board" shall mean the total number of authorized directors whether or not there exist any vacancies on the Board of Directors. Special meetings of the stockholders may be held at such place within or without the State of Delaware as may be stated in such resolution. The Board of Directors or the Chairman of the Board calling the meeting pursuant to such resolution may, in its, his or her sole discretion, determine that the meeting shall not be held at any place, but instead shall be held solely by means of remote communication as provided under the Delaware General Corporation Law.

Section 3. Notice of Meetings.

Notice of the place, if any, date, and time of all meetings of the stockholders, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning hereinafter as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation, as amended and restated from time to time).

When a meeting is adjourned to another place, if any, date or time, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken; *provided, however*, that if the date of any adjourned meeting is more than thirty (30) days after the date originally designated for the meeting in the notice, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Quorum.

At any meeting of the stockholders, the holders of a majority of the voting power of all of the shares of the stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law or by rules of any stock exchange upon which the Corporation's securities are listed. Where a separate vote by a class or classes is required, a majority of the voting power of the shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date, or time.

Section 5. Organization and Conduct of Business.

The Chairman of the Board of Directors or, in his or her absence, the Vice Chairman of the Board, if any, or in the absence of the Chairman of the Board and the Vice Chairman of the Board, if any, the Chief Executive Officer of the Corporation or, in his or her absence, the President of the Corporation or, in his or her absence, such person as the Board of Directors may have designated, shall call to order any meeting of the stockholders and shall preside at and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints. The Board of Directors may adopt, by resolution, such rules, regulations and procedures for the conduct of business at any meeting of the stockholders, as the Board of Directors determines appropriate. Subject to such rules, regulations and procedures, the chairman of any meeting of the stockholders is empowered to adopt rules, regulations and procedures and to do all acts the chairman of the meeting determines appropriate for the proper conduct of the meeting. Such rules, regulations and procedures, whether adopted by the Board of Directors or the chairman of the meeting, may include, without limitation, (a) the establishment of an agenda and the order of business to be conducted at the meeting (b) rules, regulations and procedures for maintaining order at the meeting, (c) limitations on the attendance at and participation in any meeting of the stockholders by any person other than stockholders and their properly appointed proxyholders, (d) restriction on entry to the meeting after its scheduled commencement, and (e) limitations on the allotment of time for comments and questions at the meeting. The chairman of any meeting of the stockholders shall be empowered to interpret any such rules, regulations and procedures and their applicability at such meeting, which interpretations shall be conclusive. Subject to any such rules, regulations and procedures, the chairman of any meeting of the stockholders shall determine the order of business and the procedures at the meeting. Unless and only to the extent determined by the Board of Directors or the chairman of the meeting, rules of parliamentary procedure shall not be required for any meeting of the stockholders. The chairman of any meeting of the stockholders shall have the power to adjourn the meeting to another place, if any, date and time, whether or not there is a quorum. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be determined by the chairman of the meeting and announced at the meeting prior to the opening of the polls.

Section 6. Nominations and Stockholders Business.

A. Annual Meetings of Stockholders.

Nominations of persons for election to the Board of Directors and the proposal of business to be considered and acted upon by the stockholders may be made at an annual meeting of the stockholders (1) pursuant to the Corporation's notice of meeting or proxy materials with respect to such meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 6 and on the record date for determination of stockholders entitled to vote at such meeting, who is entitled to vote at the meeting and who complies timely with the notice procedures set forth in this Section 6.

B. Special Meetings of Stockholders.

Only such business shall be conducted at a special meeting of the stockholders as shall have been included in the notice of meeting given pursuant to Section 2 above. The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of the stockholders at which directors are to be elected (1) by or at the direction of the Board of Directors or, (2) provided that the Board of Directors has determined that directors will be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 6, who shall be entitled to vote at the meeting and who complies timely with the notice procedures set forth in this Section 6.

C. Certain Matters Pertaining to Nominations and Stockholders Business.

(1) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (3) of paragraph A of this Section 6 or a special meeting pursuant to paragraph B of this Section 6, (1) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (2) such other business must otherwise be a proper matter for stockholder action under the Delaware General Corporation Law, (3) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the Corporation with a Solicitation Notice, as that term is defined in subclause (v) of clause (c) of subparagraph 1 of this paragraph C, such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder or beneficial owner, and must, in either case, have included in such materials the Solicitation Notice and, (4) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section 6, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 6.

To be timely, a stockholder's notice pertaining to an annual meeting shall be received by the Secretary of the Corporation at the principal executive offices of the Corporation not less than ninety (90) or more than one-hundred and twenty (120) days prior to the first anniversary of the date of the preceding year's annual meeting of stockholders (the "Anniversary"); *provided, however*, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after the Anniversary, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one-hundred and twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. Such stockholder's notice for an annual meeting or a special meeting shall set forth and include:

(a) as to each person whom the stockholder proposes to nominate for election or reelection as a director:

(i) the name, age, business address and, if known to the stockholder, residential address;

(ii) the principal occupation or employment;

(iii) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(iv) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated under the Securities Act of 1933, as amended, if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant;

(v) to the extent known by the stockholder or the beneficial owner, the name and address of any other securityholder of the Corporation who owns, beneficially or of record, any securities of the Corporation and who supports any nominee proposed by such stockholder or beneficial owner; and

(vi) with respect to each nominee for election or reelection to the Board of Directors, a completed and signed questionnaire, representation and agreement required by paragraph D of this Section 6.

(b) as to any business (other than a proposed nomination for election as a director) that the stockholder or beneficial owner proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, including the text of any resolution or resolutions proposed for consideration and action, the reasons for conducting such business at the meeting, any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and, to the extent known by the stockholder, the name and business address and residential address of any other securityholder of the Corporation who owns, beneficially or of record, any securities of the Corporation and who supports any matter such stockholder or beneficial owner intends to propose; and

(c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made:

(i) the name and address of such stockholder, as they appear on the Corporation's books, and the business address and, if known by the stockholder, the residential address of such beneficial owner;

(ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (B) any option, warrant, convertible security, restricted stock unit, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and such beneficial owner, if any, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder and beneficial owner, if any, has a right to vote any shares of any security of the Corporation, (D) any short interest in any security of the Corporation (for purposes of these Bylaws, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially and of record by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, or held, directly or indirectly, by a limited liability company in which such stockholder is a member or manager or directly or indirectly owns in interest in such member or manager, and (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date; *provided, however,* that if such date is after the date of the meeting, not later than the day prior to the meeting);

(iii) any other information relating to such stockholder and beneficial owner, if any, which would be required to be disclosed in a proxy statement or any other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Regulation 14A under the Exchange Act and the rules and regulations promulgated thereunder;

(iv) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and beneficial owner, if any; and

(v) a statement whether or not either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a percentage of the Corporation's voting shares that such stockholder or beneficial owner reasonably believes to be sufficient to elect such nominee or nominees, a majority of the Corporation's outstanding voting shares being conclusively reasonably sufficient (an affirmative statement of such intent being referred to herein as a "Solicitation Notice").

(2) Notwithstanding anything in the second sentence of subparagraph C(1) of this Section 6 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least fifty-five (55) days prior to the Anniversary (or, if the annual meeting is held more than thirty (30) days before or thirty (30) days after the Anniversary, at least fifty-five (55) days prior to such annual meeting), a stockholder's notice required by this Section 6 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(3) In the event the Corporation calls a special meeting of the stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by subparagraph C(1) of this Section 6 shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting nor later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

D. General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 6 shall be eligible to serve as directors and only such business shall be conducted at a meeting of the stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 6. Except as otherwise provided by law or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposed nomination or business shall be disregarded.

(2) For purposes of this Section 6, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or successor entity or comparable national news service or in a document publicly filed by the Corporation with the U.S. Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 6, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 6 shall be deemed to affect any rights (i) of the stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of preferred stock of the Corporation to elect directors under specified circumstances.

(4) In addition to the requirements set forth elsewhere in these Bylaws, to be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver, in accordance with the time periods prescribed for delivery of notice under subparagraph (C)(1) of this Section 6, to the Secretary of the Corporation at the principal executive offices of the Corporation a completed and signed questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with, applicable law and all applicable publicly disclosed corporate governance, code of conduct and ethics, conflict of interest, corporate opportunities, trading and any other policies and guidelines of the Corporation applicable to its directors.

(5) Notwithstanding the foregoing provisions of this Section 6, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of the stockholders of the Corporation to make his, her or its nomination or propose any other matter, such nomination shall be disregarded and such other proposed matter shall not be transacted, even if proxies in respect of such vote have been received by the Corporation. For purposes of this Section 6, to be considered a "qualified representative" of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of the stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the commencement of the meeting of the stockholders.

Section 7. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this Section 7 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

All voting, including on the election of directors but excepting where otherwise required by law, may be by voice vote. Any vote not taken by voice shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. The Corporation may, and to the extent required by law, shall, in advance of any meeting of the stockholders, appoint one or more inspectors of election to act in such capacity at the meeting and make a written report thereof. The chairman of the meeting may designate one or more persons as alternate inspectors to replace any inspector of election who is unavailable or fails to act in such capacity. Each inspector of election, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector of election with strict impartiality and according to the best of his or her ability. A director, officer or employee of the Corporation may serve as an inspector of election or an alternate. Every vote taken by ballots shall be counted by the duly appointed inspector or inspectors of election.

Except as otherwise provided in the terms of any class or series of preferred stock of the Corporation, all elections at any meeting of the stockholders shall be determined by a plurality of the votes cast, and except as otherwise required by law, these Bylaws or the rules of any stock exchange upon which the Corporation's securities are listed, all other matters determined by stockholders at a meeting shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8. Action Without Meeting; Record Date.

A. Any action required or permitted to be taken by the stockholders of the Corporation at a duly called annual or special meeting of the stockholders of the Corporation may be effected by written consent, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, (1) shall be signed by holders of record on the record date established pursuant to paragraph B of this Section 8 (the "Written Consent Record Date") of outstanding voting stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and (2) shall be delivered to the Secretary of the Corporation. Delivery shall be made by hand or by certified or registered mail, postage-prepaid and return receipt requested. Every written consent shall bear the date of the signature of the stockholder who signed the consent, and no written consent shall be effective to take corporate action unless, within sixty (60) days of the earliest dates valid consent delivered in the manner described in this paragraph A, written consents by stockholders having a sufficient number of votes to take such action are delivered to the Secretary of the Corporation. Only stockholders of record on the Written Consent Record Date shall be entitled to consent to corporate action in writing.

B. Without qualification, any stockholder of record seeking to have the stockholders authorize or take any action by written consent shall first request in writing that the Board of Directors fix a Written Consent Record Date for the purpose of determining the stockholders entitled to take such action, which request shall be in proper form and delivered or mailed to the Secretary of the Corporation. Within ten (10) days after receipt of such request in proper form and otherwise in compliance with this paragraph B from any such stockholder, the Board of Directors may adopt a resolution fixing a Written Consent Record Date, which date shall not be more than ten (10) days after the date upon which the resolution fixing the Written Consent Record Date is adopted by the Board of Directors. If no resolution fixing the Written Consent Record Date has been adopted by the Board of Directors within such period of ten (10) days, (1) the Written Consent Record Date, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which valid signed written consents constituting the applicable required percentage of the voting stock of the Corporation and setting forth the action proposed to be taken are delivered to the Secretary of the Corporation, and (2) the Written Consent Record Date, when prior action by the Board of Directors is required by applicable law, shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

C. To be in proper form for purposes of this Section 8, a request by a stockholder that the Board of Directors adopt a resolution fixing a Written Consent Record Date shall set forth: (1) as to each stockholder requesting that the Board of Directors adopt a resolution fixing a Written Consent Record Date, each beneficial owner for whom such stockholder holds stock of the Corporation and each affiliate of either of them, the information required to be provided under clause (c) of subparagraph C(1) of Section 6 of this Article I; (2) as to any action proposed to be taken by written consent (other than a proposal to nominate one or more persons for election as a director or directors, (a) the information required to be provided pursuant to clause (b) of subparagraph C(1) of this Article I and (b) a reasonably detailed description of all agreements, arrangements and understanding between or among the proposing persons or between any proposing person and any other person in connection with such action; and (3) if one or more directors is or are proposed to be elected by written consent, the information required under clause (a) of subparagraph C(1) of this Article I for each person proposed to be nominated for election as a director.

D. In connection with an action or actions proposed to be taken by written consent in accordance with this Section 8, the stockholder or stockholders seeking the taking of such action or actions shall update and supplement the information previously provided to the Corporation in connection therewith, if necessary so that the information previously provided will be true and correct, and will not omit to state information necessary for the information previously provided not to be misleading in light of the information previously provided, as of the Written Consent Record Date and as of the date which is five (5) business days prior to the date the consent solicitation is commenced. Each such update or supplement shall be delivered or mailed to the Secretary of the Corporation not later than five (5) business days prior to the Written Consent Record Date in the case of the update or supplement required to be made as of the Written Consent Record Date and not later than three (3) business days prior to the date that the consent solicitation is commenced in the case of the update or supplement required to be made as of five (5) business days prior to the commencement of the consent solicitation.

E. Notwithstanding anything in these Bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 8. If the Board of Directors determines that any request to fix a Written Consent Record Date or to take stockholders action by written consent was not properly made in accordance with this Section 8 or the stockholder or stockholders seeking to take action by written consent do not otherwise comply with this Section 8, then the Board of Directors shall not be required to fix a Written Consent Record Date or take any other action in connection with the purported taking of action by the stockholders by written consent as proposed by such stockholder or stockholders, and such purported action shall be null and void. In addition to the requirements of this Section 8, each stockholder seeking the taking of action by the stockholders by written consent shall comply with all requirements of applicable law, including but not limited to the Exchange Act.

Section 9. Stock List.

A complete list of the stockholders entitled to vote at any meeting of the stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law.

The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. Such list shall presumptively determine the identity of the stockholders entitled to examine such stock list and to vote at the meeting and the number of shares held by each of them.

ARTICLE II - BOARD OF DIRECTORS

Section 1. General Powers, Number, Election, Tenure, Qualification and Chairman.

A. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors.

B. Subject to the rights of the holders of shares of any series of preferred stock of the Corporation then outstanding to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Authorized Board.

C. The Chairman of the Board and any Vice Chairman of the Board appointed to act in the absence of the Chairman of the Board, if any, shall be elected by and from the Board of Directors. The Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders at which he or she is present and shall have such authority and perform such duties as may be prescribed by these Bylaws or from time to time be determined by the Board of Directors.

Section 2. Vacancies and Newly Created Directorships.

Subject to the rights of the holders of shares of any series of preferred stock of the Corporation then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a resolution of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director and not by the stockholders, and directors so chosen shall serve for a term expiring at the next annual meeting of the stockholders or until such director’s successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

Section 3. Resignation and Removal.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation at its principal place of business or to the Chairman of the Board, Chief Executive Officer, President or Secretary of the Corporation. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Subject to the rights of the holders of shares of any series of preferred stock of the Corporation then outstanding, any director, or the entire Board of Directors, may be removed from office at any time with or without cause and only by the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation then entitled to vote at an election of directors, voting together as a single class.

Section 4. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 5. Special Meetings.

Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or, in his or her absence, by the Vice Chairman of the Board, if any, and shall be called by the Secretary if requested by a majority of the Authorized Board, and shall be held at such place, on such date, and at such time as he or she or they shall fix. Notice of the place, date, and time of each such special meeting shall be given to each director by whom it is not waived by mailing written notice not less than five (5) days before the meeting or orally, by telegraph, telex, cable, telecopy or electronic transmission given not less than twenty four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business of the Board of Directors may be transacted at a special meeting of the Board of Directors.

Section 6. Quorum.

At any meeting of the Board of Directors, a majority of the total number of the Authorized Board shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, the Chairman of the Board, if present, or a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 7. Action by Consent.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors may be taken without notice and without a meeting, if all members of the Board consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 8. Participation in Meetings by Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of the Board of Directors of such a committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 9. Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Chairman of the Board or, in his or her absence, the Vice Chairman of the Board, if any, or as the Board of Directors in the absence of both of them may from time to time determine, and all matters shall be determined by a resolution of a majority of the directors present, except as otherwise provided herein or required by law.

Section 10. Powers.

The Board of Directors may, except as otherwise required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

(1) to declare dividends from time to time in accordance with law;

(2) to purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;

(3) to authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non negotiable, secured or unsecured, to borrow funds and guarantee obligations, and to do all things necessary in connection therewith;

(4) to remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person for the time being;

(5) to confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;

(6) to adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for directors, officers, employees, consultants and agents of the Corporation and its direct or indirect subsidiaries as it may determine;

(7) to adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its direct or indirect subsidiaries as it may determine; and,

(8) to adopt from time to time regulations, not inconsistent with these Bylaws, for the management of the Corporation's business and affairs.

Section 11. Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings.

ARTICLE III - COMMITTEES

Section 1. Committees of the Board of Directors.

The Board of Directors, by a resolution of a majority of the Board of Directors, may from time to time designate committees of the Board, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation to the fullest extent authorized by law. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by resolution unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business.

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; a majority of the members of any committee shall constitute a quorum unless the committee shall consist of one member, in which event one member shall constitute a quorum or unless the committee consists of two members, in which case both members shall constitute a quorum; and all matters shall be determined by a resolution of a majority of the members present. Action may be taken by any committee without notice and without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV - OFFICERS

Section 1. Enumeration.

The officers of the Corporation shall consist of a Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary and such other officers as the Board of Directors may determine, including but not limited to one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. The salaries of officers elected by the Board of Directors shall be fixed from time to time by the Board of Directors or by such officer or officers as may be designated by resolution of the Board of Directors.

Section 2. Election.

The Chief Executive Officer, President, Chief Financial Officer, Treasurer and the Secretary shall be elected annually by the Board of Directors at their first meeting following the annual meeting of the stockholders. The Board of Directors may, from time to time, elect or appoint such other officers as the Board of Directors may determine, including but not limited to one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries.

Section 3. Qualification.

No officer need be a director. Two or more offices may be held by any one person. If required by a resolution of the Board of Directors, an officer shall give bond to the Corporation for the faithful performance of his or her duties, in such form and amount and with such sureties as the Board of Directors may determine. The premiums for such bonds shall be paid by the Corporation.

Section 4. Tenure and Removal.

Each officer of the Corporation shall hold office until the first meeting of the Board of Directors following the next annual meeting of the stockholders and until his or her successor is elected or appointed and qualified, or until he or she dies, resigns, is removed or becomes disqualified, unless a shorter term is specified in the resolution electing or appointing said officer. Any officer may resign by notice given in writing or by electronic transmission of his or her resignation to the Chairman of the Board, the Chief Executive Officer, the President, or the Secretary, of the Corporation or to the Board of Directors at a meeting of the Board. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any officer may be removed from office with or without cause only by a resolution of a majority of the directors then in office.

Section 5. Chief Executive Officer.

The Chief Executive Officer shall be the chief executive officer of the Corporation and shall, subject to the direction of the Board of Directors, have the responsibility for the general management and control of the day-to-day business and affairs of the Corporation. Unless otherwise provided by resolution of the Board of Directors, in the absence of the Chairman of the Board and any Vice Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and, if a director, meetings of the Board of Directors. The Chief Executive Officer shall have general supervision and direction of all of the other officers (other than the Chairman of the Board or any Vice Chairman of the Board), employees and agents of the Corporation. Subject to the Certificate of Incorporation, the other provisions of these Bylaws and any resolution of the Board of Directors, the Chief Executive Officer shall also have the power and authority to determine the duties of all officers, employees and agents of the Corporation, shall determine the compensation of any officers whose compensation is not established by the Board of Directors and shall have the power and authority to sign all contracts and other instruments of the Corporation which are authorized.

Section 6. President.

Except for meetings at which the Chairman of the Board, any Vice Chairman of the Board or the Chief Executive Officer presides, the President shall, if present, preside at all meetings of the stockholders and, if a director, at all meetings of the Board of Directors. The President shall, subject to the control and direction of the Chief Executive Officer and the Board of Directors, have and perform such powers and duties as may be prescribed by these Bylaws or from time to time be determined by the Chief Executive Officer, subject to any determination thereof by the Board of Directors. The President shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized. In the absence of a Chief Executive Officer, the President shall be the chief executive officer of the Corporation and shall, subject to the direction of the Board of Directors, have responsibility for the general management and control of the day-to-day business and affairs of the Corporation and shall have general supervision and direction of all of the officers (other than the Chairman of the Board, any Vice Chairman of the Board and the Chief Executive Officer of the Corporation), employees and agents of the Corporation.

Section 7. Vice Presidents.

The Vice Presidents, if any, in the order of their election, or in such other order as the Board of Directors or the Chief Executive Officer may determine, shall have and perform the powers and duties of the President (or such of the powers and duties as the Board of Directors or the Chief Executive Officer may determine) whenever the President is absent or unable to act, including the power to sign contracts and other instruments of the Corporation. The Vice Presidents, if any, shall also have such other powers and duties as may from time to time be determined by the Board of Directors or the Chief Executive Officer and shall have the power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized.

Section 8. Chief Financial Officer, Treasurer and Assistant Treasurers.

The Chief Financial Officer shall, subject to the control and direction of the Board of Directors and the Chief Executive Officer, be the chief financial officer of the Corporation and shall have and perform such powers and duties as may be prescribed in these Bylaws or be determined from time to time by the Board of Directors or the Chief Executive Officer, including the power to sign all contracts and other instruments of the Corporation which are authorized. All property of the Corporation in the custody of the Chief Financial Officer shall be subject at all times to the inspection and control of the Board of Directors and the Chief Executive Officer. The Chief Financial Officer shall have the responsibility for maintaining the financial records of the Corporation. The Chief Financial Officer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. Unless the Board of Directors has designated another person as the Corporation's Treasurer, the Chief Financial Officer shall also be the Treasurer. Unless otherwise determined by the Board of Directors, the Treasurer (if different than the Chief Financial Officer) and each Assistant Treasurer, if any, shall have and perform the powers and duties of the Chief Financial Officer whenever the Chief Financial Officer is absent or unable to act, and may at any time exercise such of the powers of the Chief Financial Officer, and such other powers and duties, as may from time to time be determined by the Board of Directors, the Chief Executive Officer or the Chief Financial Officer and shall have the power to sign all stock certificates, contracts and instruments of the Corporation which are authorized.

Section 9. Secretary and Assistant Secretaries.

The Board of Directors shall appoint a Secretary and, in his or her absence, one or more Assistant Secretaries. Unless otherwise directed by the Board of Directors or the Chairman of the Board, the Secretary or, in his or her absence, any Assistant Secretary shall attend all meetings of the directors and the stockholders and shall record all resolutions of the Board of Directors and votes of the stockholders and minutes of the proceedings at such meetings. The Secretary or, in his or her absence, any Assistant Secretary, shall notify the directors of their meetings, and shall have and perform such other powers and duties as may be prescribed in these Bylaws or as may from time to time be determined by the Board of Directors, including the power to sign contracts and other instruments of the Corporation. If the Secretary or an Assistant Secretary is elected but is not present at any meeting of the Board of Directors or the stockholders, a temporary Secretary may be appointed by the Board of Directors or the chairman of the meeting. The Secretary and each Assistant Secretary shall have the power to sign all stock certificates, contracts and instruments of the Corporation which are authorized.

Section 10. Bond.

If required by the Board of Directors, any officer shall give the Corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the Board of Directors, including but not limited to a bond for the faithful performance of the duties of his office and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control and belonging to the Corporation.

Section 11. Action with Respect to Securities of Other Corporations.

Unless otherwise directed by the Board of Directors or the Chief Executive Officer, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of the stockholders of or with respect to any action of the stockholders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V - STOCK

Section 1. Certificated and Uncertificated Stock.

Shares of the Corporation's stock may be certificated or uncertificated, as provided under the Delaware General Corporation Law, and shall be entered in the books of the Corporation and registered as they are issued. Any certificates representing shares of stock shall be in such form as the Board of Directors shall prescribe, certifying the number and class of shares of stock owned by the stockholder. Any certificates issued to a stockholder of the Corporation shall bear the name of the Corporation and shall be signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Any or all of the signatures on the certificate may be by facsimile.

Section 2. Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of this Article V or, in the case of uncertificated shares, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

Section 3. Record Date.

In order that the Corporation may determine the stockholders entitled to notice of any meeting of the stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of the stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of the stockholders shall be at the close of business on the day immediately preceding the day on which notice is given or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of the stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of the stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of the stockholders entitled to vote in accordance with the foregoing provisions of this Section 3 at the adjourned meeting.

Section 4. Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, the Corporation may issue a replacement certificate of stock or uncertificated shares in place of any certificate previously issued by the Corporation pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

Section 6. Interpretation.

The Board of Directors shall have the power to interpret all of the terms and provisions of these Bylaws, which interpretation shall be conclusive.

ARTICLE VI - NOTICES

Section 1. Notices.

If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

Section 2. Waiver of Notice.

A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice, except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened.

ARTICLE VII - INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, trustee, member or manager of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter referred to as an "Indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, manager, member, partner or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights to such Indemnitee than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; *provided, however*, that, except as provided in Section 3 of this Article with respect to proceedings to enforce rights to indemnification or as otherwise required by law, the Corporation shall not be required to indemnify or advance expenses to any such Indemnitee in connection with a proceeding (or part thereof) initiated by such Indemnitee unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses.

In addition to the right to indemnification conferred in Section 1 of this Article VII, an Indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition; *provided, however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3. Right of Indemnitees to Bring Suit.

If a claim under Section 1 or 2 of this Article VII is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expenses of prosecuting or defending such suit. In (i) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights.

The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any law, statute, the Corporation's Certificate of Incorporation as amended from time to time, these Bylaws, any agreement, any vote of the stockholders or resolution of disinterested directors or otherwise.

Section 5. Insurance.

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. Indemnity Agreements.

The Corporation may enter into indemnity agreements with the persons who are members of its Board of Directors from time to time, and with such officers, employees and agents of the Corporation and with such officers, directors, members, managers, partners, employees and agents of any direct or indirect subsidiaries of the Corporation as the Board of Directors may designate, such indemnity agreements to provide in substance that the Corporation will indemnify such persons as contemplated by this Article VII, and to include any other substantive or procedural provisions regarding indemnification as are not inconsistent with Delaware law. The provisions of such indemnity agreements shall prevail to the extent that they limit or condition or differ from the provisions of this Article.

Section 7. Indemnification of Employees and Agents of the Corporation.

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 8. Nature of Rights.

The rights conferred upon Indemnitees in this Article VII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, member, manager, employee, agent or trustee and shall inure to the benefit of such Indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 9. Severability.

If any word, clause, provision or provisions of this Article VII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article VII (including, without limitation, each portion of any Section of this Article VII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article VII (including, without limitation, each such portion of any Section of this Article containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE VIII - CERTAIN TRANSACTIONS

Section 1. Transactions with Interested Parties.

No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, limited liability company, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction or solely because the votes of such director or officer are counted for such purpose, if:

(a) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by a resolution of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

(b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

Section 2. Quorum.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee thereof which authorizes the contract or transaction.

ARTICLE IX - MISCELLANEOUS

Section 1. Facsimile Signatures.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. Reliance upon Books, Reports and Records.

Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year.

Except as otherwise determined by the Board of Directors from time to time, the fiscal year of the Corporation shall end on the last day of December of each year.

Section 5. Time Periods.

In applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 6. Pronouns.

Whenever the context may require, any pronouns used in these Bylaws shall include the corresponding masculine, feminine or neuter forms.

ARTICLE X - AMENDMENTS

In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to adopt, amend and repeal these Bylaws subject to the power of the holders of stock of the Corporation to adopt, amend or repeal these Bylaws.

Exhibit 4.1

NUMBER

C-
SHARES
SEE REVERSE FOR CERTAIN DEFINITIONS
CUSIP 50535E 108

PROSOMNUS, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
COMMON STOCK

This Certifies that

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF THE PAR VALUE OF $0.0001 EACH OF THE COMMON STOCK OF

PROSOMNUS, INC.
(THE "COMPANY")

transferable on the books of the Company in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the seal of the Company and the facsimile signatures of its duly authorized officers.

Chief Executive Officer [Corporate Seal] Delaware Chief Financial Officer

PROSOMNUS, INC.

The Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Company and the qualifications, limitations, or restrictions of such preferences and/or rights. This certificate and the shares represented thereby are issued and shall be held subject to all the provisions of the Certificate of Incorporation and all amendments thereto and resolutions of the Board of Directors providing for the issue of securities (copies of which may be obtained from the secretary of the Company), to all of which the holder of this certificate by acceptance hereof assents. The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT	— _____ Custodian _____
TEN ENT	— as tenants by the entireties		(Cust) (Minor)
JT TEN	— as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act
			(State)

Additional abbreviations may also be used though not in the above list.

For value received, hereby sells, assigns and transfers unto

(PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER(S) OF ASSIGNEE(S))

(PLEASE PRINT OR TYPEWRITE NAME(S) AND ADDRESS(ES), INCLUDING ZIP CODE, OF ASSIGNEE(S))

shares of the capital stock represented by the within Certificate, and hereby irrevocably constitutes and appoints

Attorney to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated:

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed:
By

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15 (OR ANY SUCCESSOR RULE).

Exhibit 10.1

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this "**Subscription Agreement**") is entered into this day of November, 2022, by and between Lakeshore Acquisition I Corp., a Cayman Islands exempted company (the "**Company**"), ProSomnus Holdings, Inc., a Delaware corporation ("**ProSomnus**"), and the undersigned ("**Subscriber**" or "**you**"). Defined terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Transaction Agreement (as defined below).

WHEREAS, the Company, ProSomnus, and the other parties named therein entered into an agreement and plan of merger (as it may be amended, the "**Transaction Agreement**"), pursuant to which, among other things, a wholly-owned subsidiary of the Company will merge with and into ProSomnus, and ProSomnus will continue as the surviving corporation and as a wholly-owned subsidiary of the Company (the "**Transaction**");

WHEREAS, in connection with and contingent on the closing of the Transaction (the "**Transaction Closing**"), as contemplated in Section 5.20 of the Transaction Agreement, and pursuant to the terms and conditions hereof, Subscriber desires to subscribe for and purchase from the Company that number of the Company's ordinary shares, par value $0.0001 per share (the "**Common Stock**"), set forth on the signature page hereto for a purchase price of $10.00 per share (the "**Per Share Price**"), or the aggregate purchase price set forth on the signature page hereto (the "**Purchase Price**"), and the Company desires to issue and sell to Subscriber at the Closing the Securities (as defined below) in consideration of the payment of the Purchase Price by or on behalf of Subscriber to the Company on or prior to the Closing (as defined below);

WHEREAS, the initial shareholders of the Company will cancel 410,025 founder shares that they received prior to the closing of the Company's initial public offering at the Transaction Closing; and

WHEREAS, in connection with the Transaction, certain other institutional "accredited investors" (within the meaning of Rule 501(a) under the Securities Act of 1933, as amended (the "**Securities Act**")) or "qualified institutional buyers" (within the meaning of Rule 144A under the Securities Act) (the "**Other Subscribers**") are entering into separate subscription agreements with the Company ("**Other Subscription Agreements**") substantially similar to this Subscription Agreement, pursuant to which such Other Subscribers, and Subscriber pursuant to this Subscription Agreement, have agreed, severally and not jointly, to purchase on the closing date of the Transaction (the "**Closing Date**") an aggregate of up to 1,000,000 shares of Common Stock at the Per Share Price (the "**Offering**").

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and pursuant to the terms and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Subscription.

1.1 Subject to the terms and conditions hereof, Subscriber hereby subscribes for and agrees to purchase from the Company at the Closing, and the Company hereby agrees to issue and sell to Subscriber, at the Closing, upon the payment of the Purchase Price, that number of shares of Common Stock set forth on the signature page hereto (the "**Securities**") on the terms and conditions set forth herein (such subscription and issuance, the "**Subscription**"). Prior to the Transaction closing, at the discretion of the Subscriber, as requested by ProSomnus, the Subscriber may advance to ProSomnus all or any portion of the Subscription amount for the Securities (without interest) (such amounts, the "**Forwarded Payment**") and will receive the Securities at the Closing. In the event that the Transaction does not close, the Subscriber shall receive from ProSomnus one share of Series B Preferred Stock, par value $0.0001 per share, of ProSomnus (the "**ProSomnus Securities**") for every $1.80 of Forwarded Payment pursuant to the immediately preceding sentence.

1.2 At the Closing, the Equity Investors (as defined in the Transaction Agreement, and which includes the Subscriber), will receive an additional 8.2005 shares of Common Stock from the Company for every $100.00 invested pursuant to this Agreement.

2. Representations, Warranties and Agreements.

2.1 Subscriber's Representations, Warranties and Agreements. To induce the Company to issue the Securities to Subscriber, Subscriber hereby represents and warrants to the Company and ProSomnus and agrees with the Company and ProSomnus as follows:

2.1.1 Subscriber has been duly formed or incorporated and is validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with power and authority to enter into, deliver and perform its obligations under this Subscription Agreement. If Subscriber is an individual, Subscriber has the authority to enter into, deliver and perform Subscriber's obligations under this Subscription Agreement.

2.1.2 This Subscription Agreement has been duly authorized, executed and delivered by Subscriber. If Subscriber is an individual, the signature on this Subscription Agreement is genuine, and Subscriber has legal competence and capacity to execute the same. This Subscription Agreement constitutes a valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

2.1.3 Assuming the accuracy of the Company's representations and warranties as set forth in Section 2.2 hereof, the execution, delivery and performance by Subscriber of this Subscription Agreement and the consummation of the transactions contemplated herein do not and will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Subscriber or any of its subsidiaries pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which Subscriber is a party or by which Subscriber is bound or to which any of the property or assets of Subscriber is subject, which would reasonably be expected to have a material adverse effect on the business, properties, financial condition, stockholders' equity or results of operations of Subscriber and its subsidiaries, taken as a whole, or materially and adversely affect the legal authority or ability of Subscriber to comply in all material respects with the terms of this Subscription Agreement (a "**Subscriber Material Adverse Effect**"); (ii) if Subscriber is not an individual, result in any violation of the provisions of the organizational documents of Subscriber or any of its subsidiaries in any material respect; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any court or government or governmental, tribunal, judicial, administrative federal, state, local, or foreign or any agency, bureau, board, commission instrumentality or authority thereof, including any state's attorney general or any court or arbitrator (public or private) ("**Authority**"), having jurisdiction over Subscriber or any of its subsidiaries or any of their respective properties that would reasonably be expected to have a Subscriber Material Adverse Effect.

2.1.4 The Subscriber (i) is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an "accredited investor" (within the meaning of Rule 501(a) under the Securities Act), in each case, satisfying the applicable requirements set forth on Schedule A, (ii) is acquiring all of the Securities only for his, her or its own account and not for the account of others, or if the Subscriber, or the investment advisor to which Subscriber has delegated decision making authority over its investments, is subscribing for the Securities as a fiduciary or agent for one or more investment accounts, the Subscriber has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations and agreements herein on behalf of each owner of each such account, and (iii) is acquiring the Securities for investment purposes only and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act or the laws of any jurisdiction (and shall provide the requested information set forth on Schedule A). If the Subscriber is an entity, the Subscriber is not an entity formed for the specific purpose of acquiring the Securities.

2.1.5 Subscriber understands and agrees that the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Securities have not been registered under the Securities Act. Subscriber understands and agrees that the Securities may not be resold, transferred, pledged or otherwise disposed of by Subscriber absent an effective registration statement under the Securities Act with respect to the Securities except (i) to the Company or a subsidiary thereof, or (ii) pursuant to another applicable exemption from the registration requirements of the Securities Act that is available and that any book entries representing the Securities shall contain a restrictive legend to such effect. Subscriber understands and agrees that the Securities will not be eligible for resale pursuant to Rule 144A promulgated under the Securities Act. Subscriber understands and agrees that the Securities will be subject to the foregoing transfer restrictions and, as a result of these transfer restrictions, Subscriber may not be able to readily resell the Securities and may be required to bear the financial risk of an investment in the Securities for an indefinite period of time. Subscriber understands that it has been advised to consult legal, tax and accounting counsel prior to making any offer, resale, transfer, pledge or other disposition of any of the Securities.

2.1.6 Subscriber understands and agrees that Subscriber is purchasing the Securities directly from the Company. Subscriber further acknowledges that there have been no representations, warranties, covenants and agreements made to Subscriber by the Company or any of its officers or directors, expressly or by implication, other than those representations, warranties, covenants and agreements included in this Subscription Agreement, and Subscriber is not relying on any representations, warranties or covenants other than those expressly set forth in this Subscription Agreement.

2.1.7 Subscriber represents and warrants that (i) it is not a Benefit Plan Subscriber as contemplated by the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), or (ii) its acquisition and holding of the Securities will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Internal Revenue Code of 1986, as amended, or any applicable similar law.

2.1.8 In making its decision to purchase the Securities, Subscriber represents that it has relied solely upon independent investigation made by Subscriber and the representations, warranties, and covenants of the Company contained in this Subscription Agreement. Subscriber acknowledges and agrees that Subscriber has received and has had an adequate opportunity to review, such financial and other information as Subscriber deems necessary in order to make an investment decision with respect to the Securities and made its own assessment and is satisfied concerning the relevant tax and other economic considerations relevant to Subscriber's investment in the Securities. Without limiting the generality of the foregoing, Subscriber acknowledges that it has had the opportunity to review the documents provided to Subscriber by the Company, including (collectively, the "**Disclosure Documents**"): (i) the final prospectus of the Company, dated as of June 10, 2021 and filed with the Securities and Exchange Commission (the "**Commission**") (File Nos. 333-255174) (the "**Prospectus**"), (ii) each SEC Document (as defined below) through the date of this Subscription Agreement, (iii) the Transaction Agreement, a copy of which will be filed by the Company with the Commission and (iv) the investor presentation by the Company and ProSomnus (the "**Investor Presentation**"), a copy of which was furnished by the Company to the Commission. Subscriber represents and agrees that Subscriber and its professional advisor(s), if any, have had the full opportunity to ask the Company's management questions, receive such answers and obtain such information as Subscriber and its professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Securities. The Subscriber further acknowledges that the information contained in the Disclosure Documents is subject to change, and that any changes to the information contained in the Disclosure Documents, including any changes based on updated information or changes in terms of the Transaction, shall in no way affect Subscriber's obligation to purchase the Securities hereunder, except as otherwise provided herein, and that, in purchasing the Securities, Subscriber is not relying upon any projections contained in the Investor Presentation.

2.1.9 Subscriber became aware of this offering of the Securities solely (a) by means of direct contact from the Company, ProSomnus, or a representative of the Company or ProSomnus, or (b) directly from the Company as a result of a pre-existing, substantial relationship with the Company, and the Securities were offered to Subscriber solely by direct contact between Subscriber and either the Company or ProSomnus. Subscriber did not become aware of this offering of the Securities, nor were the Securities offered to Subscriber, by any other means. Subscriber acknowledges that the Company represents and warrants that the Securities (i) were not offered by any form of general solicitation or general advertising and (ii) are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws.

2.1.10 Subscriber acknowledges that it is aware that there are substantial risks incident to the purchase and ownership of the Securities. Subscriber has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Securities, and Subscriber has sought such accounting, legal and tax advice as Subscriber has considered necessary to make an informed investment decision. Subscriber understands and acknowledges that it (i) is a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities and (ii) has exercised independent judgment in evaluating its participation in the purchase of the Securities.

2.1.11 Subscriber represents and acknowledges that Subscriber has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment in the Securities, has analyzed and fully considered the risks of an investment in the Securities and determined that the Securities are a suitable investment for Subscriber and that Subscriber is able at this time and in the foreseeable future to bear the economic risk of a total loss of Subscriber's investment in the Company. Subscriber further acknowledges specifically that a possibility of total loss of investment exists.

2.1.12 Subscriber understands and agrees that no federal or state agency has passed upon or endorsed the merits of the offering of the Securities or made any findings or determination as to the fairness of this investment.

2.1.13 Subscriber represents and warrants that Subscriber is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, each of which is administered by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**") or in any Executive Order issued by the President of the United States and administered by OFAC ("**OFAC List**"), or a person or entity prohibited by any OFAC sanctions program, (ii) owned or controlled by, or acting on behalf of, a person, that is named on an OFAC List; (iii) organized, incorporated, established, located, resident or born in, or a citizen, national, or the government, including any political subdivision, agency, or instrumentality thereof, of any country or territory embargoed or subject to substantial trade restrictions by the United States; (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (collectively, a "**Prohibited Investor**"). Subscriber agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Subscriber is permitted to do so under applicable law. Subscriber represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "**BSA**"), as amended by the USA PATRIOT Act of 2001 (the "**PATRIOT Act**"), and its implementing regulations (collectively, the "**BSA/PATRIOT Act**"), that Subscriber, directly or indirectly through a third party administrator, maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. Subscriber also represents that, to the extent required, it, directly or indirectly through a third party administrator, maintains policies and procedures reasonably designed for the screening of its investors against the OFAC sanctions programs, including the OFAC List, and to otherwise ensure compliance with OFAC-administered sanctions programs. Subscriber further represents and warrants that, to the extent required, it, directly or indirectly through a third-party administrator, maintains policies and procedures reasonably designed to ensure that the funds held by Subscriber and used to purchase the Securities were legally derived.

2.1.14 On the date the Purchase Price will be required to be funded pursuant to Section 3.1, Subscriber will have sufficient immediately available funds to pay the Purchase Price pursuant to Section 3.1.

2.1.15 Subscriber represents that no disqualifying event described in Rule 506(d)(1)(i)-(viii) under the Securities Act (a "**Disqualification Event**") is applicable to Subscriber or any of its Rule 506(d) Related Parties (as defined below), except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Subscriber hereby agrees that it shall notify the Company promptly in writing in the event a Disqualification Event becomes applicable to Subscriber or any of its Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. For purposes of this Section 2.1.15, "Rule 506(d) Related Party" shall mean a person or entity that is a direct beneficial owner of Subscriber's securities for purposes of Rule 506(d) under the Securities Act.

2.1.16 No broker, finder or other financial consultant has acted on behalf of Subscriber in connection with this Subscription Agreement or the transactions contemplated hereby in such a way as to create any liability on the Company.

2.1.17 Except as expressly disclosed in a Schedule 13D or Schedule 13G (or amendments thereto) filed by such Subscriber with the Commission with respect to the beneficial ownership of the Company's Common Stock prior to the date hereof, Subscriber is not currently (and at all times through Closing will refrain from being or becoming) a member of a "group" (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or any successor provision) acting for the purpose of acquiring, holding or disposing of equity securities of the Company (within the meaning of Rule 13d-5(b)(1) under the Exchange Act).

2.1.18 No foreign person (as defined in 31 C.F.R. Part 800.224) in which the national or subnational governments of a single foreign state have a substantial interest (as defined in 31 C.F.R. Part 800.244) will acquire a substantial interest in the Company as a result of the purchase by such Subscriber and sale of the Securities hereunder such that a declaration to the Committee on Foreign Investment in the United States would be mandatory under 31 C.F.R. Part 800.401, and no foreign person will have control (as defined in 31 C.F.R. Part 800.208) over the Company from and after the Closing as a result of the purchase by such Subscriber and sale of the Securities hereunder.

2.2 Company's Representations, Warranties and Agreements. To induce Subscriber to purchase the Securities, the Company hereby represents and warrants to Subscriber and agrees with Subscriber as follows:

2.2.1 The Company is an exempted company duly organized, validly existing and in good standing under the Laws of the Cayman Islands, with the requisite corporate power and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

2.2.2 The Securities have been duly authorized and, when issued and delivered to Subscriber against full payment for the Securities in accordance with the terms of this Subscription Agreement, and registered with the Company's transfer agent, the Securities will be validly issued, fully paid, non-assessable and free and clear of any liens or other restrictions whatsoever (other than those arising under state or federal securities laws or as set forth herein), and will not be issued in violation of or subject to any preemptive or similar rights created under the Company's organizational documents or any agreement or other instrument to which the Company is a party or by which it is otherwise bound.

2.2.3 This Subscription Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

2.2.4 The execution, delivery and performance of this Subscription Agreement (including compliance by the Company with all of the provisions hereof), the issuance and sale of the Securities and the consummation of the certain other transactions contemplated herein will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Company pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, which would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, assets, liabilities, operations, financial condition, stockholders' equity or results of operations of the Company or materially and adversely affect the validity of the Securities or the legal authority or ability of the Company to comply in all material respects with the terms of this Subscription Agreement (a "**Material Adverse Effect**"); (ii) result in any violation of the provisions of the organizational documents of the Company in any material respect; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any Authority having jurisdiction over the Company or any of its properties that would reasonably be expected to have a Material Adverse Effect.

2.2.5 Neither the Company, nor any person acting on its behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) of the Securities Act for the exemption from registration for the transactions contemplated hereby or would require registration of the issuance or sale of the Securities under the Securities Act.

2.2.6 Neither the Company nor any person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) in connection with the offer or sale of any of the Securities and neither the Company, nor any person acting on its behalf has offered any of the Securities in a manner involving any public offering under, or in a distribution in violation of, the Securities Act or any state securities laws.

2.2.7 The Company has not taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation, administration or winding up or failed to pay its debts when due, nor does the Company have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or seek to commence an administration.

2.2.8 As of the date hereof, except as set forth in the SEC Documents (as defined below), the Other Subscription Agreements, the Transaction Agreement and any promissory notes issued by the Company's sponsor or its affiliate to the Company for working capital purposes as described in the SEC Documents ("**Sponsor Loans**"), there are no outstanding options, warrants or other rights to subscribe for, purchase or acquire from the Company any Purchaser Ordinary Shares or other equity interests in the Company, or securities convertible into or exchangeable or exercisable for such equity interests. As of the date hereof, other than any subsidiary created for purposes of the Transaction, the Company has no subsidiaries and does not own, directly or indirectly, interests or investments (whether equity or debt) in any person, whether incorporated or unincorporated. There are no stockholder agreements, voting trusts or other agreements or understandings to which the Company is a party or by which it is bound relating to the voting of any securities of the Company, other than (A) as set forth in the Company's filings with the Commission, together with any amendments, restatements or supplements thereto (the "**SEC Documents**") and (B) as contemplated by the Transaction Agreement. Except as disclosed in the SEC Documents, the Company has no outstanding indebtedness and will not have any outstanding long-term indebtedness as of immediately prior to the Closing (excluding any Sponsor Loans).

2.2.9 Assuming the accuracy of Subscriber's representations and warranties set forth in this Subscription Agreement, no registration under the Securities Act is required for the offer and sale of the Common Stock by the Company to Subscriber and the Common Stock is not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act or any state securities laws.

2.2.10 Except as disclosed in the SEC Documents, the Company has made all filings required to be filed by it with the Commission and, as of their respective dates, each of the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Documents, 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; provided, that the Company makes no such representation or warranty with respect to any information relating to ProSomnus or any of its affiliates included in any SEC Document or filed as an exhibit thereto. Except as to the accounting relating to the Warrants, each of the financial statements of the Company included in the SEC Documents 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 and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. As of the date hereof, there are no outstanding or unresolved comments in comment letters from the Staff of the Commission with respect to any of the SEC Documents.

2.2.11 Other than the Other Subscription Agreements, the Transaction Agreement and any other agreement expressly contemplated by the Transaction Agreement, the Company has not entered into any side letter or similar agreement with any Other Subscriber or any other investor in connection with such Other Subscriber's or investor's investment in the Company. No Other Subscription Agreement includes a price per Security different from this Subscription Agreement or other terms, rights or conditions that are more advantageous (economically or otherwise) in any material respect to any such Other Subscriber than Subscriber hereunder, and such Other Subscription Agreements have not been amended or modified in any material respect following the date of this Subscription Agreement in any manner that materially benefits the Other Subscriber thereunder unless Subscriber has been granted the same benefits.

2.2.12 The Company is not, and immediately after receipt of payment for the Securities will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

2.2.13 As of the date of this Agreement the Company has not received any written communication from a governmental entity that alleges that the Company is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

2.2.14 Except for such matters as have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect, as of the date of this Subscription Agreement, there is no (i) action, claim, inquiry, arbitration, investigation, litigation or other proceeding pending, or, to the knowledge of the Company, threatened against the Company or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against the Company.

2.2.15 Except for discussions specifically regarding the offer and sale of the Securities, the Company confirms that neither it nor any other person acting on its behalf has provided Subscriber or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information concerning the Company or any of its subsidiaries, other than with respect to the Transaction and the transactions contemplated by this Subscription Agreement or the Other Subscription Agreements. Except with respect to the Transaction and the transactions contemplated by this Subscription Agreement and the Other Subscription Agreements, no event or circumstance has occurred which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly disclosed.

2.3 ProSomnus's Representations, Warranties and Agreements. To induce Subscriber to purchase the Securities, ProSomnus hereby represents and warrants to Subscriber and agrees with Subscriber as follows:

2.3.1 ProSomnus has been duly incorporated and is validly existing as a corporation in good standing under the Delaware General Corporation Law, with the requisite corporate power and authority to own, lease and operate its properties and conduct its business as presently conducted and to enter into, deliver and perform its obligations under this Subscription Agreement.

2.3.2 This Subscription Agreement has been duly authorized, executed and delivered by ProSomnus and is a valid and binding obligation of ProSomnus, enforceable against it in accordance with its terms, except as may be limited or otherwise affected by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws relating to or affecting the rights of creditors generally, and (ii) principles of equity, whether considered at law or equity.

2.3.3 The execution, delivery and performance of this Subscription Agreement (including compliance by ProSomnus with all of the provisions hereof), the issuance and sale of the Securities and the consummation of the certain other transactions contemplated herein will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of ProSomnus pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which ProSomnus is a party or by which ProSomnus is bound or to which any of the property or assets of ProSomnus is subject, which would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, assets, liabilities, operations, financial condition, stockholders' equity or results of operations of ProSomnus or materially and adversely affect the validity of the Securities or the legal authority or ability of ProSomnus to comply in all material respects with the terms of this Subscription Agreement (a "**Material Adverse Effect**"); (ii) result in any violation of the provisions of the organizational documents of ProSomnus in any material respect; or (iii) result in any violation of any statute or any judgment, order, rule or regulation of any Authority having jurisdiction over ProSomnus or any of its properties that would reasonably be expected to have a Material Adverse Effect.

2.3.4 Neither ProSomnus, nor any person acting on its behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by ProSomnus on Section 4(a)(2) of the Securities Act for the exemption from registration for the transactions contemplated hereby or would require registration of the issuance or sale of the Securities under the Securities Act.

2.3.5 Neither ProSomnus nor any person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) in connection with the offer or sale of any of the Securities and neither ProSomnus, nor any person acting on its behalf has offered any of the Securities in a manner involving any public offering under, or in a distribution in violation of, the Securities Act or any state securities laws.

2.3.6 ProSomnus has not taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation, administration or winding up or failed to pay its debts when due, nor does ProSomnus have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or seek to commence an administration.

2.3.7 Assuming the accuracy of Subscriber's representations and warranties set forth in this Subscription Agreement, no registration under the Securities Act is required for the offer and sale of common stock by ProSomnus to Subscriber and the ProSomnus common stock is not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act or any state securities laws.

2.3.8 Other than the Other Subscription Agreements, the Transaction Agreement and any other agreement expressly contemplated by the Transaction Agreement, ProSomnus has not entered into any side letter or similar agreement with any Other Subscriber or any other investor in connection with such Other Subscriber's or investor's investment in ProSomnus. No Other Subscription Agreement includes a price per Security different from this Subscription Agreement or other terms, rights or conditions that are more advantageous (economically or otherwise) in any material respect to any such Other Subscriber than Subscriber hereunder, and such Other Subscription Agreements have not been amended or modified in any material respect following the date of this Subscription Agreement in any manner that materially benefits the Other Subscriber thereunder unless Subscriber has been granted the same benefits.

2.3.9 ProSomnus is not, and immediately after receipt of payment for the Securities will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

2.3.10 As of the date of this Agreement ProSomnus has not received any written communication from a governmental entity that alleges that ProSomnus is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

2.3.11 Except for such matters as have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect, as of the date of this Subscription Agreement, there is no (i) action, claim, inquiry, arbitration, investigation, litigation or other proceeding pending, or, to the knowledge of ProSomnus, threatened against ProSomnus or (ii) judgment, decree, injunction, ruling or order of any governmental entity or arbitrator outstanding against ProSomnus.

2.3.12 Except for discussions specifically regarding the offer and sale of the Securities, ProSomnus confirms that neither it nor any other person acting on its behalf has provided Subscriber or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information concerning ProSomnus or any of its subsidiaries, other than with respect to the Transaction and the transactions contemplated by this Subscription Agreement or the Other Subscription Agreements. Except with respect to the Transaction and the transactions contemplated by this Subscription Agreement and the Other Subscription Agreements, no event or circumstance has occurred which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by ProSomnus but which has not been so publicly disclosed.

3. Settlement Date and Delivery.

3.1 Closing. The closing of the Subscription contemplated hereby (the "**Closing**") is contingent upon the substantially concurrent consummation of the Transaction, as provided for by the Transaction Agreement. The Closing shall occur on the closing date of, and immediately prior to, or simultaneously with, the consummation of the Transaction. Upon written notice from (or on behalf of) the Company to Subscriber (the "**Closing Notice**") that the Company reasonably expects all conditions to the Transaction Closing to be satisfied on a date that is not less than five (5) business days from the date of the Closing Notice, Subscriber shall deliver to the Company, at least two (2) business day prior to the scheduled closing date specified in the Closing Notice (the "**Scheduled Closing Date**"), to be held in escrow until the Closing, the Purchase Price for the Securities less the Forwarded Payment, if any, by wire transfer of United States dollars in immediately available funds to the account specified by the Company in the Closing Notice, which at the Closing will be released to the Company against delivery by the Company promptly after the Closing to Subscriber of the Securities in book-entry form (or in certificated form if indicated by Subscriber on Subscriber's signature page hereto), free and clear of any liens or other restrictions (other than those arising under this Subscription Agreement or applicable securities laws). Not later than one (1) business day after the Closing, the Company shall deliver to Subscriber the Securities in book entry form, in the name of Subscriber (or its nominee in accordance with its delivery instructions) or to a custodian designated by Subscriber, as applicable. In the event the Closing does not occur within three (3) business days of the Scheduled Closing Date, the Company shall promptly (but not later than two (2) business days thereafter) return the Purchase Price less any Forwarded Payment to Subscriber by wire transfer of U.S. dollars in immediately available funds to the account specified by the Subscriber, and any book-entries for the Securities shall be deemed repurchased and cancelled. Unless this Subscription Agreement is terminated pursuant to Section 5 below, the failure of the Closing to occur on the Scheduled Closing Date shall not terminate this Subscription Agreement or otherwise relieve any party of any of its obligations hereunder. For purposes of this Subscription Agreement, "business day" means any day that, in New York, New York, is neither a legal holiday nor a day on which commercial banking institutions are generally authorized or required by law or regulation to close (excluding as a result of "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems, including for wire transfers, of commercial banking institutions in New York, New York are generally open for use by customers on such day).

3.2 Conditions to Closing.

3.2.1 The Closing shall be subject to the satisfaction or valid waiver by the Company, on the one hand, or Subscriber, on the other, of the conditions that, on the Closing Date:

(i) No suspension of the qualification of the Securities for offering or sale or trading of the Common Stock on the Nasdaq Capital Market ("**Nasdaq**") shall have occurred and be continuing.

(ii) No Authority shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, judgment, decree, executive order or award (whether temporary preliminary or permanent) which is then in effect and has the effect of making the transactions contemplated hereby illegal or otherwise prohibiting or enjoining the consummation of the transactions contemplated hereby.

(iii) All conditions precedent to the consummation of the Transaction set forth in the Transaction Agreement, as determined by the parties to the Transaction Agreement, shall have been satisfied or waived by the party entitled to the benefit thereof (other than those conditions that, by their nature, may only be satisfied at the consummation of the Transaction, but subject to satisfaction of such conditions as of the consummation of the Transaction), and the Transaction Closing shall be substantially concurrent with the Closing.

3.2.2 The Closing shall also be subject to the satisfaction or valid waiver by the Subscriber of the conditions that, on the Closing Date:

(i) The Company shall have performed, satisfied and complied in all material respects with all agreements, conditions and covenants required by this Subscription Agreement to be performed by the Company at or prior to the Closing.

(ii) The representations and warranties of the Company contained in this Subscription Agreement shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect (as defined herein), which representations and warranties shall be true in all respects) at and as of the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Material Adverse Effect, which representations and warranties shall be true in all respects) as of such date), and consummation of the Closing, shall constitute a reaffirmation by the Company of each of the representations, warranties and agreements of the Company contained in this Subscription Agreement as of the Closing Date.

(iii) No amendment, waiver or modification of the Transaction Agreement shall have occurred that would reasonably be expected to materially and adversely affect the economic benefits that Subscriber would reasonably expect to receive under this Subscription Agreement, unless Subscriber has previously consented in writing to such amendment, waiver or modification.

(iv) Company shall have filed with Nasdaq an application or supplemental listing application for the listing of the Securities and Nasdaq shall have raised no objection with respect thereto, subject to official notice of issuance.

(v) There shall have been no amendment, waiver or modification to the Other Subscription Agreements that materially benefits (economically or otherwise) the Other Subscribers thereunder unless this Subscription Agreement shall have been amended to reflect the same terms.

(vi) From and after the date hereof, there shall have not occurred a Material Adverse Effect which is continuing and uncured.

3.2.3 The Closing shall also be subject to the satisfaction or valid waiver by the Company of the conditions that, on the Closing Date:

(i) Subscriber shall have performed, satisfied and complied in all material respects with all agreements, conditions and covenants required by this Subscription Agreement to be performed by Subscriber at or prior to the Closing.

(ii) All representations and warranties of Subscriber contained in this Subscription Agreement shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Subscriber Material Adverse Effect, which representations and warranties shall be true in all respects) at and as of the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct in all material respects (other than representations and warranties that are qualified as to materiality or Subscriber Material Adverse Effect, which representations and warranties shall be true in all respects) as of such date), and consummation of the Closing, shall constitute a reaffirmation by the Subscriber of each of the representations, warranties and agreements of the Subscriber contained in this Subscription Agreement as of the Closing Date.

4. Transfer Restrictions.

4.1 After the Closing, the Securities and, if applicable, the ProSomnus Securities, may only be resold, transferred, pledged or otherwise disposed of in compliance with state and federal securities laws and pursuant to an effective registration statement, Rule 144 under the Securities Act ("**Rule 144**") or pursuant to another applicable exemption from the registration requirements of the Securities Act, to the Company or to an affiliate of Subscriber. As a condition of transfer (other than pursuant to an effective registration statement pursuant to Rule 144 or pursuant to another applicable exemption from the registration requirements of the Securities Act), any such transferee shall agree in writing to be bound by the terms of this Subscription Agreement and shall have the rights and obligations of Subscriber under this Agreement.

4.2 The Company acknowledges that the Securities may be pledged by Subscriber in connection with a bona fide margin agreement, provided that such pledge shall be pursuant to an available exemption from the registration requirements of the Securities Act or pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of such pledge, and Subscriber effecting a pledge of the Securities shall not be required to provide the Company with any notice thereof; provided, however, that neither the Company nor its counsel shall be required to take any action (or refrain from taking any action) in connection with any such pledge, other than providing any such lender of such margin agreement with an acknowledgment that the Securities are not subject to any contractual lock up or prohibition on pledging, the form of such acknowledgment to be subject to review and comment by the Company in all respects.

4.3 Subject to applicable requirements of the Securities Act and the interpretations of the Commission thereunder and any requirements of the Company's transfer agent, the Company shall use commercially reasonable efforts to ensure that instruments, whether certificated or uncertificated, evidencing the Securities shall not contain any legend (including the legend set forth in Section 4.4 below) (i) following any sale of such Securities pursuant to Rule 144, (ii) if such Securities are eligible for sale under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, and in each case, Subscriber provides the Company with an undertaking to effect any sales or other transfers in accordance with the Securities Act, or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission).

4.4 Subscriber agrees to the imprinting, so long as is required by this Section 4, of a legend on any of the Securities and, if applicable, the ProSomnus Securities, in the following form:

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

4.5 Subscriber hereby acknowledges and agrees that it will not, and will cause each person acting at Subscriber's direction or pursuant to any understanding with Subscriber to not, directly or indirectly offer, sell, pledge, contract to sell or sell any option to purchase, or engage in hedging activities or execute any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act, in each case that result in Subscriber having a net short cash position in respect of the Securities until the Closing (or such earlier termination of this Subscription Agreement in accordance with its terms). For the avoidance of doubt, nothing contained herein shall prohibit Subscriber from (i) any purchase of securities by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates in an open market transaction after the execution of this Subscription Agreement, or (ii) any sale (including the exercise of any redemption right) of securities of the Company (A) held by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates prior to the execution of this Subscription Agreement or (B) purchased by Subscriber, its controlled affiliates or any person or entity acting on behalf of Subscriber or any of its controlled affiliates in an open market transaction after the execution of this Subscription Agreement. Notwithstanding the foregoing, (i) nothing herein shall prohibit other entities under common management with Subscriber that have no knowledge of this Subscription Agreement or of Subscriber's participation in the Transaction (including Subscriber's controlled affiliates and/or affiliates) from entering into any "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act and (ii) in the case of a Subscriber that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Subscriber's assets and the portfolio managers have no knowledge of the investment decisions made by the portfolio managers managing other portions of such Subscriber's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Subscription Agreement.

4.6 The Company will use its commercially reasonable efforts to make all Securities eligible on the Direct Registration System of the Depository Trust Company so that Subscriber can move shares to respective prime broker accounts and sell without restriction.

5. Termination. Except for the provisions of Sections 5, 7, 8 and 9 and the provisions of this Agreement providing for the return of funds previously delivered other than the Forwarded Payments in the event the Closing does not occur, all of which shall survive any termination hereunder, this Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (i) such date and time as the Transaction Agreement is terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties hereto to terminate this Subscription Agreement, (iii) at the election of the Subscriber, if the Closing shall not have occurred on or before the Outside Date (as defined in the Transaction Agreement), or (iv) if any of the conditions to Closing set forth in Section 3.2 are not satisfied on or prior to the Closing Date and, as a result thereof, the transactions contemplated by this Subscription Agreement are not consummated at the Closing; *provided*, that, subject to the limitations set forth in Section 8, nothing herein will relieve any party from liability for any willful breach hereof prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from such breach; and further provided, that for the avoidance of doubt, the Forwarded Payment and issuance of ProSomnus Securities is intended to be final, and no Forwarded Payments made or ProSomnus Securities issued shall be subject to refund or rescission. The Company shall notify Subscriber of the termination of the Transaction Agreement promptly after the termination of such agreement. Upon the termination hereof in accordance with this Section 5, any monies paid by Subscriber to the Company in connection herewith shall promptly (and in any event within two (2) Business Days) be returned in full to Subscriber by wire transfer of U.S. dollars in immediately available funds to the account specified by Subscriber.

6. Registration Rights.

6.1 The Company agrees that within thirty (30) days after the Closing Date, the Company will file with the Commission (at the Company's sole cost and expense) a registration statement to register under and in accordance with the provisions of the Securities Act, the resale of all of the Registrable Securities (as defined below) on Form S-3 or Form S-1 (which in either case shall be filed pursuant to Rule 415 under the Securities Act as a secondary-only registration statement), which shall be on Form S-3 if the Company is then eligible for such short form, or any similar or successor short form registration or, if the Company is not then eligible for such short form registration or would not be able to register for resale all of the Registrable Securities on Form S-3, on Form S-1 or any similar or successor long form registration (the "**Registration Statement**"). The Company will provide a draft of the Registration Statement to Subscriber for review at least two (2) business days in advance of the filing the Registration Statement, and shall advise Subscriber promptly upon the Registration Statement being declared effective by the Commission. The Company shall use its commercially reasonable efforts to have the Registration Statement declared effective by the Commission as soon as practicable after the filing thereof, but no later than the earlier of (i) sixty (60) calendar days (or ninety (90) calendar days if the Commission notifies the Company that it will "review" the Registration Statement) following the Closing Date and (ii) the fifth (5^{th}) business day after the date the Company is notified in writing by the Commission that the Registration Statement will not be "reviewed" or will not be subject to further review (such earlier date, the "**Effectiveness Deadline**"); provided, however, that the Company's obligations to include the Registrable Securities of Subscriber in the Registration Statement are contingent upon Subscriber furnishing in writing to the Company such information regarding Subscriber, the securities of the Company held by Subscriber and the intended method of disposition of the Registrable Securities as shall be reasonably requested by the Company to effect the registration of the Registrable Securities, and Subscriber shall execute such documents in connection with such registration as the Company may reasonably request that are customary of a selling shareholder in similar situations. Notwithstanding the foregoing, if the Commission prevents the Company from including any or all of the Common Stock proposed to be registered under the Registration Statement due to limitations on the use of Rule 415 under the Securities Act for the resale of the Registrable Securities by the Subscribers or otherwise, the Company shall use its best efforts to ensure that the Commission determines that (1) the offering contemplated by the Registration Statement is a bona fide secondary offering and not an offering "by or on behalf of the issuer" as defined in Rule 415 of the Securities Act and (2) Subscriber is not a statutory underwriter. If the Company is unsuccessful in the efforts described in the preceding sentence then (i) the Company shall cause such Registration Statement to register for resale such number of Common Stock which is equal to the maximum number of Common Stock as is permitted by the Commission and (ii) Subscriber shall have an opportunity to withdraw its Registrable Securities. In such event, the number of Common Stock to be registered for each selling shareholder named in the Registration Statement shall be reduced pro rata among all such selling shareholders. The Company will use its commercially reasonable efforts to maintain the continuous effectiveness of the Registration Statement until the earliest of (x) such time as when all of Subscriber's securities included therein cease to be Registrable Securities, (y) such time as when all of Subscriber's Registrable Securities included in such Registration Statement have actually been sold and (z) three years from the Closing Date. The Company will use its commercially reasonable efforts to cause the removal of all restrictive legends from any Registrable Securities being sold under the Registration Statement at the time of sale of such Registrable Securities upon the receipt from the Subscriber of such supporting documentation, if any, as requested by the Company. The Company will use commercially reasonable efforts to file all reports, and provide all customary and reasonable cooperation, reasonably necessary to enable Subscriber to resell Registrable Securities pursuant to the Registration Statement and Rule 144, qualify the Registrable Securities for listing on the applicable stock exchange and update or amend the Registration Statement as necessary to include Registrable Securities. "**Registrable Securities**" shall mean, as of any date of determination, the Securities and any other equity security issued or issuable with respect to the Securities by way of share split, dividend, distribution, recapitalization, merger, exchange, replacement or similar event, provided, however, that such securities shall cease to be Registrable Securities at the earliest of (A) three (3) years after the Closing Date, (B) the date all Securities held by Subscriber may be sold by Subscriber without volume or manner of sale limitations pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable), (C) the date on which such securities have actually been sold by Subscriber, or (D) when such securities shall have ceased to be outstanding. Notwithstanding the foregoing, Subscriber shall not be required to sign any form of lock-up agreement in connection with the Registration Statement. Subscriber may deliver written notice (an "**Opt-Out Notice**") to the Company requesting that Subscriber not receive notices from the Company otherwise required by this Section 6.1; provided, however, that Subscriber may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from Subscriber (unless subsequently revoked), (i) the Company shall not deliver any such notices to Subscriber and Subscriber shall no longer be entitled to the rights associated with any such notice and (ii) Subscriber will notify the Company in writing at least three (3) business days in advance of each intended use of an effective Registration Statement, and if a notice of a Suspension Event (as defined below) was previously delivered (or would have been delivered but for the provisions of this Section 6.1) and the related suspension period remains in effect, the Company will so notify Subscriber, within two (2) business days after Subscriber's notification to the Company, by delivering to Subscriber a copy of such previous notice of Suspension Event, and thereafter will provide Subscriber with the related notice of the conclusion of such Suspension Event promptly following its availability.

6.2 At its expense the Company shall:

6.2.1 except for such times as the Company is permitted hereunder to suspend the use of the prospectus forming part of a Registration Statement, use its commercially reasonable efforts to keep such registration, and any qualification, exemption or compliance under state securities laws that the Company determines to obtain in connection with such registration, continuously effective with respect to Subscriber, and to keep the applicable Registration Statement or any subsequent shelf registration statement free of any material misstatements or omissions, until all Securities acquired by Subscriber hereunder cease to be Registrable Securities or such shorter period upon which Subscriber has notified the Company that such Registrable Securities have actually been sold, or otherwise when such Registration Statement is no longer required to be effective under this Section 6;

6.2.2 subject to an Opt-Out Notice, advise Subscriber within three (3) business days: (A) of the issuance by the Commission of any stop order suspending the effectiveness of any Registration Statement or the initiation of any proceedings for such purpose; (B) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and (C) subject to the provisions in this Subscription Agreement, of the occurrence of any event that requires the making of any changes in any Registration Statement or prospectus included therein so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading. Notwithstanding anything to the contrary set forth herein, the Company shall not, when so advising Subscriber of such events, provide Subscriber with any material, nonpublic information regarding the Company other than to the extent that providing notice to Subscriber of the occurrence of the events listed in (A) through (C) above constitutes material, nonpublic information regarding the Company;

6.2.3 use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement as promptly as reasonably practicable;

6.2.4 upon the occurrence of any event contemplated in Section 6.2.2, except for such times as the Company is permitted hereunder to suspend, and has suspended, the use of a prospectus forming part of a Registration Statement, the Company shall use its commercially reasonable efforts to as promptly as reasonably practicable prepare a post-effective amendment to such Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, such prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

6.2.5 use its commercially reasonable efforts to cause all Securities to be listed on each securities exchange or market, if any, on which the Common Stock issued by the Company have been listed; and

6.2.6 use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Registrable Securities contemplated hereby.

6.3 Notwithstanding anything to the contrary in this Subscription Agreement, the Company shall be entitled to delay or postpone the effectiveness of the Registration Statement, and from time to time to require Subscriber not to sell under the Registration Statement or to suspend the effectiveness thereof, (i) if any information (e.g., compensation data) is not readily available and the non-disclosure of which in the Registration Statement would be expected, in the reasonable determination of the Company's board of directors, upon the advice of external legal counsel, to cause the Registration Statement to fail to comply with applicable disclosure requirements, (ii) at any time the Company is required to file a post-effective amendment to the Registration Statement and the Commission has not declared such amendment effective or (iii) if the negotiation or consummation of a transaction by the Company or its subsidiaries is pending or an event has occurred, which negotiation, consummation or event, the Company's board of directors reasonably believes, upon the advice of external legal counsel, would require additional disclosure by the Company in the Registration Statement of material non-public information that the Company has a bona fide business purpose for keeping confidential and the non-disclosure of which in the Registration Statement would be expected, in the reasonable determination of the Company's board of directors, upon the advice of external legal counsel, to cause the Registration Statement to fail to comply with applicable disclosure requirements (each such circumstance, a "**Suspension Event**"); provided, however, the Company shall not so delay filing or so suspend the use of the Registration Statement on more than two (2) occasions or for a period of more than sixty (60) consecutive days or more than a total of ninety (90) calendar days, in each case in any three hundred sixty (360) day period. Upon receipt of any written notice from the Company of the happening of any Suspension Event during the period that the Registration Statement is effective or if as a result of a Suspension Event the Registration Statement or related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made (in the case of the prospectus) not misleading, Subscriber agrees that (i) it will immediately discontinue offers and sales of the Registrable Securities under the Registration Statement (excluding, for the avoidance of doubt, sales conducted pursuant to Rule 144) until such Subscriber receives copies of a supplemental or amended prospectus (which the Company agrees to promptly prepare after the completion of the Suspension Event) that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment has become effective or unless otherwise notified by the Company that it may resume such offers and sales, and (ii) it will maintain the confidentiality of any information included in such written notice delivered by the Company unless otherwise required by law or subpoena. If so directed by the Company, Subscriber will deliver to the Company or, in such Subscriber's sole discretion destroy, all copies of the prospectus covering the Registrable Securities in such Subscriber's possession; provided, however, that this obligation to deliver or destroy all copies of the prospectus covering the Registrable Securities shall not apply (i) to the extent such Subscriber is required to retain a copy of such prospectus (a) in order to comply with applicable legal, regulatory, self-regulatory or professional requirements or (b) in accordance with a bona fide pre-existing document retention policy or (ii) to copies stored electronically on archival servers as a result of automatic data back-up.

6.4 The Company shall indemnify, defend and hold harmless Subscriber (to the extent a seller under the Registration Statement), and any of its officers, directors, agents, partners, members, stockholders, affiliates, managers, investment advisers and employees, and each person who controls Subscriber (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including reasonable out-of-pocket external attorneys' fees and expenses incurred in connection with defending or investigating any such action or claim) and expenses (collectively, "**Losses**"), as incurred, that arise out of or are based upon (i) any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any prospectus included in the Registration Statement or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading or (ii) any violation or alleged violation by the Company of the Securities Act, Exchange Act or any state securities law or any rule or regulation thereunder, in connection with the performance of its obligations under this Section 6, except insofar as and to the extent, but only to the extent, that such untrue statements, alleged untrue statements, omissions or alleged omissions are based upon information regarding Subscriber furnished in writing to the Company by such Subscriber expressly for use therein or such Subscriber has omitted a material fact from such information or otherwise violated the Securities Act, the Exchange Act or any state securities law or any rule or regulation thereunder, in each case, in connection with the registration of the Common Stock; provided, however, that the indemnification contained in this Section 6 shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Company be liable for any Losses to the extent they arise out of or are based upon a violation which occurs (A) in reliance upon and in conformity with written information furnished by such Subscriber, (B) in connection with any failure of such person to deliver or cause to be delivered a prospectus made available by the Company in a timely manner, (C) as a result of offers or sales effected by or on behalf of any person by means of a "free writing prospectus" (as defined in Rule 405 under the Securities Act) that was not authorized in writing by the Company, or (D) in connection with any offers or sales effected by or on behalf of such Subscriber in violation of Section 6.3 hereof. Subscriber shall notify the Company promptly of the institution of any proceeding arising from or in connection with the transactions contemplated by this Section 6 of which Subscriber becomes aware, provided that a failure by Subscriber to provide such notice shall not impact Subscriber's right to be indemnified hereunder unless the Company is actually prejudiced thereby. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an indemnified party and shall survive the transfer of the Securities by Subscriber.

6.5 Subscriber shall (severally and not jointly with any Other Subscriber) indemnify and hold harmless the Company, its directors, officers, agents and employees, and each person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), to the fullest extent permitted by applicable law, from and against all Losses, as incurred, arising out of or are based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any prospectus included in the Registration Statement, or any form of prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any prospectus, or any form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding Subscriber furnished in writing to the Company by Subscriber expressly for use therein; provided, however, that the indemnification contained in this Section 6 shall not apply to amounts paid in settlement of any Losses if such settlement is effected without the consent of Subscriber (which consent shall not be unreasonably withheld, conditioned or delayed). In no event shall the liability of Subscriber be greater in amount than the dollar amount of the net proceeds received by Subscriber upon the sale of the Registrable Securities giving rise to such indemnification obligation. The Company shall notify Subscriber promptly of the institution of any proceeding arising from or in connection with the transactions contemplated by this Section 6 of which the Company becomes aware, provided that a failure by the Company to provide such notice shall not impact the Company's right to be indemnified hereunder unless Subscriber is actually prejudiced thereby. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of an indemnified party and shall survive the transfer of the Securities by Subscriber.

6.6 If the indemnification provided under this Section 6 from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by, or relates to information supplied by, such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in this Section 6, any legal or other fees, charges or expenses reasonably incurred by such party in connection with any investigation or proceeding. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 6 from any person who was not guilty of such fraudulent misrepresentation. Each indemnifying party's obligation to make a contribution pursuant to this Section 6.6 shall be individual, not joint and several, and in no event shall the liability of Subscriber hereunder be greater in amount than the dollar amount of the net proceeds received by Subscriber upon the sale of the Registrable Securities giving rise to such indemnification obligation.

7. Miscellaneous.

7.1 Further Assurances. At the Closing, the parties hereto shall execute and deliver such additional documents and take such additional actions as the parties reasonably may deem to be practical and necessary in order to consummate the Subscription as contemplated by this Subscription Agreement.

7.1.1 Subscriber acknowledges that the Company, ProSomnus and others will rely on the acknowledgments, understandings, agreements, representations and warranties contained in this Subscription Agreement. Subscriber agrees to promptly notify the Company and ProSomnus if any of the acknowledgments, understandings, agreements, representations and warranties made by Subscriber set forth herein are no longer accurate in all material respects.

7.1.2 Each of the Company, ProSomnus and Subscriber is entitled to rely upon this Subscription Agreement and is irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby, in each case, to the extent required by applicable law.

7.1.3 The Company may request from Subscriber such additional information as the Company may deem reasonably necessary to evaluate the eligibility of Subscriber to acquire the Securities, and Subscriber shall use reasonable best efforts to promptly provide such information as may be reasonably requested, to the extent readily available and to the extent consistent with its internal policies and procedures, *provided* that the Company agrees to keep confidential any such information provided by Subscriber.

7.2 Notices. Any notice or communication required or permitted hereunder shall be in writing and either delivered personally, emailed or sent by overnight mail via a reputable overnight carrier, or sent by certified or registered mail, postage prepaid, and shall be deemed to be given and received (a) when so delivered personally, (b) when sent, with affirmative confirmation of receipt, if sent by email, (c) one (1) business day after being sent, if sent by reputable, internationally recognized overnight courier service or (d) three (3) business days after the date of mailing by registered or certified mail (prepaid and return receipt requested), in any case, to the address below or to such other address or addresses as such person may hereafter designate by notice given hereunder:

(i) if to Subscriber, to such address or addresses set forth on the signature page hereto;

(ii) if to the Company (prior to the Closing), to:

Lakeshore Acquisition I Corp.
667 Madison Avenue
New York, NY 10065
Attn: Bill Chen
Telephone No.: (917) 327-9933
E-mail: bchen65@126.com

with a required copy to (which copy shall not constitute notice):

Loeb & Loeb LLP
345 Park Avenue, 19th Floor
New York, NY 10154
Attention: Giovanni Caruso
E-mail: gcaruso@loeb.com

(iii) if to ProSomnus, to:

ProSomnus Holdings Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@ProSomnus.com

with a required copy to (which copy shall not constitute notice):

Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue NW, Suite 900
Washington, DC 20001
Attn: Peter Strand, Esq.
Facsimile No.: (202) 689-2952
Telephone No.: (202) 689-2983
E-mail: peter.strand@nelsonmullins.com

(iv) if to the Company (following the Closing), to:

ProSomnus Holdings Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@ProSomnus.com

with a required copy to (which copy shall not constitute notice):

Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue NW, Suite 900
Washington, DC 20001
Attn: Peter Strand, Esq.
Facsimile No.: (202) 689-2952
Telephone No.: (202) 689-2983
E-mail: peter.strand@nelsonmullins.com

7.3 Entire Agreement. This Subscription Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof (other than any confidentiality agreement entered into by the Company and Subscriber in connection with the Offering).

7.4 Modifications and Amendments. This Subscription Agreement may not be modified, waived or terminated except by an instrument in writing, signed by the parties hereto.

7.5 Waivers and Consents. The terms and provisions of this Subscription Agreement may be waived, or consent for the departure therefrom granted, only by a written document executed by the party against whom enforcement of such waiver or consent is sought. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Subscription Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent. No failure or delay by a party hereto in exercising any right, power or remedy under this Subscription Agreement, and no course of dealing between the parties hereto, shall operate as a waiver of any such right, power or remedy of such party. No single or partial exercise of any right, power or remedy under this Subscription Agreement by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, shall preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto shall not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Subscription Agreement shall entitle the party receiving such notice or demand to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand.

7.6 Assignment. Neither this Subscription Agreement nor any rights, interests or obligations that may accrue to the Subscriber hereunder (other than the Securities acquired hereunder by Subscriber, if any, after the Closing and Subscriber's rights under Section 6 above) may be transferred or assigned without the prior written consent of the Company, and any purported transfer or assignment without such consent shall be null and void ab initio; *provided*, *however*, Subscriber may transfer or assign its rights, interests and obligations hereunder to a controlled affiliate of Subscriber or another investment fund or account managed or advised by the same manager as Subscriber (or a related party or affiliate) that can satisfy the requirements of Section 2.1.4 and the other representations and warranties in Section 2.1, *provided*, further, that no such transfer or assignment without the prior express written consent of the Company shall release Subscriber of its obligations hereunder and such transferee(s) or assignee(s), as applicable, agrees in writing to be bound by the terms hereof as if it were the original Subscriber party hereto.

7.7 Benefit. Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns. Except as expressly provided for herein, this Subscription Agreement shall not confer rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

7.8 Governing Law. This Subscription Agreement, and any claim or cause of action hereunder based upon, arising out of or related to this Subscription Agreement (whether based on law, in equity, in contract, in tort or any other theory) or the negotiation, execution, performance or enforcement of this Subscription Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

7.9 Consent to Jurisdiction; Waiver of Jury Trial. The parties hereto agree to submit any matter or dispute resulting from or arising out of the execution, performance, interpretation, breach or termination of this Agreement to the exclusive jurisdiction of federal or state courts within the County of New York, State of New York (and any appellate courts thereof) (the "**Specified Courts**"). Each of the parties agrees that service of any process, summons, notice or document in the manner set forth in Section 7.2 hereof or in such other manner as may be permitted by applicable law, shall be effective service of process for any proceeding with respect to any matters to which it has submitted to jurisdiction in this Section 7.9. Each of the parties hereto irrevocably and unconditionally agrees that it is subject to, and hereby submits to, the personal jurisdiction of the Specified Courts for any action, suit or proceeding arising out of this Subscription Agreement or the transactions contemplated hereunder and waives any objection to the laying of venue in the Specified Courts (the United States District Court for the Southern District of New York, or the applicable New York state courts if the federal jurisdictional standards are not satisfied), and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY.

7.10 Non-Reliance and Exculpation. Subscriber acknowledges that it is not relying upon, and has not relied upon, any statement, representation or warranty made by any person other than the statements, representations and warranties of the Company expressly contained in Section 2.2 of this Subscription Agreement, in making its investment or decision to invest in the Company. Subscriber further acknowledges and agrees that no Other Subscriber pursuant to Other Subscription Agreements (including the controlling persons, members, officers, directors, partners, agents, employees or other representatives of any such Other Subscriber) shall be liable to Subscriber pursuant to this Subscription Agreement for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Securities.

7.11 Severability. If any provision of this Subscription Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect. Upon such determination that any provision is invalid, illegal or unenforceable, the parties will substitute for any invalid, illegal or unenforceable provision a suitable and equitable provision that carries out so far as may be valid, legal and enforceable, the intent and purpose of such invalid, illegal or unenforceable provision.

7.12 Survival of Representations and Warranties. All representations and warranties made by the parties hereto in this Subscription Agreement or in any other agreement, certificate or instrument provided for or contemplated hereby, shall survive the Closing until the expiration of any statute of limitations under applicable law.

7.13 Expenses. The Subscriber shall pay all of its own expenses in connection with this Subscription Agreement and the transactions contemplated herein.

7.14 Headings and Captions. The headings and captions of the various subdivisions of this Subscription Agreement are for convenience of reference only and shall in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

7.15 Counterparts. This Subscription Agreement may be executed in one or more counterparts (including by facsimile or electronic mail or in .pdf), all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or any other form of electronic delivery, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

7.16 Construction. The words "*include*," "*includes*," and "*including*" will be deemed to be followed by "*without limitation*." Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "*this Subscription Agreement*," "*herein*," "*hereof*," "*hereby*," "*hereunder*," and words of similar import refer to this Subscription Agreement as a whole and not to any particular subdivision unless expressly so limited. The parties hereto intend that each representation, warranty, and covenant contained herein will have independent significance. If any party hereto has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party hereto has not breached will not detract from or mitigate the fact that such party hereto is in breach of the first representation, warranty, or covenant. All references in this Subscription Agreement to numbers of shares, per share amounts and purchase prices shall be appropriately adjusted to reflect any stock split, stock dividend, stock combination, recapitalization or the like occurring after the date hereof. As used in this Subscription Agreement, the term: (x) "person" shall refer to any individual, corporation, partnership, trust, limited liability company or other entity or association, including any governmental or regulatory body, whether acting in an individual, fiduciary or any other capacity; and (y) "affiliate" shall mean, with respect to any specified person, any other person or group of persons acting together that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified person (where the term "control" (and any correlative terms) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise).

7.17 Mutual Drafting. This Subscription Agreement is the joint product of Subscriber and the Company and each provision hereof has been subject to the mutual consultation, negotiation and agreement of such parties and shall not be construed for or against any party hereto.

7.18 Remedies.

7.18.1 The parties agree that the irreparable damage would occur if this Subscription Agreement was not performed in accordance with its specific terms or was otherwise breached and that money damages or other legal remedies would not be an adequate remedy for any such damage. It is accordingly agreed that the parties hereto shall be entitled to equitable relief, including in the form of an injunction or injunctions, to prevent breaches or threatened breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement in an appropriate court of competent jurisdiction as set forth in Section 7.9, this being in addition to any other remedy to which any party is entitled at law or in equity, including money damages. The right to specific enforcement shall include the right of the parties hereto to cause to cause the other parties hereto to cause the transactions contemplated hereby to be consummated on the terms and subject to the conditions and limitations set forth in this Subscription Agreement. The parties hereto further agree (i) to waive any requirement for the security or posting of any bond in connection with any such equitable remedy, (ii) not to assert that a remedy of specific enforcement pursuant to this Section 7.18 is unenforceable, invalid, contrary to applicable law or inequitable for any reason and (iii) to waive any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

7.18.2 The parties acknowledge and agree that this Section 7.18 is an integral part of the transactions contemplated hereby and without that right, the parties hereto would not have entered into this Subscription Agreement.

7.18.3 In any dispute arising out of or related to this Subscription Agreement, or any other agreement, document, instrument or certificate contemplated hereby, or any transactions contemplated hereby or thereby, the applicable adjudicating body shall award to the prevailing party, if any, the documented and out-of-pocket costs and external attorneys' fees reasonably incurred by the prevailing party in connection with the dispute and the enforcement of its rights under this Subscription Agreement or any other agreement, document, instrument or certificate contemplated hereby and, if the adjudicating body determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the adjudicating body may award the prevailing party an appropriate percentage of the documented out-of-pocket costs and external attorneys' fees reasonably incurred by the prevailing party in connection with the adjudication and the enforcement of its rights under this Subscription Agreement or any other agreement, document, instrument or certificate contemplated hereby or thereby.

8. Disclosure.

8.1 The Company shall, by 5:30 p.m., New York City time, on the first (1st) business day immediately following the date of this Subscription Agreement file a Current Report on Form 8-K with the Commission (the time of such filing, "**Disclosure Time**") disclosing and describing all material terms of the transactions contemplated hereby and the Merger, and a form of this Subscription Agreement will be filed with the Commission as an exhibit thereto. From and after the Disclosure Time, the Company represents to Subscriber that it shall have publicly disclosed all material, non-public information delivered to Subscriber by the Company, ProSomnus or any of their officers, directors, employees or agents in connection with the transactions contemplated by the Subscription Agreement and the Transaction Agreement, and Subscriber shall no longer be subject to any confidentiality or similar obligations under any current agreement, whether written or oral with Company or any of their affiliates, relating to the transactions contemplated by this Subscription Agreement.

8.2 Notwithstanding anything in this Subscription Agreement to the contrary, the Company shall not publicly disclose the name of Subscriber or any of its affiliates, or include the name of Subscriber or any of its affiliates in any press release or in any filing with the Commission or any regulatory agency or trading market, without the prior written consent of Subscriber, except (i) as required by the federal securities law in connection with the Registration Statement, (ii) in a press release or marketing materials of the Company in connection with the Merger to the extent any such disclosure is substantially equivalent to the information that has previously been made public without breach of the obligation under this Section 8.2 and (iii) to the extent such disclosure is required by law, at the request of the Staff of the Commission or regulatory agency or under the regulations of Nasdaq, in which case the Company shall provide Subscriber with prior written notice of such disclosure, and shall reasonably consult with the Subscriber regarding such disclosure.

9. Trust Account Waiver. Subscriber acknowledges that the Company is a blank check company with the powers and privileges to effect a merger, asset acquisition, reorganization or similar business combination involving the Company and one or more businesses or assets. Subscriber further acknowledges that, as described in the Prospectus available at www.sec.gov, substantially all of the Company's assets consist of the cash proceeds of Company's initial public offering (including overallotment securities sold by the Company's underwriter thereafter) and private placements of its securities, and substantially all of those proceeds have been deposited in a trust account (the "**Trust Account**") for the benefit of Company, its public shareholders and the underwriters of Company's initial public offering. Except with respect to interest earned on the funds held in the Trust Account that may be released to Company to pay its tax obligations, if any, the cash in the Trust Account may be disbursed only for the purposes set forth in the Prospectus. For and in consideration of the Company entering into this Subscription Agreement, the receipt and sufficiency of which are hereby acknowledged, Subscriber, on behalf of itself and its representatives, hereby irrevocably waives any and all right, title and interest, or any claim of any kind they now have or may have in the future, in or to any monies held in the Trust Account or distributions therefrom to the Company's public stockholders, and agrees not to seek recourse against the Trust Account for any claims in connection with, as a result of, or arising out of, this Subscription Agreement or the transactions contemplated hereby; *provided, however*, that nothing in this Section 9 (x) shall serve to limit or prohibit Subscriber's right to pursue a claim against Company for legal relief against assets held outside the Trust Account (other than distributions to the Company's public stockholders), for specific performance or other equitable relief, (y) shall serve to limit or prohibit any claims that Subscriber may have in the future against Company's assets or funds that are not held in the Trust Account (including any funds that have been released from the Trust Account (other than distributions to the Company's public stockholders) and any assets that have been purchased or acquired with any such funds) or (z) shall be deemed to limit any Subscriber's right, title, interest or claim to the Trust Account by virtue of such Subscriber's record or beneficial ownership of securities of the Company acquired by any means other than pursuant to this Subscription Agreement, including but not limited to any redemption right with respect to any such securities of the Company.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, each of the Company and Subscriber has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date first set forth above.

LAKESHORE ACQUISITION I CORP.

By:
Name:
Title:

PROSOMNUS HOLDINGS INC.

By:
Name:
Title:

[Signature page to Subscription Agreement]

Accepted and agreed as of the date first set forth above.

SUBSCRIBER:

Name of Subscriber:

{Please print}

Signature of Subscriber:

By: _____
Name:
Title:

Name of Joint Subscriber, if applicable

{Please print}

Signature of Joint Subscriber, if applicable:

By: _____
Name:
Title:

If there are joint investors, please check one:
☐ Joint Tenants with Rights of Survivorship
☐ Community Property
☐ Tenants-in-Common

Subscriber's EIN:

Business Address-Street:

Joint Subscriber's EIN:

Mailing Address-Street (if different):

City, State, Zip: _____

Attn: _____

Telephone No.: _____

Facsimile No: _____

Email Address: _____

City, State, Zip: _____

Attn: _____

Telephone No.: _____

Facsimile No: _____

Email Address: _____

Aggregate Number of shares of Common Stock subscribed for:_____

Aggregate Purchase Price: $_____

Subscriber must pay the Purchase Price by wire transfer of U.S. dollars in immediately available funds to the account specified by the Company in the Closing Notice.

If Subscriber wants certificated Securities rather than book-entry form, indicate here: _____

[Signature page to Subscription Agreement]

SCHEDULE A
ELIGIBILITY REPRESENTATIONS OF SUBSCRIBER

This Schedule A should be completed by Subscriber and constitutes a part of the Subscription Agreement.

A. QUALIFIED INSTITUTIONAL BUYER STATUS

(Please check the applicable subparagraphs):

1. ☐ Subscriber is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") (a "QIB")).

2. ☐ Subscriber is subscribing for the Securities as a fiduciary or agent for one or more investor accounts, and each owner of such account is a QIB.

*** OR ***

B. INSTITUTIONAL ACCREDITED INVESTOR STATUS

(Please check the applicable subparagraphs):

1. ☐ Subscriber is an institutional "accredited investor" (within the meaning of Rule 501(a) under the Securities Act), and have marked and initialed the appropriate box on the following page indicating the provision under which we qualify as an institutional "accredited investor."

2. ☐ Subscriber is not a natural person.

*** AND ***

C. AFFILIATE STATUS

(Please check the applicable box) SUBSCRIBER:

☐ is:
☐ is not

an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company or acting on behalf of an affiliate of the Company.

Rule 501(a), in relevant part, states that an "accredited investor" shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. Subscriber has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to Subscriber and under which Subscriber accordingly qualifies as an "accredited investor."

☐ Any bank as defined in section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;

☐ Any broker or dealer registered pursuant to section 15 of the Exchange Act;

☐ Any investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 or registered pursuant to the laws of a state;

☐ Any investment adviser relying on the exemption from registering with the Commission under section 203(l) or (m) of the Investment Advisers Act of 1940;

☐ Any insurance company as defined in section 2(a)(13) of the Securities Act;

☐ Any investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of the Investment Company Act;

☐ Any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

☐ Any Rural Business Investment Company as defined in section 384A of the Consolidated Farm and Rural Development Act;

☐ Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

☐ Any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), if (i) the investment decision is made by a plan fiduciary, as defined in section 3(21) of ERISA, which is either a bank, a savings and loan association, an insurance company, or a registered investment adviser, (ii) the employee benefit plan has total assets in excess of $5,000,000 or, (iii) the plan is a self-directed plan, with investment decisions made solely by persons that are "accredited investors";

☐ Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

☐ Any (i) corporation, limited liability company or partnership, (ii) Massachusetts or similar business trust, or (iii) organization described in section 501(c)(3) of the Internal Revenue Code, in each case that was not formed for the specific purpose of acquiring the securities offered and that has total assets in excess of $5,000,000;

☐ Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in section 230.506(b)(2)(ii) of Regulation D under the Securities Act;

☐ Any entity, other than an entity described in the categories of "accredited investors" above, not formed for the specific purpose of acquiring the securities offered, owning investments in excess of $5,000,000;

☐ Any "family office," as defined under the Investment Advisers Act that satisfies all of the following conditions: (i) with assets under management in excess of $5,000,000, (ii) that is not formed for the specific purpose of acquiring the securities offered and (iii) whose prospective investment is directed by a person who has such knowledge and experience in financial and business matters that such family office is capable of evaluating the merits and risks of the prospective investment;

☐ Any "family client," as defined under the Investment Advisers Act, of a family office meeting the requirements in the previous paragraph and whose prospective investment in the issuer is directed by such family office pursuant to the previous paragraph; or

☐ Any entity in which all of the equity owners are accredited investors.

☐ I have an individual net worth, or joint net worth with my spouse or spousal equivalent, of more than $1,000,000 exclusive of the value of my primary residence.

(For purposes of determining net worth, exclude the value of your primary residence as well as the amount of indebtedness secured by your primary residence, up to the fair market value. Any amount in excess of the fair market value of your primary residence must be included as a liability. In the event the indebtedness on your primary residence was increased in the 60 days preceding the completion of this Agreement, the amount of the increase must be included as a liability in the net worth calculation. For this purpose, "joint net worth" can be the aggregate net worth of the investor and spouse or spousal equivalent; assets need not be held jointly to be included in the calculation. Reliance on the joint net worth standard described herein does not require that the securities be purchased jointly. For this purpose, "spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse.)

☐ I have an individual income in excess of $200,000, or joint income with my spouse or spousal equivalent in excess of $300,000, in each of the 2 most recent years and I have a reasonable expectation of reaching the same income level in the current year.

☐ I hold, in good standing, 1 or more professional certifications or designations or credentials from an accredited educational institution that the SEC has designated as qualifying an individual for accredited investor status and which the SEC has posted as qualifying. (For this purpose, the SEC has posted the following qualifying professional certifications: holders in good standing of FINRA Series 7, Series 65, and Series 82 licenses.)

Exhibit 10.2

PROSOMNUS, INC.

2022 EQUITY INCENTIVE PLAN

1. DEFINITIONS.

Unless otherwise specified or unless the context otherwise requires, the following terms, as used in this ProSomnus, Inc. 2022 Equity Incentive Plan, have the following meanings:

Administrator means the Board of Directors, unless it has delegated power to act on its behalf to the Committee, in which case the term "Administrator" means the Committee.

Affiliate means a corporation or other entity, which, for purposes of Section 424 of the Code, is a parent or subsidiary of the Company, direct or indirect.

Agreement means a written or electronic document setting forth the terms of a Stock Right delivered pursuant to the Plan, in such form as the Administrator shall approve.

Board of Directors means the Board of Directors of the Company.

Business Combination Agreement means that certain Business Combination Agreement, dated as of May 9, 2022 by and among Lakeshore Acquisition I Corp., LAAA Merger Sub Inc., RedOne Investment Limited, HGP II, LLC and ProSomnus Holdings Inc.

Cause means, with respect to a Participant (a) dishonesty with respect to the Company or any Affiliate, (b) insubordination, substantial malfeasance or non-feasance of duty, (c) unauthorized disclosure of confidential information, (d) breach by a Participant of any provision of any employment, consulting, advisory, nondisclosure, non-competition or similar agreement between the Participant and the Company or any Affiliate or any material written policy of the Company or any Affiliate, and (e) conduct substantially prejudicial to the business of the Company or any Affiliate; provided, however, that any provision in an agreement between a Participant and the Company or an Affiliate, which contains a conflicting definition of Cause for termination and which is in effect at the time of such termination, shall supersede this definition with respect to that Participant. The determination of the Administrator as to the existence of Cause will be conclusive on the Participant and the Company.

Closing means the date on which the transactions contemplated by the Business Combination Agreement are consummated.

Code means the United States Internal Revenue Code of 1986, as amended including any successor statute, regulation and guidance thereto.

Committee means the committee of the Board of Directors, if any, to which the Board of Directors has delegated power to act under or pursuant to the provisions of the Plan.

Common Stock means shares of the Company's common stock, $0.0001 par value per share.

Company means ProSomnus, Inc., a Delaware corporation.

Consultant means any natural person who is an advisor or consultant who provides bona fide services to the Company or its Affiliates, provided that such services are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the Company's or its Affiliates' securities.

Corporate Transaction means a merger, consolidation, or sale of all or substantially all of the Company's assets or the acquisition of all of the outstanding voting stock of the Company (or similar transaction) in a single transaction or a series of related transactions by a single entity, other than a transaction to merely change the state of incorporation or in which the Company is the surviving corporation. Where a Corporate Transaction involves a tender offer that is reasonably expected to be followed by a merger (as determined by the Administrator), the Corporate Transaction will be deemed to have occurred upon consummation of the tender offer.

Disability or Disabled means permanent and total disability as defined in Section 22(e)(3) of the Code.

Employee means any employee of the Company or of an Affiliate (including, without limitation, an employee who is also serving as an officer or director of the Company or of an Affiliate), designated by the Administrator to be eligible to be granted one or more Stock Rights under the Plan.

Exchange Act means the United States Securities Exchange Act of 1934, as amended.

Fair Market Value of a Share of Common Stock means:

If the Common Stock is listed on a national securities exchange or traded in the over-the-counter market and sales prices are regularly reported for the Common Stock, the closing or, if not applicable, the last price of the Common Stock on the composite tape or other comparable reporting system for the trading day on the applicable date and if such applicable date is not a trading day, the last market trading day prior to such date;

If the Common Stock is not traded on a national securities exchange but is traded on the over-the-counter market, if sales prices are not regularly reported for the Common Stock for the trading day referred to in clause (1), and if bid and asked prices for the Common Stock are regularly reported, the mean between the bid and the asked price for the Common Stock at the close of trading in the over-the-counter market for the most recent trading day on which Common Stock was traded on the applicable date and if such applicable date is not a trading day, the last market trading day prior to such date; and

If the Common Stock is neither listed on a national securities exchange nor traded in the over-the-counter market, such value as the Administrator, in good faith, shall determine in compliance with applicable laws.

ISO means a stock option intended to qualify as an incentive stock option under Section 422.

Non-Qualified Option means a stock option which is not intended to qualify as an ISO.

Option means an ISO or Non-Qualified Option granted under the Plan.

Participant means an Employee, director or Consultant of the Company or an Affiliate to whom one or more Stock Rights are granted under the Plan. As used herein, “Participant” shall include “Participant’s Survivors” where the context requires.

Performance-Based Award means a Stock Grant or Stock-Based Award which vests based on the attainment of written Performance Goals as set forth in Paragraph 9 hereof.

Performance Goals means performance goals determined by the Committee in its sole discretion and set forth in an Agreement. The satisfaction of Performance Goals shall be subject to certification by the Committee. The Committee has the authority to take appropriate action with respect to the Performance Goals (including, without limitation, making adjustments to the Performance Goals or determining the satisfaction of the Performance Goals in connection with a Corporate Transaction) provided that any such action does not otherwise violate the terms of the Plan.

Plan means this ProSomnus, Inc. 2022 Equity Incentive Plan.

SAR means a stock appreciation right.

Section 409A means Section 409A of the Code.

Section 422 means Section 422 of the Code.

Securities Act means the United States Securities Act of 1933, as amended.

Shares means shares of the Common Stock as to which Stock Rights have been or may be granted under the Plan or any shares of capital stock into which the Shares are changed or for which they are exchanged within the provisions of Paragraph 3 of the Plan. The Shares issued under the Plan may be authorized and unissued shares or shares held by the Company in its treasury, or both.

Stock-Based Award means a grant by the Company under the Plan of an equity award or an equity based award, which is not an Option, or a Stock Grant.

Stock Grant means a grant by the Company of Shares under the Plan.

Stock Right means an ISO, a Non-Qualified Option, a Stock Grant or a Stock-Based Award or a right to Shares or the value of Shares of the Company granted pursuant to the Plan.

Substitute Award means an award issued under the Plan in substitution for one or more equity awards of an acquired company that are converted, replaced or adjusted in connection with the acquisition.

Survivor means a deceased Participant's legal representatives and/or any person or persons who acquired the Participant's rights to a Stock Right by will or by the laws of descent and distribution.

2. PURPOSES OF THE PLAN.

The Plan is intended to encourage ownership of Shares by Employees and directors of and certain Consultants to the Company and its Affiliates in order to attract and retain such people, to induce them to work for the benefit of the Company or of an Affiliate and to provide additional incentive for them to promote the success of the Company or of an Affiliate. The Plan provides for the granting of ISOs, Non-Qualified Options, Stock Grants and Stock-Based Awards.

3. SHARES SUBJECT TO THE PLAN.

(a) The number of Shares that may be issued from time to time pursuant to this Plan shall be equal to the sum of (i) fifteen percent (15%) of the outstanding shares of Common Stock issued and outstanding immediately after the Closing (giving effect to the Redemption (as defined in the Business Combination Agreement)), (ii) that number of shares remaining available for issuance under the Company Equity Plan (as defined in the Business Combination Agreement), determined immediately prior to the Closing, divided by the Redemption Price (as defined in the Business Combination Agreement), such number not to exceed 321,496 shares divided by the Redemption Price, and (iii) that number of shares attributable to awards granted under the Company Equity Plan that are forfeited, expire or are cancelled without delivery of shares of Common Stock or which result in the forfeiture of shares of Common Stock back to the Company on or after the Closing, which number shall not exceed 2,411,283.

(b) Notwithstanding Subparagraph (a) above, on the first day of each fiscal year of the Company during the period beginning in fiscal year 2023 and ending on the second day of fiscal year 2032, the number of Shares that may be issued from time to time pursuant to the Plan, shall be increased automatically by an amount equal to the lesser of (i) 4% of the number of outstanding shares of Common Stock on such date and (ii) an amount determined by the Administrator.

(c) If an Option ceases to be "outstanding", in whole or in part (other than by exercise), or if the Company shall reacquire (at not more than its original issuance price) any Shares issued pursuant to a Stock Grant or Stock-Based Award, or if any Stock Right expires or is forfeited, cancelled, or otherwise terminated or results in any Shares not being issued, the unissued or reacquired Shares which were subject to such Stock Right shall again be available for issuance from time to time pursuant to this Plan; provided, however, that the number of Shares underlying any awards under the Plan that are retained or repurchased on the exercise of an Option or the vesting or issuance of any Stock Right to cover the exercise price and/or tax withholding required by the Company in connection with vesting shall not be added back to the Shares available for issuance under the Plan; and provided, further that, in the case of ISOs, the foregoing provisions shall be subject to any limitations under the Code. In addition, any Shares repurchased using exercise price proceeds will not be available for issuance under the Plan.

(d) The maximum number of Shares available for grant under the Plan as ISOs will be equal to 250,000,000. The limits set forth in this Paragraph 3 will be construed to comply with the applicable requirements of Section 422.

(e) The Administrator may grant Substitute Awards under the Plan. To the extent consistent with the requirements of Section 422 and the regulations thereunder and other applicable legal requirements (including applicable stock exchange requirements), Shares issued in respect of Substitute Awards will be in addition to and will not reduce the shares available under the Plan. Notwithstanding the foregoing, if any Substitute Award is settled in cash or expires, becomes unexercisable, terminates or is forfeited to or repurchased by the Company without the issuance or retention of Shares, the Shares previously subject to such award will not be available for future issuance under the Plan. The Administrator will determine the extent to which the terms and conditions of the Plan apply to Substitute Awards, if at all; provided, however, that Substitute Awards will not be subject to the limits described in Paragraph 4(c) below.

4. ADMINISTRATION OF THE PLAN.

The Administrator of the Plan will be the Board of Directors, except to the extent the Board of Directors delegates its authority to the Committee, in which case the Committee shall be the Administrator. Subject to the provisions of the Plan, the Administrator is authorized to:

(a) Interpret the provisions of the Plan and all Stock Rights and to make all rules and determinations which it deems necessary or advisable for the administration of the Plan;

(b) Determine which Employees, directors and Consultants shall be granted Stock Rights;

(c) Determine the number of Shares for which a Stock Right or Stock Rights shall be granted; provided, however, that in no event shall the aggregate grant date fair value (determined in accordance with ASC 718) of Stock Rights to be granted and any other cash compensation paid to any non-employee director in any calendar year, exceed $750,000, increased to $1,000,000 in the year in which such non-employee director initially joins the Board of Directors.

(d) Specify the terms and conditions upon which a Stock Right or Stock Rights may be granted provided that no dividends or dividend equivalents shall be paid on any Stock Right prior to the vesting of the underlying Shares.

(e) Amend any term or condition of any outstanding Stock Right, provided that (i) such term or condition as amended is not prohibited by the Plan and (ii) any such amendment shall not impair the rights of a Participant under any Stock Right previously granted without such Participant's consent or in the event of death of the Participant the Participant's Survivors.

(f) Determine and make any adjustments in the Performance Goals included in any Performance-Based Awards; and

(g) Adopt any sub-plans applicable to residents of any specified jurisdiction as it deems necessary or appropriate in order to comply with or take advantage of any tax or other laws applicable to the Company, any Affiliate or to Participants or to otherwise facilitate the administration of the Plan, which sub-plans may include additional restrictions or conditions applicable to Stock Rights or Shares issuable pursuant to a Stock Right;

Subject to the foregoing, the interpretation and construction by the Administrator of any provisions of the Plan or of any Stock Right granted under it shall be final, unless otherwise determined by the Board of Directors, if the Administrator is the Committee. In addition, if the Administrator is the Committee, the Board of Directors may take any action under the Plan that would otherwise be the responsibility of the Committee.

To the extent permitted under applicable law, the Board of Directors or the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any portion of its responsibilities and powers to any other person selected by it. The Board of Directors or the Committee may revoke any such allocation or delegation at any time. Notwithstanding the foregoing, only the Board of Directors or the Committee shall be authorized to grant a Stock Right to any director of the Company or to any "officer" of the Company as defined by Rule 16a-1 under the Exchange Act.

5. ELIGIBILITY FOR PARTICIPATION.

The Administrator will, in its sole discretion, name the Participants in the Plan; provided, however, that each Participant must be an Employee, director or Consultant of the Company or of an Affiliate at the time a Stock Right is granted. Notwithstanding the foregoing, the Administrator may authorize the grant of a Stock Right to a person in anticipation of such person becoming an Employee, director or Consultant of the Company or of an Affiliate, provided, that the actual grant of such Stock Right shall be conditioned upon such person becoming eligible to become a Participant at or prior to the time of the execution of the Agreement evidencing such Stock Right. ISOs may be granted only to Employees. Non-Qualified Options, Stock Grants and Stock-Based Awards may be granted to any Employee, director or Consultant of the Company or an Affiliate. The granting of any Stock Right to any individual shall neither entitle that individual to, nor disqualify that individual from, participation in any other grant of Stock Rights or any grant under any other benefit plan established by the Company or any Affiliate for Employees, directors or Consultants.

6. TERMS AND CONDITIONS OF OPTIONS.

Each Option shall be set forth in an Option Agreement duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Administrator may provide that Options be granted subject to such terms and conditions, consistent with the terms and conditions specifically required under this Plan, as the Administrator may deem appropriate including, without limitation, subsequent approval by the shareholders of the Company of this Plan or any amendments thereto. The Option Agreements shall be subject to at least the following terms and conditions:

(a) Non-Qualified Options: Each Option intended to be a Non-Qualified Option shall be subject to the terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company, subject to the following minimum standards for any such Non-Qualified Option:

(i) Exercise Price: Each Option Agreement shall state the exercise price (per share) of the Shares covered by each Option which exercise price shall be determined by the Administrator and shall be at least equal to the Fair Market Value per share of the Common Stock on the date of grant of the Option.

(ii) Number of Shares: Each Option Agreement shall state the number of Shares to which it pertains.

(iii) Vesting: Each Option Agreement shall state the date or dates on which it first is exercisable and the date after which it may no longer be exercised, and may provide that the Option rights accrue or become exercisable in installments over a period of months or years, or upon the occurrence of certain performance conditions or the attainment of stated goals or events.

(iv) Term of Option: Each Option shall terminate not more than ten years from the date of the grant or at such earlier time as the Option Agreement may provide.

(b) ISOs: Each Option intended to be an ISO shall be issued only to an Employee who is deemed to be a resident of the United States for tax purposes, and shall be subject to the following terms and conditions, with such additional restrictions or changes as the Administrator determines are appropriate but not in conflict with Section 422 and relevant regulations and rulings of the Internal Revenue Service:

(i) Minimum Standards: The ISO shall meet the minimum standards required of Non-Qualified Options, as described in Paragraph 6(a) above, except clause (i) and (iv) thereunder.

(ii) Exercise Price: Immediately before the ISO is granted, if the Participant owns, directly or by reason of the applicable attribution rules in Section 424(d) of the Code:

A. 10% or less of the total combined voting power of all classes of stock of the Company or an Affiliate, the exercise price per share of the Shares covered by each ISO shall not be less than 100% of the Fair Market Value per share of the Common Stock on the date of grant of the Option; or

B. More than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, the exercise price per share of the Shares covered by each ISO shall not be less than 110% of the Fair Market Value per share of the Common Stock on the date of grant of the Option.

(iii) Term of Option: For Participants who own:

A. 10% or less of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than ten years from the date of the grant or at such earlier time as the Option Agreement may provide; or

B. More than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than five years from the date of the grant or at such earlier time as the Option Agreement may provide.

(iv) Limitation on Yearly Exercise: To the extent that aggregate Fair Market Value (determined on the date each ISO is granted) of the Shares with respect to which ISOs are exercisable for the first time by the Participant in any calendar year exceeds $100,000, such Options shall be treated as Non-Qualified Options even if denominated ISOs at grant.

(c) Except in connection with a corporate transaction involving the Company (which term includes, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares) or as otherwise contemplated by Paragraph 24 below, the Company may not, without obtaining stockholder approval, (i) amend the terms of outstanding Options to reduce the exercise price of such Options, (ii) cancel outstanding Options in exchange for Options that have an exercise price that is less than the exercise price value of the original Options, or (iii) cancel outstanding Options that have an exercise price greater than the Fair Market Value of a Share on the date of such cancellation in exchange for cash or other consideration.

7. TERMS AND CONDITIONS OF STOCK GRANTS.

Each Stock Grant to a Participant shall state the principal terms in an Agreement duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Agreement shall be in a form approved by the Administrator and shall contain terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company, subject to the following minimum standards:

(a) Each Agreement shall state the purchase price per Share, if any, of the Shares covered by each Stock Grant, which purchase price shall be determined by the Administrator on the date of the grant of the Stock Grant;

(b) Each Agreement shall state the number of Shares to which the Stock Grant pertains;

(c) Each Agreement shall include the terms of any right of the Company to restrict or reacquire the Shares subject to the Stock Grant, including the time period or attainment of Performance Goals or such other performance criteria upon which such rights shall accrue and the purchase price therefor, if any; and

(d) Dividends (other than stock dividends to be issued pursuant to Paragraph 24 of the Plan) may accrue but shall not be paid prior to the time, and may be paid only to the extent that, the restrictions or rights to reacquire the Shares subject to the Stock Grant lapse. Any entitlement to dividend equivalents or similar entitlements will be established and administered either consistent with an exemption from, or in compliance with the applicable requirements of Section 409A.

8. TERMS AND CONDITIONS OF OTHER STOCK-BASED AWARDS.

The Administrator shall have the right to grant other Stock-Based Awards based upon the Common Stock having such terms and conditions as the Administrator may determine, including, without limitation, the grant of Shares based upon certain conditions, the grant of securities convertible into Shares and the grant of SARs, phantom stock awards or stock units. The principal terms of each Stock-Based Award shall be set forth in an Agreement, duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. The Agreement shall be in a form approved by the Administrator and shall contain terms and conditions which the Administrator determines to be appropriate and in the best interest of the Company. Each Agreement shall include the terms of any right of the Company including the right to terminate the Stock-Based Award without the issuance of Shares, the terms of any vesting conditions, Performance Goals or events upon which Shares shall be issued, provided that dividends (other than stock dividends to be issued pursuant to Paragraph 24 of the Plan) or dividend equivalents may accrue but shall not be paid prior to and may be paid only to the extent that the Shares subject to the Stock-Based Award vest. Under no circumstances may the Agreement covering SARs (a) have an exercise or base price (per share) that is less than the Fair Market Value per share of Common Stock on the date of grant or (b) expire more than ten years following the date of grant.

9. PERFORMANCE-BASED AWARDS.

The Committee shall determine whether, with respect to a performance period, the applicable Performance Goals have been met with respect to a given Participant and, if they have, to so certify and ascertain the amount of the applicable Performance-Based Award. No Performance-Based Awards will be issued for such performance period until such certification is made by the Committee. The number of Shares issued in respect of a Performance-Based Award determined by the Committee for a performance period shall be paid to the Participant at such time as determined by the Committee in its sole discretion after the end of such performance period, and any dividends (other than stock dividends to be issued pursuant to Paragraph 24 of the Plan) or dividend equivalents that accrue shall only be paid in respect of the number of Shares earned in respect of such Performance-Based Award.

10. EXERCISE OF OPTIONS AND ISSUE OF SHARES.

An Option (or any part or installment thereof) shall be exercised by giving written notice to the Company or its designee (in a form acceptable to the Administrator, which may include electronic notice), together with provision for payment of the aggregate exercise price in accordance with this Paragraph for the Shares as to which the Option is being exercised, and upon compliance with any other condition(s) set forth in the Option Agreement. Such notice shall be signed by the person exercising the Option (which signature may be provided electronically in a form acceptable to the Administrator), shall state the number of Shares with respect to which the Option is being exercised and shall contain any representation required by the Plan or the Option Agreement. Payment of the exercise price for the Shares as to which such Option is being exercised shall be made (a) in United States dollars in cash or by check; or (b) at the discretion of the Administrator, through delivery of shares of Common Stock held for at least six months (if required to avoid negative accounting treatment) having a Fair Market Value equal as of the date of the exercise to the aggregate cash exercise price for the number of Shares as to which the Option is being exercised; or (c) at the discretion of the Administrator, by having the Company retain from the Shares otherwise issuable upon exercise of the Option, a number of Shares having a Fair Market Value equal as of the date of exercise to the aggregate exercise price for the number of Shares as to which the Option is being exercised; or (d) at the discretion of the Administrator, in accordance with a cashless exercise program established with a securities brokerage firm, and approved by the Administrator; or (e) at the discretion of the Administrator, by any combination of (a), (b), (c) and (d) above or (f) at the discretion of the Administrator, by payment of such other lawful consideration as the Administrator may determine. Notwithstanding the foregoing, the Administrator shall accept only such payment on exercise of an ISO as is permitted by Section 422.

The Company shall then reasonably promptly deliver the Shares as to which such Option was exercised to the Participant (or to the Participant's Survivors, as the case may be). In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the Shares may be delayed by the Company if the Administrator determines it is necessary to comply with any law or regulation (including, without limitation, federal securities laws) that requires the Company to take any action with respect to the Shares prior to their issuance. The Shares shall, upon delivery, be fully paid, non-assessable Shares.

11. PAYMENT IN CONNECTION WITH THE ISSUANCE OF STOCK GRANTS AND STOCK-BASED AWARDS AND ISSUE OF SHARES.

Any Stock Grant or Stock-Based Award requiring payment of a purchase price for the Shares as to which such Stock Grant or Stock-Based Award is being granted shall be made (a) in United States dollars in cash or by check; or (b) at the discretion of the Administrator, through delivery of shares of Common Stock held for at least six months (if required to avoid negative accounting treatment) and having a Fair Market Value equal as of the date of payment to the purchase price of the Stock Grant or Stock-Based Award; or (c) by delivery of a promissory note, if the Board of Directors has expressly authorized the loan of funds to the Participant for the purpose of enabling or assisting the Participant to effect such purchase; (d) at the discretion of the Administrator, by any combination of (a) through (c) above; or (e) at the discretion of the Administrator, by payment of such other lawful consideration as the Administrator may determine.

The Company shall when required by the applicable Agreement, reasonably promptly deliver the Shares as to which such Stock Grant or Stock-Based Award was made to the Participant (or to the Participant's Survivors, as the case may be), subject to any escrow provision set forth in the applicable Agreement. In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the Shares may be delayed by the Company if the Administrator determines it is necessary to comply with any law or regulation (including, without limitation, federal securities laws) which requires the Company to take any action with respect to the Shares prior to their issuance.

12. RIGHTS AS A SHAREHOLDER.

No Participant to whom a Stock Right has been granted shall have rights as a shareholder with respect to any Shares covered by such Stock Right except after due exercise of an Option or issuance of Shares as set forth in any Agreement, tender of the aggregate exercise or purchase price, if any, for the Shares being purchased and registration of the Shares in the Company's share register in the name of the Participant.

13. ASSIGNABILITY AND TRANSFERABILITY OF STOCK RIGHTS.

By its terms, a Stock Right granted to a Participant shall not be transferable by the Participant other than (i) by will or by the laws of descent and distribution, or (ii) as approved by the Administrator in its discretion and set forth in the applicable Agreement provided that no Stock Right may be transferred by a Participant for value. Notwithstanding the foregoing, an ISO transferred except in compliance with clause (i) above shall no longer qualify as an ISO. The designation of a beneficiary of a Stock Right by a Participant, with the prior approval of the Administrator and in such form as the Administrator shall prescribe, shall not be deemed a transfer prohibited by this Paragraph. Except as provided above during the Participant's lifetime a Stock Right shall only be exercisable by or issued to such Participant (or his or her legal representative) and shall not be assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to execution, attachment or similar process. Any attempted transfer, assignment, pledge, hypothecation or other disposition of any Stock Right or of any rights granted thereunder contrary to the provisions of this Plan, or the levy of any attachment or similar process upon a Stock Right, shall be null and void.

14. EFFECT ON OPTIONS OF TERMINATION OF SERVICE OTHER THAN FOR CAUSE OR DEATH OR DISABILITY.

Except as otherwise provided in a Participant's Option Agreement in the event of a termination of service (whether as an Employee, director or Consultant) with the Company or an Affiliate before the Participant has exercised an Option, the following rules apply:

(a) A Participant who ceases to be an Employee, director or Consultant of the Company or of an Affiliate (for any reason other than termination for Cause, Disability, or death for which events there are special rules in Paragraphs 15, 16, and 17, respectively), may exercise any Option granted to such Participant to the extent that the Option is exercisable on the date of such termination of service, but only within such term as the Administrator has designated in a Participant's Option Agreement.

(b) Except as provided in Subparagraph (c) below, or Paragraph 16 or 17, in no event may an Option intended to be an ISO, be exercised later than three months after the Participant's termination of employment.

(c) The provisions of this Paragraph, and not the provisions of Paragraph 16 or 17, shall apply to a Participant who subsequently becomes Disabled or dies after the termination of employment, director status or consultancy; provided, however, in the case of a Participant's Disability or death within three months after the termination of employment, director status or consultancy, the Participant or the Participant's Survivors may exercise the Option within one year after the date of the Participant's termination of service, but in no event after the date of expiration of the term of the Option.

(d) Notwithstanding anything herein to the contrary, if subsequent to a Participant's termination of employment, termination of director status or termination of consultancy, but prior to the exercise of an Option, the Administrator determines that, either prior or subsequent to the Participant's termination, the Participant engaged in conduct which would constitute Cause, then such Participant shall forthwith cease to have any right to exercise any Option.

(e) A Participant to whom an Option has been granted under the Plan who is absent from the Company or an Affiliate because of temporary disability (any disability other than a Disability as defined in Paragraph 1 hereof), or who is on leave of absence for any purpose, shall not, during the period of any such absence, be deemed, by virtue of such absence alone, to have terminated such Participant's employment, director status or consultancy with the Company or with an Affiliate, except as the Administrator may otherwise expressly provide; provided, however, that, for ISOs, any leave of absence granted by the Administrator of greater than three months, unless pursuant to a contract or statute that guarantees the right to reemployment, shall cause such ISO to become a Non-Qualified Option on the date that is six months following the commencement of such leave of absence.

(f) Except as required by law or as set forth in a Participant's Option Agreement, Options granted under the Plan shall not be affected by any change of a Participant's status within or among the Company and any Affiliates, so long as the Participant continues to be an Employee, director or Consultant of the Company or any Affiliate.

15. EFFECT ON OPTIONS OF TERMINATION OF SERVICE FOR CAUSE.

Except as otherwise provided in a Participant's Option Agreement, the following rules apply if the Participant's service (whether as an Employee, director or Consultant) with the Company or an Affiliate is terminated for Cause prior to the time that all his or her outstanding Options have been exercised:

(a) All outstanding and unexercised Options as of the time the Participant is notified his or her service is terminated for Cause will immediately be forfeited.

(b) Cause is not limited to events which have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service but prior to the exercise of an Option, that either prior or subsequent to the Participant's termination the Participant engaged in conduct which would constitute Cause, then the right to exercise any Option is forfeited.

16. EFFECT ON OPTIONS OF TERMINATION OF SERVICE FOR DISABILITY.

Except as otherwise provided in a Participant's Option Agreement:

(a) A Participant who ceases to be an Employee, director or Consultant of the Company or of an Affiliate by reason of Disability may exercise any Option granted to such Participant to the extent that the Option has become exercisable but has not been exercised on the date of the Participant's termination of service due to Disability; and in the event rights to exercise the Option accrue periodically, to the extent of a pro rata portion through the date of the Participant's termination of service due to Disability of any additional vesting rights that would have accrued on the next vesting date had the Participant not become Disabled. The proration shall be based upon the number of days accrued in the current vesting period prior to the date of the Participant's termination of service due to Disability.

(b) A Disabled Participant may exercise the Option only within the period ending one year after the date of the Participant's termination of service due to Disability, notwithstanding that the Participant might have been able to exercise the Option as to some or all of the Shares on a later date if the Participant had not been terminated due to Disability and had continued to be an Employee, director or Consultant or, if earlier, within the originally prescribed term of the Option.

(c) The Administrator shall make the determination both of whether Disability has occurred and the date of its occurrence (unless a procedure for such determination is set forth in another agreement between the Company and such Participant, in which case such procedure shall be used for such determination). If requested, the Participant shall be examined by a physician selected or approved by the Administrator, the cost of which examination shall be paid for by the Company.

17. EFFECT ON OPTIONS OF DEATH WHILE AN EMPLOYEE, DIRECTOR OR CONSULTANT.

Except as otherwise provided in a Participant's Option Agreement:

(a) In the event of the death of a Participant while the Participant is an Employee, director or Consultant of the Company or of an Affiliate, such Option may be exercised by the Participant's Survivors to the extent that the Option has become exercisable but has not been exercised on the date of death; and in the event rights to exercise the Option accrue periodically, to the extent of a pro rata portion through the date of death of any additional vesting rights that would have accrued on the next vesting date had the Participant not died. The proration shall be based upon the number of days accrued in the current vesting period prior to the Participant's date of death.

(b) If the Participant's Survivors wish to exercise the Option, they must take all necessary steps to exercise the Option within one year after the date of death of such Participant, notwithstanding that the decedent might have been able to exercise the Option as to some or all of the Shares on a later date if he or she had not died and had continued to be an Employee, director or Consultant or, if earlier, within the originally prescribed term of the Option.

18. EFFECT OF TERMINATION OF SERVICE ON UNACCEPTED STOCK GRANTS AND STOCK-BASED AWARDS.

In the event of a termination of service (whether as an Employee, director or Consultant) with the Company or an Affiliate for any reason before the Participant has accepted a Stock Grant or a Stock-Based Award and paid the purchase price, if required, such grant shall terminate.

For purposes of this Paragraph 18 and Paragraph 19 below, a Participant to whom a Stock Grant or a Stock-Based Award has been issued under the Plan who is absent from work with the Company or with an Affiliate because of temporary disability (any disability other than a Disability as defined in Paragraph 1 hereof), or who is on leave of absence for any purpose, shall not, during the period of any such absence, be deemed, by virtue of such absence alone, to have terminated such Participant's employment, director status or consultancy with the Company or with an Affiliate, except as the Administrator may otherwise expressly provide.

In addition, for purposes of this Paragraph 18 and Paragraph 19 below, any change of employment or other service within or among the Company and any Affiliates shall not be treated as a termination of employment, director status or consultancy so long as the Participant continues to be an Employee, director or Consultant of the Company or any Affiliate.

19. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE OTHER THAN FOR CAUSE, DEATH OR DISABILITY.

Except as otherwise provided in a Participant's Agreement, in the event of a termination of service for any reason (whether as an Employee, director or Consultant), other than termination for Cause, death or Disability for which there are special rules in Paragraphs 20, 21, and 22 below, before all forfeiture provisions or Company rights of repurchase shall have lapsed, then the Company shall have the right to cancel or repurchase that number of Shares subject to a Stock Grant or Stock-Based Award as to which the Company's forfeiture or repurchase rights have not lapsed.

20. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE FOR CAUSE.

Except as otherwise provided in a Participant's Agreement, the following rules apply if the Participant's service (whether as an Employee, director or Consultant) with the Company or an Affiliate is terminated for Cause:

(a) All Shares subject to any Stock Grant or Stock-Based Award that remain subject to forfeiture provisions or as to which the Company shall have a repurchase right shall be immediately forfeited to the Company as of the time the Participant is notified his or her service is terminated for Cause.

(b) Cause is not limited to events which have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service, that either prior or subsequent to the Participant's termination the Participant engaged in conduct which would constitute Cause, then all Shares subject to any Stock Grant or Stock-Based Award that remained subject to forfeiture provisions or as to which the Company had a repurchase right on the date of termination shall be immediately forfeited to the Company.

21. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF TERMINATION OF SERVICE FOR DISABILITY.

Except as otherwise provided in a Participant's Agreement, the following rules apply if a Participant ceases to be an Employee, director or Consultant of the Company or of an Affiliate by reason of Disability: to the extent the forfeiture provisions or the Company's rights of repurchase have not lapsed on the date of Disability, they shall be exercisable; provided, however, that in the event such forfeiture provisions or rights of repurchase lapse periodically, such provisions or rights shall lapse to the extent of a pro rata portion of the Shares subject to such Stock Grant or Stock-Based Award through the date of Disability as would have lapsed had the Participant not become Disabled. The proration shall be based upon the number of days accrued prior to the date of Disability.

The Administrator shall make the determination both as to whether Disability has occurred and the date of its occurrence (unless a procedure for such determination is set forth in another agreement between the Company and such Participant, in which case such procedure shall be used for such determination). If requested, the Participant shall be examined by a physician selected or approved by the Administrator, the cost of which examination shall be paid for by the Company.

22. EFFECT ON STOCK GRANTS AND STOCK-BASED AWARDS OF DEATH WHILE AN EMPLOYEE, DIRECTOR OR CONSULTANT.

Except as otherwise provided in a Participant's Agreement, the following rules apply in the event of the death of a Participant while the Participant is an Employee, director or Consultant of the Company or of an Affiliate:

(a) To the extent the forfeiture provisions or the Company's rights of repurchase have not lapsed on the date of death, they shall be exercisable; provided, however, that in the event such forfeiture provisions or rights of repurchase lapse periodically, such provisions or rights shall lapse to the extent of a pro rata portion of the Shares subject to such Stock Grant or Stock-Based Award through the date of death as would have lapsed had the Participant not died. The proration shall be based upon the number of days accrued prior to the Participant's date of death.

(b) At the discretion of the Administrator, the Company shall have received an opinion of its counsel that the Shares may be issued in compliance with the Securities Act without registration thereunder.

23. DISSOLUTION OR LIQUIDATION OF THE COMPANY.

Upon the dissolution or liquidation of the Company, all Options granted under this Plan which as of such date shall not have been exercised and all Stock Grants and Stock-Based Awards which have not been accepted, to the extent required under the applicable Agreement, will terminate and become null and void; provided, however, that if the rights of a Participant or a Participant's Survivors have not otherwise terminated and expired, the Participant or the Participant's Survivors will have the right immediately prior to such dissolution or liquidation to exercise or accept any Stock Right to the extent that the Stock Right is exercisable or subject to acceptance as of the date immediately prior to such dissolution or liquidation. Upon the dissolution or liquidation of the Company, any outstanding Stock-Based Awards shall immediately terminate unless otherwise determined by the Administrator or specifically provided in the applicable Agreement.

24. ADJUSTMENTS.

Upon the occurrence of any of the following events, a Participant's rights with respect to any Stock Right granted to such Participant hereunder shall be adjusted as hereinafter provided, unless otherwise specifically provided in a Participant's Agreement.

(a) Changes with respect to Shares of Common Stock.

(i) If (1) the shares of Common Stock shall be subdivided or combined into a greater or smaller number of shares or if the Company shall issue any shares of Common Stock as a stock dividend on its outstanding Common Stock, or (2) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock, each Stock Right and the number of shares of Common Stock deliverable thereunder shall be appropriately increased or decreased proportionately, and appropriate adjustments shall be made including, in the exercise, base or purchase price per share and in the Performance Goals applicable to outstanding Performance-Based Awards to reflect such events. The number of Shares subject to the limitations in Paragraphs 3(a), 3(b), 3(d) and 4(c) shall also be proportionately adjusted upon the occurrence of such events.

(ii) The Administrator may also make adjustments of the type described in Paragraph 24(a) above to take into account distributions to stockholders other than those provided for in Paragraphs 24(b) below, or any other event, if the Administrator determines that adjustments are appropriate to avoid distortion in the operation of the Plan or any award, having due regard for the qualification of ISOs under Section 422, the requirements of Section 409A, to the extent applicable.

(ii) References in the Plan to Shares will be construed to include any stock or securities resulting from an adjustment pursuant to this Paragraph 24(a).

(b) Corporate Transactions. If the Company is to be consolidated with or acquired by another entity in a Corporate Transaction, the Administrator or the board of directors of any entity assuming the obligations of the Company hereunder (the "Successor Board"), may, as to outstanding Options, take any of the following actions: (i) make appropriate provision for the continuation of such Options by substituting on an equitable basis for the Shares then subject to such Options either the consideration payable with respect to the outstanding shares of Common Stock in connection with the Corporate Transaction or securities of any successor or acquiring entity; or (ii) upon written notice to the Participants, provide that such Options must be exercised (either (A) to the extent then exercisable or (B) at the discretion of the Administrator, any such Options being made partially or fully exercisable for purposes of this Subparagraph), within a specified number of days of the date of such notice, at the end of which period such Options which have not been exercised shall terminate; or (iii) terminate such Options in exchange for payment of an amount equal to the consideration payable upon consummation of such Corporate Transaction to a holder of the number of shares of Common Stock into which such Option would have been exercisable (either (A) to the extent then exercisable or, (B) at the discretion of the Administrator, any such Options being made partially or fully exercisable for purposes of this Subparagraph) less the aggregate exercise price thereof. For purposes of determining the payments to be made pursuant to Subclause (iii) above, in the case of a Corporate Transaction the consideration for which, in whole or in part, is other than cash, the consideration other than cash shall be valued at the fair value thereof as determined in good faith by the Board of Directors. For the avoidance of doubt, if the per share exercise price of an Option or portion thereof is equal to or greater than the Fair Market Value of one Share of Common Stock, such Option may be cancelled with no payment due hereunder or otherwise in respect thereof.

With respect to outstanding Stock Grants or Stock-Based Awards, the Administrator or the Successor Board, shall make appropriate provision for the continuation of such Stock Grants or Stock-Based Awards on the same terms and conditions by substituting on an equitable basis for the Shares then subject to such Stock Grants or Stock-Based Awards either the consideration payable with respect to the outstanding Shares of Common Stock in connection with the Corporate Transaction or securities of any successor or acquiring entity. In lieu of the foregoing, in connection with any Corporate Transaction, the Administrator may provide that each outstanding Stock Grant or Stock-Based Award shall be terminated in exchange for payment of an amount equal to the consideration payable upon consummation of such Corporate Transaction to a holder of the number of shares of Common Stock comprising such Stock Grant or Stock-Based Award (to the extent such Stock Grant or Stock-Based Award is no longer subject to any forfeiture or repurchase rights then in effect or, at the discretion of the Administrator, all forfeiture and repurchase rights being waived). For the avoidance of doubt, if the purchase or base price of a Stock Grant or Stock-Based Award or portion thereof is equal to or greater than the Fair Market Value of one Share of Common Stock, such Stock Grant or Stock-Based Award, as applicable, may be cancelled with no payment due hereunder or otherwise in respect thereof.

In taking any of the actions permitted under this Paragraph 24(b), the Administrator shall not be obligated by the Plan to treat all Stock Rights, all Stock Rights held by a Participant, or all Stock Rights of the same type, identically.

(c) Recapitalization or Reorganization. In the event of a recapitalization or reorganization of the Company other than a Corporate Transaction pursuant to which securities of the Company or of another corporation are issued with respect to the outstanding shares of Common Stock, a Participant upon exercising an Option or accepting a Stock Grant after the recapitalization or reorganization shall be entitled to receive for the price paid upon such exercise or acceptance if any, the number of replacement securities which would have been received if such Option had been exercised or Stock Grant accepted prior to such recapitalization or reorganization.

(d) Adjustments to Stock-Based Awards. Upon the happening of any of the events described in Subparagraphs (a), (b) or (c) above, any outstanding Stock-Based Award shall be appropriately adjusted to reflect the events described in such Subparagraphs. The Administrator or the Successor Board shall determine the specific adjustments to be made under this Paragraph 24, including, but not limited to the effect of any, Corporate Transaction and, subject to Paragraph 4, its determination shall be conclusive.

(e) Termination of Awards upon Consummation of a Corporate Transaction. Except as the Administrator may otherwise determine, each Stock Right will automatically terminate (and in the case of outstanding Shares of restricted Common Stock, will automatically be forfeited) immediately upon the consummation of a Corporate Transaction, other than (i) any award that is assumed, continued or substituted pursuant to Paragraph 24(b) above, and (ii) any cash award that by its terms, or as a result of action taken by the Administrator, continues following the consummation of the Corporate Transaction.

25. ISSUANCES OF SECURITIES.

(a) Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares subject to Stock Rights. Except as expressly provided herein, no adjustments shall be made for dividends paid in cash or in property (including without limitation, securities) of the Company prior to any issuance of Shares pursuant to a Stock Right.

(b) The Company will not be obligated to issue any Shares pursuant to the Plan or to remove any restriction from Shares previously issued under the Plan until: (i) the Company is satisfied that all legal matters in connection with the issuance of such Shares have been addressed and resolved; (ii) if the outstanding Shares is at the time of issuance listed on any stock exchange or national market system, the Shares to be issued have been listed or authorized to be listed on such exchange or system upon official notice of issuance; and (iii) all conditions of the award have been satisfied or waived. The Company may require, as a condition to the exercise of an award or the issuance of Shares under an award, such representations or agreements as counsel for the Company may consider appropriate to avoid violation of the Securities Act of 1933, as amended, or any applicable state or non-U.S. securities law. Any Shares issued under the Plan will be evidenced in such manner as the Administrator determines appropriate, including book-entry registration or delivery of stock certificates. In the event that the Administrator determines that stock certificates will be issued in connection with Shares issued under the Plan, the Administrator may require that such certificates bear an appropriate legend reflecting any restriction on transfer applicable to such Stock, and the Company may hold the certificates pending the lapse of the applicable restrictions.

26. FRACTIONAL SHARES.

No fractional shares shall be issued under the Plan and the person exercising a Stock Right shall receive from the Company cash in lieu of such fractional shares equal to the Fair Market Value thereof.

27. WITHHOLDING.

In the event that any federal, state, or local income taxes, employment taxes, Federal Insurance Contributions Act withholdings or other amounts are required by applicable law or governmental regulation to be withheld from the Participant's salary, wages or other remuneration in connection with the issuance of a Stock Right or Shares under the Plan or for any other reason required by law, the Company may withhold from the Participant's compensation, if any, or may require that the Participant advance in cash to the Company, or to any Affiliate of the Company which employs or employed the Participant, the statutory minimum amount of such withholdings unless a different withholding arrangement, including the use of shares of the Company's Common Stock or a promissory note, is authorized by the Administrator (and permitted by law). For purposes hereof, the fair market value of the shares withheld for purposes of payroll withholding shall be determined in the manner set forth under the definition of Fair Market Value provided in Paragraph 1 above, as of the most recent practicable date. If the Fair Market Value of the shares withheld is less than the amount of payroll withholdings required, the Participant may be required to advance the difference in cash to the Company or the Affiliate employer.

28. TERMINATION OF THE PLAN.

The Plan will terminate on December 2, 2032, the date which is ten years from the earlier of the date of its adoption by the Board of Directors and the date of its approval by the shareholders of the Company. The Plan may be terminated at an earlier date by vote of the shareholders or the Board of Directors of the Company; provided, however, that any such earlier termination shall not affect any Agreements executed prior to the effective date of such termination. Termination of the Plan shall not affect any Stock Rights theretofore granted.

29. AMENDMENT OF THE PLAN AND AGREEMENTS.

The Plan may be amended by the shareholders of the Company. The Plan may also be amended by the Administrator; provided that any amendment approved by the Administrator which the Administrator determines is of a scope that requires shareholder approval shall be subject to obtaining such shareholder approval including, without limitation, to the extent necessary to qualify any or all outstanding Stock Rights granted under the Plan or Stock Rights to be granted under the Plan for favorable federal income tax treatment as may be afforded ISOs under Section 422 and to the extent necessary to qualify the Shares issuable under the Plan for listing on any national securities exchange or quotation in any national automated quotation system of securities dealers. Any modification or amendment of the Plan shall not, without the consent of a Participant, adversely affect his or her rights under a Stock Right previously granted to such Participant, unless such amendment is required by applicable law or necessary to preserve the economic value of such Stock Right. With the consent of the Participant affected, the Administrator may amend outstanding Agreements in a manner which may be adverse to the Participant but which is not inconsistent with the Plan. In the discretion of the Administrator, outstanding Agreements may be amended by the Administrator in a manner which is not adverse to the Participant. Nothing in this Paragraph 30 shall limit the Administrator's authority to take any action permitted pursuant to Paragraph 24.

30. EMPLOYMENT OR OTHER RELATIONSHIP.

Nothing in this Plan or any Agreement shall be deemed to prevent the Company or an Affiliate from terminating the employment, consultancy or director status of a Participant, nor to prevent a Participant from terminating his or her own employment, consultancy or director status or to give any Participant a right to be retained in employment or other service by the Company or any Affiliate for any period of time.

31. SECTION 409A AND SECTION 422.

The Company intends that the Plan and any awards granted hereunder be exempt from or comply with Section 409A, to the extent applicable. The Company intends that ISOs comply with Section 422, to the extent applicable. Any ambiguities in the Plan or any award shall be construed to effect the intent as described in this Paragraph 31.

If a Participant is a "specified employee" as defined in Section 409A (and as applied according to procedures of the Company and its Affiliates) as of his or her separation from service, to the extent any payment under this Plan or pursuant to an award constitutes non-exempt deferred compensation under Section 409A that is being paid by reason of separation from service, no payments due under this Plan or pursuant to an award may be made until the earlier of: (i) the first day of the seventh month following the Participant's separation from service, or (ii) the Participant's date of death; provided, however, that any payments delayed during this six-month period shall be paid in the aggregate in a lump sum, without interest, on the first day of the seventh month following the Participant's separation from service.

The Administrator shall administer the Plan with a view toward ensuring that awards under the Plan that are subject to Section 409A or Section 422, as applicable, comply with the requirements thereof and that Options under the Plan be exempt from the requirements of Section 409A or compliant with Section 422, as applicable, but neither the Administrator nor any member of the Board of Directors, nor the Company nor any of its Affiliates, nor any other person acting hereunder on behalf of the Company, the Administrator or the Board of Directors shall be liable to a Participant or any Survivor by reason of the acceleration of any income, or the imposition of any additional tax or penalty, with respect to any award, whether by reason of a failure to satisfy the requirements of Section 409A or Section 422 or otherwise.

32. INDEMNITY.

Neither the Board of Directors nor the Administrator, nor any members of either, nor any employees of the Company or any parent, subsidiary, or other Affiliate, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with their responsibilities with respect to this Plan, and the Company hereby agrees to indemnify the members of the Board or Directors, the members of the Committee, and the employees of the Company and its parent or subsidiaries in respect of any claim, loss, damage, or expense (including reasonable counsel fees) arising from any such act, omission, interpretation, construction or determination to the full extent permitted by law.

33. CLAWBACK.

Notwithstanding anything to the contrary contained in this Plan, the Company may recover from a Participant any compensation received from any Stock Right (whether or not settled) or cause a Participant to forfeit any Stock Right (whether or not vested) in the event that the Company's Clawback Policy as then in effect is triggered.

34. WAIVER OF JURY TRIAL.

By accepting or being deemed to have accepted an award under the Plan, each Participant waives (or will be deemed to have waived), to the maximum extent permitted under applicable law, any right to a trial by jury in any action, proceeding or counterclaim concerning any rights under the Plan or any award, or under any amendment, waiver, consent, instrument, document or other agreement delivered or which in the future may be delivered in connection therewith, and agrees (or will be deemed to have agreed) that any such action, proceedings or counterclaim will be tried before a court and not before a jury. By accepting or being deemed to have accepted an award under the Plan, each Participant certifies that no officer, representative, or attorney of the Company has represented, expressly or otherwise, that the Company would not, in the event of any action, proceeding or counterclaim, seek to enforce the foregoing waivers. Notwithstanding anything to the contrary in the Plan, nothing herein is to be construed as limiting the ability of the Company and a Participant to agree to submit any dispute arising under the terms of the Plan or any ward to binding arbitration or as limiting the ability of the Company to require any individual to agree to submit such disputes to binding arbitration as a condition of receiving an award hereunder.

35. UNFUNDED OBLIGATIONS.

The Company's obligations under the Plan are unfunded, and no Participant will have any right to specific assets of the Company in respect of any award under the Plan. Participants will be general unsecured creditors of the Company with respect to any amounts due or payable under the Plan.

36. GOVERNING LAW.

This Plan shall be construed and enforced in accordance with the law of the State of Delaware.

Exhibit 10.3

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") is made as of December 6, 2022, by and between ProSomnus, Inc., a Delaware corporation (the "***Company***"), and _____ ("***Indemnitee***").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of such corporations;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Amended and Restated Certificate of Incorporation (the "***Charter***") and the Bylaws (the "***Bylaws***") of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to applicable provisions of the Delaware General Corporation Law ("***DGCL***"). The Charter, Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification, hold harmless, exoneration, advancement and reimbursement rights;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, hold harmless, exonerate and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so protected against liabilities;

WHEREAS, this Agreement is a supplement to and in furtherance of the Charter and Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, Indemnitee may not be willing to serve as an officer or director, advisor or in another capacity without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

TERMS AND CONDITIONS

1. **SERVICES TO THE COMPANY** Indemnitee will serve or continue to serve as an officer, director, advisor, key employee or any other capacity of the Company, as applicable, for so long as Indemnitee is duly elected or appointed or retained or until Indemnitee tenders Indemnitee's resignation or until Indemnitee is removed. The foregoing notwithstanding, this Agreement shall continue in full force and effect after Indemnitee has ceased to serve as a director, officer, advisor, key employee or in any other capacity of the Company, as provided in Section 17. This Agreement, however, shall not impose any obligation on Indemnitee or the Company to continue Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

2. **DEFINITIONS**. As used in this Agreement:

(a) References to "***agent***" shall mean any person who is or was a director, officer or employee of the Company or a subsidiary of the Company or other person authorized by the Company to act for the Company, to include such person serving in such capacity as a director, officer, employee, fiduciary or other official of another corporation, partnership, limited liability company, joint venture, trust or other enterprise at the request of, for the convenience of, or to represent the interests of the Company or a subsidiary of the Company.

(b) The terms "***Beneficial Owner***" and "***Beneficial Ownership***" shall have the meanings set forth in Rule 13d-3 promulgated under the Exchange Act (as defined below) as in effect on the date hereof.

(c) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors, unless (1) the change in the relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (2) such acquisition was approved in advance by the Continuing Directors (as defined below) and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board of Directors. Individuals who, as of the date hereof, constitute the Board, and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two thirds of the directors then still in office who were directors on the date hereof or whose election for nomination for election was previously so approved (collectively, the "***Continuing Directors***"), cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination, involving the Company and one or more businesses (a "***Business Combination***"), in each case, unless, following such Business Combination: (1) all or substantially all of the individuals and entities who were the Beneficial Owners of securities entitled to vote generally in the election of directors immediately prior to such Business Combination beneficially own, directly or indirectly, more than 51% of the combined voting power of the then outstanding securities of the Company entitled to vote generally in the election of directors resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more Subsidiaries (as defined below)) in substantially the same proportions as their ownership immediately prior to such Business Combination, of the securities entitled to vote generally in the election of directors; (2) no Person (excluding any corporation resulting from such Business Combination) is the Beneficial Owner, directly or indirectly, of 15% or more of the combined voting power of the then outstanding securities entitled to vote generally in the election of directors of the surviving corporation except to the extent that such ownership existed prior to the Business Combination; and (3) at least a majority of the Board of Directors of the corporation resulting from such Business Combination were Continuing Directors at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Business Combination;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets, other than factoring the Company's current receivables or escrows due (or, if such stockholder approval is not required, the decision by the Board to proceed with such a liquidation, sale, or disposition in one transaction or a series of related transactions); or

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or any successor rule) (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

(d) "***Corporate Status***" describes the status of a person who is or was a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of the Company or of any other Enterprise (as defined below) which such person is or was serving at the request of the Company.

(e) "***Delaware Court***" shall mean the Court of Chancery of the State of Delaware.

(f) "***Disinterested Director***" shall mean a director of the Company who is not and was not a party to the Proceeding (as defined below) in respect of which indemnification is sought by Indemnitee.

(g) "***Enterprise***" shall mean the Company and any other corporation, constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which the Company (or any of its wholly owned subsidiaries) is a party, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent.

(h) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(i) "***Expenses***" shall include all direct and indirect costs, fees and expenses of any type or nature whatsoever, including, without limitation, all reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, fees of private investigators and professional advisors, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, fax transmission charges, secretarial services and all other disbursements, obligations or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settlement or appeal of, or otherwise participating in, a Proceeding (as defined below), including reasonable compensation for time spent by Indemnitee for which he or she is not otherwise compensated by the Company or any third party. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the principal, premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. "Expenses," however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(j) References to "***fines***" shall include any excise tax assessed on Indemnitee with respect to any employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

(k) "***Independent Counsel***" shall mean a law firm or a member of a law firm with significant experience in matters of corporation law and that neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements); or (ii) any other party to the Proceeding (as defined below) giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(l) The term "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act as in effect on the date hereof; provided, however, that "Person" shall exclude: (i) the Company; (ii) any Subsidiaries (as defined below) of the Company; (iii) any employment benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company; and (iv) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a Subsidiary (as defined below) of the Company or of a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(m) The term "***Proceeding***" shall include any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative or related nature, in which Indemnitee was, is, will or might be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action (or failure to act) taken by Indemnitee or of any action (or failure to act) on Indemnitee's part while acting as a director or officer of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

(n) The term "***Subsidiary***," with respect to any Person, shall mean any corporation, limited liability company, partnership, joint venture, trust or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by that Person.

3. **INDEMNITY IN THIRD-PARTY PROCEEDINGS**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 3 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 3, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement) actually, and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful.

4. **INDEMNITY IN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY**. To the fullest extent permitted by applicable law, the Company shall indemnify, hold harmless and exonerate Indemnitee in accordance with the provisions of this Section 4 if Indemnitee was, is, or is threatened to be made, a party to or a participant (as a witness, deponent or otherwise) in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of Indemnitee's Corporate Status. Pursuant to this Section 4, Indemnitee shall be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification, hold harmless or exoneration for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought or the Delaware Court shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification, to be held harmless or to exoneration.

5. **INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL**. Notwithstanding any other provisions of this Agreement except for Section 27, to the extent that Indemnitee was or is, by reason of Indemnitee's Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. If Indemnitee is not wholly successful in such Proceeding, the Company also shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which Indemnitee was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

6. **INDEMNIFICATION FOR EXPENSES OF A WITNESS**. Notwithstanding any other provision of this Agreement except for Section 27, to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness or deponent in any Proceeding to which Indemnitee was or is not a party or threatened to be made a party, Indemnitee shall, to the fullest extent permitted by applicable law, be indemnified, held harmless and exonerated against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

7. **ADDITIONAL INDEMNIFICATION, HOLD HARMLESS AND EXONERATION RIGHTS.** Notwithstanding any limitation in Sections 3, 4, or 5 and except for Section 27, the Company shall, to the fullest extent permitted by applicable law, indemnify, hold harmless and exonerate Indemnitee if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses, judgments, liabilities, fines, penalties and amounts paid in settlement) actually and reasonably incurred by Indemnitee in connection with the Proceeding. No indemnification, hold harmless or exoneration rights shall be available under this Section 7 on account of Indemnitee's conduct which constitutes a breach of Indemnitee's duty of loyalty to the Company or its stockholders or is an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law.

8. **CONTRIBUTION IN THE EVENT OF JOINT LIABILITY**.

(a) To the fullest extent permissible under applicable law, if the indemnification, hold harmless and/or exoneration rights provided for in this Agreement are unavailable to Indemnitee in whole or in part for any reason whatsoever, the Company, in lieu of indemnifying, holding harmless or exonerating Indemnitee, shall pay, in the first instance, the entire amount incurred by Indemnitee, whether for judgments, liabilities, fines, penalties, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have at any time against Indemnitee.

(b) The Company shall not enter into any settlement of any Proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such Proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(c) The Company hereby agrees to fully indemnify, hold harmless and exonerate Indemnitee from any claims for contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

9. **EXCLUSIONS**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnification, advance expenses, hold harmless or exoneration payment in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity or advancement provision, except with respect to any excess beyond the amount actually received under any insurance policy, contract, agreement, other indemnity or advancement provision or otherwise;

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (or any successor rule) or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 14(f)-(g) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, hold harmless or exoneration payment, in its sole discretion, pursuant to the powers vested in the Company under applicable law. Indemnitee shall seek payments or advances from the Company only to the extent that such payments or advances are unavailable from any insurance policy of the Company covering Indemnitee.

10. **ADVANCES OF EXPENSES; DEFENSE OF CLAIM**.

(a) Notwithstanding any provision of this Agreement to the contrary, except for Section 27, and to the fullest extent not prohibited by applicable law, the Company shall pay the Expenses incurred by Indemnitee (or reasonably expected by Indemnitee to be incurred by Indemnitee within three months) in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements requesting such advances from time to time, prior to the final disposition of any Proceeding. Advances shall, to the fullest extent permitted by law, be unsecured and interest free. Advances shall, to the fullest extent permitted by law, be made without regard to Indemnitee's ability to repay the Expenses and without regard to Indemnitee's ultimate entitlement to be indemnified, held harmless or exonerated under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing a Proceeding to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. To the fullest extent required by applicable law, such payments of Expenses in advance of the final disposition of the Proceeding shall be made only upon the Company's receipt of an undertaking, by or on behalf of Indemnitee, to repay the advanced amounts to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified, held harmless or exonerated by the Company under the provisions of this Agreement, the Charter, the Bylaws, applicable law or otherwise. This Section 10(a) shall not apply to any claim made by Indemnitee for which an indemnification, hold harmless or exoneration payment is excluded pursuant to Section 9.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

(c) The Company shall not settle any action, claim or Proceeding (in whole or in part) which would impose any Expense, judgment, liability, fine, penalty or limitation on Indemnitee without Indemnitee's prior written consent.

11. **PROCEDURE FOR NOTIFICATION AND APPLICATION FOR INDEMNIFICATION**.

(a) Indemnitee agrees to notify promptly the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding, claim, issue or matter therein which may be subject to indemnification, hold harmless or exoneration rights, or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement, or otherwise.

(b) Indemnitee may deliver to the Company a written application to indemnify, hold harmless or exonerate Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, Indemnitee's entitlement to indemnification shall be determined according to Section 12(a) of this Agreement.

12. **PROCEDURE UPON APPLICATION FOR INDEMNIFICATION**.

(a) A determination, if required by applicable law, with respect to Indemnitee's entitlement to indemnification shall be made in the specific case by one of the following methods, which shall be at the election of Indemnitee: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (ii) by a committee of such directors designated by majority vote of such directors, (iii) if there are no Disinterested Directors or if such directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, or (iv) by vote of the stockholders. The Company promptly will advise Indemnitee in writing with respect to any determination that Indemnitee is or is not entitled to indemnification, including a description of any reason or basis for which indemnification has been denied. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall reasonably cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby agrees to indemnify and to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 12(a) hereof, the Independent Counsel shall be selected as provided in this Section 12(b). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. If the Independent Counsel is selected by the Board, the Company shall give written notice to Indemnitee advising Indemnitee of the identity of the Independent Counsel so selected and certifying that the Independent Counsel so selected meets the requirements of "Independent Counsel" as defined in Section 2 of this Agreement. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been received, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court of competent jurisdiction has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 11(b) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Delaware Court for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Delaware Court, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 12(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 14(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) The Company agrees to pay the reasonable fees and expenses of Independent Counsel and to fully indemnify and hold harmless such Independent Counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

13. **PRESUMPTIONS AND EFFECT OF CERTAIN PROCEEDINGS**.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 11(b) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by the Disinterested Directors or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by the Disinterested Directors or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) If the person, persons or entity empowered or selected under Section 12 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent permitted by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; provided, however, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

(d) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, manager, or officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, or on information or records given or reports made to the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member, by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise, its Board, any committee of the Board or any director, trustee, general partner, manager or managing member. The provisions of this Section 13(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) The knowledge and/or actions, or failure to act, of any other director, officer, trustee, partner, manager, managing member, fiduciary, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. **REMEDIES OF INDEMNITEE**.

(a) In the event that (i) a determination is made pursuant to Section 12 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses, to the fullest extent permitted by applicable law, is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 12(a) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5, 6, 7 or the last sentence of Section 12(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) a contribution payment is not made in a timely manner pursuant to Section 8 of this Agreement, (vi) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vii) payment to Indemnitee pursuant to any hold harmless or exoneration rights under this Agreement or otherwise is not made in accordance with this Agreement, Indemnitee shall be entitled to an adjudication by the Delaware Court to such indemnification, hold harmless, exoneration, contribution or advancement rights. Alternatively, Indemnitee, at Indemnitee's option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as set forth herein, the provisions of Delaware law (without regard to its conflict of laws rules) shall apply to any such arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 14 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) In any judicial proceeding or arbitration commenced pursuant to this Section 14, Indemnitee shall be presumed to be entitled to be indemnified, held harmless, and exonerated and to receive advancement of Expenses under this Agreement and the Company shall have the burden of proving Indemnitee is not entitled to be indemnified, held harmless, and exonerated and to receive advancement of Expenses, as the case may be, and the Company may not refer to or introduce into evidence any determination pursuant to Section 12(a) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 14, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 10 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(d) If a determination shall have been made pursuant to Section 12(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 14, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 14 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify and hold harmless Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) pay to Indemnitee, to the fullest extent permitted by applicable law, such Expenses which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee: (i) to enforce his or her rights under, or to recover damages for breach of, this Agreement or any other indemnification, hold harmless, exoneration, advancement or contribution agreement or provision of the Charter, or the Bylaws now or hereafter in effect; or (ii) for recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of the outcome and whether Indemnitee ultimately is determined to be entitled to such indemnification, hold harmless or exoneration right, advancement, contribution or insurance recovery, as the case may be (unless such judicial proceeding or arbitration was not brought by Indemnitee in good faith).

(g) Interest shall be paid by the Company to Indemnitee at the legal rate under Delaware law for amounts which the Company indemnifies, holds harmless or exonerates, or advances, or is obliged to indemnify, hold harmless or exonerate or advance for the period commencing with the date on which Indemnitee requests indemnification, to be held harmless, exonerated, contribution, reimbursement or advancement of any Expenses and ending with the date on which such payment is made to Indemnitee by the Company.

15. **SECURITY**. Notwithstanding anything herein to the contrary, except for Section 27, to the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

16. **NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION**.

(a) The rights of Indemnitee as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) or claim, issue or matter therein arising out of, or related to, any action taken or omitted by such Indemnitee in Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification, hold harmless or exoneration rights or advancement of Expenses than would be afforded currently under the Charter, the Bylaws or this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The DGCL, the Charter and the Bylaws permit the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Indemnitee against any liability asserted against Indemnitee or incurred by or on behalf of Indemnitee or in such capacity as a director, officer, employee or agent of the Company, or arising out of Indemnitee's status as such, whether or not the Company would have the power to indemnify Indemnitee against such liability under the provisions of this Agreement or under the DGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Indemnitee under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Indemnitee shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managers, managing members, fiduciaries, employees, or agents of the Company or of any other Enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managers, managing member, fiduciary, employee or agent under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness, deponent or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company, to the fullest extent permitted by law, shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) The Company's obligation to indemnify, hold harmless, exonerate or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification, hold harmless or exoneration payments or advancement of expenses from such Enterprise. Notwithstanding any other provision of this Agreement to the contrary except for Section 27, (i) Indemnitee shall have no obligation to reduce, offset, allocate, pursue or apportion any indemnification, hold harmless, exoneration, advancement, contribution or insurance coverage among multiple parties possessing such duties to Indemnitee prior to the Company's satisfaction and performance of all its obligations under this Agreement, and (ii) the Company shall perform fully its obligations under this Agreement without regard to whether Indemnitee holds, may pursue or has pursued any indemnification, advancement, hold harmless, exoneration, contribution or insurance coverage rights against any person or entity other than the Company.

17. **DURATION OF AGREEMENT**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee serves as a director or officer of the Company or as a director, officer, trustee, partner, manager, managing member, fiduciary, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other Enterprise which Indemnitee serves at the request of the Company and shall continue thereafter so long as Indemnitee shall be subject to any possible Proceeding (including any rights of appeal thereto and any Proceeding commenced by Indemnitee pursuant to Section 14 of this Agreement) by reason of Indemnitee's Corporate Status, whether or not Indemnitee is acting in any such capacity at the time any liability or expense is incurred for which indemnification or advancement can be provided under this Agreement.

18. **SEVERABILITY**. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section, paragraph or sentence of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

19. **ENFORCEMENT AND BINDING EFFECT**.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or key employee of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or key employee of the Company.

(b) Without limiting any of the rights of Indemnitee under the Charter or Bylaws as they may be amended from time to time, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The indemnification, hold harmless, exoneration and advancement of expenses rights provided by or granted pursuant to this Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent of the Company or a director, officer, trustee, general partner, manager, managing member, fiduciary, employee or agent of any other Enterprise at the Company's request, and shall inure to the benefit of Indemnitee and Indemnitee's spouse, assigns, heirs, devisees, executors and administrators and other legal representatives.

(d) The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(e) The Company and Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may, to the fullest extent permitted by law, enforce this Agreement by seeking, among other things, injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which Indemnitee may be entitled. The Company and Indemnitee further agree that Indemnitee shall, to the fullest extent permitted by law, be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by a court of competent jurisdiction. The Company hereby waives any such requirement of such a bond or undertaking to the fullest extent permitted by law.

20. **MODIFICATION AND WAIVER**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Company and Indemnitee. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

21. **NOTICES**. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed:

(a) If to Indemnitee, at the address indicated on the signature page of this Agreement, or such other address as Indemnitee shall provide in writing to the Company.

(b) If to the Company, to:

ProSomnus, Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@prosomnus.com

With a copy, which shall not constitute notice, to

Nelson Mullins Riley & Scarborough, LLP
101 Constitution Ave, NW, Suite 900
New York, New York 10105
Washington DC 20001
Attention: Peter Strand
Email: peter.strand@nelsonmullins.com

or to any other address as may have been furnished to Indemnitee in writing by the Company.

22. **APPLICABLE LAW AND CONSENT TO JURISDICTION**. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 14(a) of this Agreement, to the fullest extent permitted by law, the Company and Indemnitee hereby irrevocably and unconditionally: (a) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country; (b) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court; and (d) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum, or is subject (in whole or in part) to a jury trial. To the fullest extent permitted by law, the parties hereby agree that the mailing of process and other papers in connection with any such action or proceeding in the manner provided by Section 21 or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

23. **IDENTICAL COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

24. **MISCELLANEOUS**. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

25. **PERIOD OF LIMITATIONS**. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's spouse, heirs, executors or personal or legal representatives after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

26. **ADDITIONAL ACTS**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required to the fullest extent permitted by law, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

27. **WAIVER OF CLAIMS TO TRUST ACCOUNT**. Indemnitee hereby agrees that it does not have any right, title, interest or claim of any kind (each, a "***Claim***") in or to any monies in the trust account established in connection with the Company's initial public offering for the benefit of the Company and holders of shares issued in such offering, and hereby waives any Claim it may have in the future as a result of, or arising out of, any services provided to the Company and will not seek recourse against such trust account for any reason whatsoever.

28. **MAINTENANCE OF INSURANCE**. The Company shall use commercially reasonable efforts to obtain and maintain in effect during the entire period for which the Company is obligated to indemnify the Indemnitee under this Agreement, one or more policies of insurance with reputable insurance companies to provide the officers/directors of the Company with coverage for losses from wrongful acts and omissions and to ensure the Company's performance of its indemnification obligations under this Agreement. The Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. In all such insurance policies, the Indemnitee shall be named as an insured in such a manner as to provide the Indemnitee with the same rights and benefits as are accorded to the most favorably insured of the Company's directors and officers.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be signed as of the day and year first above written.

PROSOMNUS, INC.

By: _____
Name: Len Liptak
Title: Chief Executive Officer

INDEMNITEE

By: _____
Name:
Address:

[Signature page to Indemnity Agreement]

Exhibit 10.4

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "***Agreement***") is made and entered into as of December 6, 2022 by and among (i) **Lakeshore Acquisition I Corp.**, a Cayman Islands exempted company (which shall reincorporate as a Delaware corporation in connection with the consummation of the transactions contemplated under the Merger Agreement (as defined below) (together with its successors, including after the Reincorporation (as defined in the Merger Agreement), "***Purchaser***"), and (ii) the undersigned parties listed under Investor on the signature page hereto (each such party, together with any person or entity who hereafter becomes a party to this Agreement pursuant to Section 6.2 of this Agreement, an "***Investor***" and collectively the "***Investors***").

WHEREAS, on May 9, 2022, (i) Purchaser, (ii) LAAA Merger Sub Inc., a Delaware corporation and a wholly-owned subsidiary of Purchaser ("***Merger Sub***"), (iii) RedOne Investment Limited, a British Virgin Islands company, in the capacity as the representative from and after the Effective Time (as defined in the Merger Agreement) for the stockholders of the Purchaser (other than the Company Security Holders (as defined in the Merger Agreement) as of immediately prior to the Effective Time and their successors and assignees) in accordance with the terms and conditions of the Merger Agreement (the "***Purchaser Representative***"), (iv) HGP II, LLC, a Delaware limited liability company, in the capacity as the representative from and after the Effective Time for the Company Stockholders (as defined below) as of immediately prior to the Effective Time in accordance with the terms and conditions of the Merger Agreement (the "***Seller Representative***"), and (v) ProSomnus Holdings Inc., a Delaware corporation (the "***Company***"), entered into that certain Agreement and Plan of Merger (as amended from time to time in accordance with the terms thereof, the "***Merger Agreement***");

WHEREAS, pursuant to the Merger Agreement, subject to the terms and conditions thereof, upon the consummation of the transactions contemplated thereby (the "***Closing***"), among other matters, Merger Sub will merge with and into the Company, with the Company continuing as the surviving entity and a wholly-owned subsidiary of Purchaser, and with the Investors, as stockholders of the Company, receiving shares of the Purchaser's Common Stock (the "***Merger Consideration Shares***"), all upon the terms and subject to the conditions set forth in the Merger Agreement and in accordance with the provisions of applicable law;

WHEREAS, in connection with the Closing, the Investors will enter into a lock-up agreement with Purchaser and the Purchaser Representative (as amended from time to time in accordance with the terms thereof, a "***Lock-Up Agreement***"), pursuant to which the Investors will agree not to transfer the Merger Consideration Shares for a certain period of time after the Closing as stated in the Lock-Up Agreement; and

WHEREAS, the parties desire to enter into this Agreement to provide the Investors with certain rights relating to the registration of the Merger Consideration Shares received by the Investors under the Merger Agreement, including any additional Merger Consideration Shares issued after the Closing pursuant to Section 1.17 of the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS. Any capitalized term used but not defined in this Agreement will have the meaning ascribed to such term in the Merger Agreement. The following capitalized terms used herein have the following meanings:

"***Agreement***" means this Agreement, as amended, restated, supplemented, or otherwise modified from time to time.

"***Closing***" is defined in the recitals to this Agreement.

"***Company***" is defined in the recitals to this Agreement.

"***Demand Registration***" is defined in Section 2.1.1.

"***Demanding Holder***" is defined in Section 2.1.1.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

"***Founder Registration Rights Agreement***" means that certain Registration Rights Agreement, dated as of June 10, 2021, by and among Purchaser and the investors included on the signature page thereto.

"***Founder Securities***" means those securities included in the definition of "Registrable Security" specified in the Founder Registration Rights Agreement.

"***Indemnified Party***" is defined in Section 4.3.

"***Indemnifying Party***" is defined in Section 4.3.

"***Investors***" is defined in the preamble to this Agreement, and includes any transferee of the Registrable Securities (so long as they remain Registrable Securities) of an Investor permitted under this Agreement and the Lock-Up Agreement.

"***Investor Indemnified Party***" is defined in Section 4.1.

"***Lock-Up Agreement***" is defined in the recitals to this Agreement.

"***Maximum Number of Securities***" is defined in Section 2.1.4.

"***Merger Agreement***" is defined in the recitals to this Agreement.

"***Piggy-Back Registration***" is defined in Section 2.2.1.

"***PIPE Investment***" is defined in the Merger Agreement.

"***Pro Rata***" is defined in Section 2.1.4.

"***Proceeding***" is defined in Section 6.9.

"***Purchaser***" is defined in the preamble to this Agreement, and shall include Purchaser's successors by merger, acquisition, reorganization or otherwise.

"***Purchaser Common Stock***" means the shares of common stock of the Purchaser following consummation of the Reincorporation.

"***Register***," "***Registered***" and "***Registration***" mean a registration or offering effected by preparing and filing a registration statement or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

"***Registrable Securities***" means all of the Merger Consideration Shares and shares of Purchaser Common Stock beneficially owned by the Investors, including any shares issued after the Closing pursuant to Section 1.17 of the Merger Agreement. Registrable Securities also include any warrants, capital shares or other securities of Purchaser issued as a dividend, stock split or other distribution with respect to or in exchange for or in replacement of the foregoing securities or otherwise in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other reorganization or other similar event with respect to the Purchaser Common Stock. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when: (a) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (b) such securities shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by Purchaser and subsequent public distribution of them shall not require registration under the Securities Act; (c) such securities shall have ceased to be outstanding; (d) such securities are freely saleable under Rule 144 without volume limitations; or (e) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction. Notwithstanding anything to the contrary contained herein, securities shall only be "Registrable Securities" under this Agreement if they are held by an Investor or a transferee of an Investor permitted under this Agreement and the Lock-Up Agreement.

"***Registration Statement***" means a registration statement filed by Purchaser with the SEC in compliance with the Securities Act and the rules and regulations promulgated thereunder for a public offering and sale of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities (other than a registration statement on Form S-4 or Form S-8, or their successors, or any registration statement covering only securities proposed to be issued in exchange for securities or assets of another entity).

"***Rule 144***" means Rule 144 promulgated under the Securities Act or any successor rule thereto.

"***SEC***" means the United States Securities and Exchange Commission or any successor thereto.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder, all as the same shall be in effect at the time.

"***Short Form Registration***" is defined in Section 2.3.

"***Specified Courts***" is defined in Section 6.9.

"***Underwriter***" means a securities dealer who purchases any Registrable Securities as principal in an underwritten offering and not as part of such dealer's market-making activities.

2. REGISTRATION RIGHTS.

2.1 Demand Registration.

2.1.1 Request for Registration. Subject to this Section 2.1.1 and Section 2.4, at any time and from time to time after the Closing, Investors holding a majority-in-interest of the Registrable Securities then issued and outstanding may make a written demand for registration under the Securities Act of all or part of their Registrable Securities (a "***Demand Registration***"). Any demand for a Demand Registration shall specify the number of Registrable Securities proposed to be sold and the intended method(s) of distribution thereof. Within thirty (30) days following receipt of any request for a Demand Registration, Purchaser will notify all other Investors holding Registrable Securities of the demand, and each Investor holding Registrable Securities who wishes to include all or a portion of such Investor's Registrable Securities in the Demand Registration (each such Investor including shares of Registrable Securities in such registration, a "***Demanding Holder***") shall so notify Purchaser within fifteen (15) days after the receipt by the Investor of the notice from Purchaser. Upon any such request, the Demanding Holders shall be entitled to have their Registrable Securities included in the Demand Registration, subject to Section 2.1.4 and the provisos set forth in Section 3.1.1. Purchaser shall not be obligated to effect more than an aggregate of three (3) Demand Registrations under this Section 2.1.1 in respect of all Registrable Securities.

2.1.2 Effective Registration. A Registration will not count as a Demand Registration until the Registration Statement filed with the SEC with respect to such Demand Registration has been declared effective and Purchaser has complied in all material respects with its obligations under this Agreement with respect thereto; provided, however, that if, after such Registration Statement has been declared effective, the offering of Registrable Securities pursuant to a Demand Registration is interfered with by any stop order or injunction of the SEC or any other governmental agency or court, the Registration Statement with respect to such Demand Registration will be deemed not to have been declared effective, unless and until, (i) such stop order or injunction is removed, rescinded or otherwise terminated, and (ii) a majority-in-interest of the Demanding Holders thereafter elect to continue with such Registration and accordingly notify Purchaser in writing, but in no event later than five (5) days, of such election; provided, further, that Purchaser shall not be obligated to file a second Registration Statement until a Registration Statement that has been filed is counted as a Demand Registration or is terminated.

2.1.3 Underwritten Offering. If a majority-in-interest of the Demanding Holders so elect and advise Purchaser as part of their written demand for a Demand Registration, the offering of such Registrable Securities pursuant to such Demand Registration shall be in the form of an underwritten offering. In such event, the right of any Demanding Holder to include its Registrable Securities in such registration shall be conditioned upon such Demanding Holder's participation in such underwritten offering and the inclusion of such Demanding Holder's Registrable Securities in the underwritten offering to the extent provided herein. All Demanding Holders proposing to distribute their Registrable Securities through such underwritten offering shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such underwritten offering by a majority-in-interest of the Investors initiating the Demand Registration and reasonably acceptable to Purchaser.

2.1.4 Reduction of Offering. If the managing Underwriter or Underwriters for a Demand Registration that is to be an underwritten offering, in good faith, advises Purchaser and the Demanding Holders in writing that the dollar amount or number of Registrable Securities which the Demanding Holders desire to sell, taken together with all other shares of Purchaser Common Stock or other securities which Purchaser desires to sell and the shares of Purchaser Common Stock or other securities, if any, as to which Registration by Purchaser has been requested pursuant to written contractual piggy-back registration rights held by other security holders of Purchaser who desire to sell, exceeds the maximum dollar amount or maximum number of shares that can be sold in such offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of securities, as applicable, the "***Maximum Number of Securities***"), then Purchaser shall include in such Registration: (i) first, the Registrable Securities as to which Demand Registration has been requested by the Demanding Holders and the Founder Securities for the account of any Persons who have exercised demand registration rights pursuant to the Founder Registration Rights Agreement during the period under which the Demand Registration hereunder is ongoing (all pro rata in accordance with the number of securities that each applicable Person has requested be included in such registration, regardless of the number of securities held by each such Person, as long as they do not request to include more securities than they own (such proportion is referred to herein as "***Pro Rata***")) that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i) the Registrable Securities of Investors as to which registration has been requested pursuant to Section 2.2 and the Founder Securities as to which registration has been requested pursuant to the applicable written contractual piggy-back registration rights of the Founder Registration Rights Agreement, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Purchaser Common Stock or other securities that Purchaser desires to sell that can be sold without exceeding the Maximum Number of Securities; and (iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Purchaser Common Stock or other securities for the account of other Persons that Purchaser is obligated to register pursuant to written contractual arrangements with such Persons that can be sold without exceeding the Maximum Number of Securities. In the event that Purchaser securities that are convertible into shares of Purchaser Common Stock are included in the offering, the calculations under this Section 2.1.4 shall include such Purchaser securities on an as-converted to Purchaser Common Stock basis.

2.1.5 Withdrawal. A Demanding Holder may withdraw all or any portion of their Registrable Securities included in a Demand Registration from such Demand Registration at any time prior to the effectiveness of the Demand Registration Statement. If a majority-in-interest of the Demanding Holders disapprove of the terms of any underwritten offering or are not entitled to include all of their Registrable Securities in any offering, such majority-in-interest of the Demanding Holders may elect to withdraw from such offering by giving written notice to Purchaser and the Underwriter or Underwriters of their request to withdraw prior to the effectiveness of the Registration Statement filed with the SEC with respect to such Demand Registration. If the majority-in-interest of the Demanding Holders withdraws from a proposed offering relating to a Demand Registration in such event, then such registration shall not count as a Demand Registration provided for in Section 2.1.

2.2 Piggy-Back Registration.

2.2.1 Piggy-Back Rights. Subject to Section 2.4, if at any time after the Closing Purchaser proposes to file a Registration Statement under the Securities Act with respect to the Registration of or an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into, equity securities, by Purchaser for its own account or for security holders of Purchaser for their account (or by Purchaser and by security holders of Purchaser including pursuant to Section 2.1), other than a Registration Statement (i) filed in connection with any employee share option or other benefit plan, (ii) for an exchange offer or offering of securities solely to Purchaser's existing security holders, (iii) for an offering of debt that is convertible into equity securities of Purchaser, or (iv) for a dividend reinvestment plan, then Purchaser shall (x) give written notice of such proposed filing to Investors holding Registrable Securities as soon as practicable but in no event less than ten (10) days before the anticipated filing date or confidential submission date, which notice shall describe the amount and type of securities to be included in such Registration or offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, of the offering, and (y) offer to Investors holding Registrable Securities in such notice the opportunity to register the sale of such number of Registrable Securities as such Investors may request in writing within five (5) days following receipt of such notice (a "***Piggy-Back Registration***"). To the extent permitted by applicable securities laws with respect to such registration by Purchaser or another demanding security holder, Purchaser shall use its best efforts to cause (i) such Registrable Securities to be included in such registration and (ii) the managing Underwriter or Underwriters of a proposed underwritten offering to permit the Registrable Securities requested to be included in a Piggy-Back Registration on the same terms and conditions as any similar securities of Purchaser and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All Investors holding Registrable Securities proposing to distribute their securities through a Piggy-Back Registration that involves an Underwriter or Underwriters shall enter into an underwriting agreement in customary form with the Underwriter or Underwriters selected for such Piggy-Back Registration.

2.2.2 Reduction of Offering. If the managing Underwriter or Underwriters for a Piggy-Back Registration that is to be an underwritten offering, in good faith, advises Purchaser and Investors holding Registrable Securities proposing to distribute their Registrable Securities through such Piggy-Back Registration in writing that the dollar amount or number of shares of Purchaser Common Stock or other Purchaser securities which Purchaser desires to sell, taken together with the shares of Purchaser Common Stock or other Purchaser securities, if any, as to which registration has been demanded pursuant to written contractual arrangements with Persons other than the Investors holding Registrable Securities hereunder, the Registrable Securities as to which registration has been requested under this Section 2.2, and the shares of Purchaser Common Stock or other Purchaser securities, if any, as to which registration has been requested pursuant to the written contractual piggy-back registration rights of other security holders of Purchaser, exceeds the Maximum Number of Securities, then Purchaser shall include in any such registration:

(a) If the registration is undertaken for Purchaser's account: (i) first, the shares of Purchaser Common Stock or other securities that Purchaser desires to sell that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Registrable Securities of Investors as to which registration has been requested pursuant to this Section 2.2 and the Founder Securities as to which registration has been requested pursuant to the applicable written contractual piggy-back registration rights under the Founder Registration Rights Agreement, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; and (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Purchaser Common Stock or other equity securities for the account of other Persons that Purchaser is obligated to register pursuant to separate written contractual arrangements with such Persons that can be sold without exceeding the Maximum Number of Securities;

(b) If the registration is a "demand" registration undertaken at the demand of Demanding Holders pursuant to Section 2.1: (i) first, the shares of Purchaser Common Stock or other securities for the account of the Demanding Holders and the Founder Securities for the account of any Persons who have exercised demand registration rights pursuant to the Founder Registration Rights Agreement during the period under which the Demand Registration hereunder is ongoing, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Registrable Securities of Investors as to which registration has been requested pursuant to this Section 2.2 and the Founder Securities as to which registration has been requested pursuant to the applicable written contractual piggy-back registration rights under the Founder Registration Rights Agreement, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Purchaser Common Stock or other securities that Purchaser desires to sell that can be sold without exceeding the Maximum Number of Securities; and (iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Purchaser Common Stock or other equity securities for the account of other Persons that Purchaser is obligated to register pursuant to separate written contractual arrangements with such Persons that can be sold without exceeding the Maximum Number of Securities;

(c) If the registration is a "demand" registration undertaken at the demand of holders of Founder Securities under the Founder Registration Rights Agreement: (i) first, the Founder Securities for the account of the demanding holders and the Registrable Securities for the account of Demanding Holders who have exercised demand registration rights pursuant to Section 2.1 during the period under which the demand registration under the Founder Registration Rights Agreement is ongoing, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the Registrable Securities of Investors as to which registration has been requested pursuant to this Section 2.2 and the Founder Securities as to which registration has been requested pursuant to the applicable written contractual piggy-back registration rights under the Founder Registration Rights Agreement, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Purchaser Common Stock or other securities that Purchaser desires to sell that can be sold without exceeding the Maximum Number of Securities; and (iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Purchaser Common Stock or other equity securities for the account of other Persons that Purchaser is obligated to register pursuant to separate written contractual arrangements with such Persons that can be sold without exceeding the Maximum Number of Securities; and

(d) If the registration is a "demand" registration undertaken at the demand of Persons other than either Demanding Holders under Section 2.1 or the holders of Founder Securities exercising demand registration rights under the Founder Registration Rights Agreement: (i) first, the shares of Purchaser Common Stock or other securities for the account of the demanding Persons that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i) the Registrable Securities of Investors as to which registration has been requested pursuant to this Section 2.2 and the Founder Securities as to which registration has been requested pursuant to the applicable written contractual piggy-back registration rights under the Founder Registration Rights Agreement, Pro Rata among the holders thereof based on the number of securities requested by such holders to be included in such registration, that can be sold without exceeding the Maximum Number of Securities; (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Purchaser Common Stock or other securities that Purchaser desires to sell that can be sold without exceeding the Maximum Number of Securities; and (iv) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i), (ii) and (iii), the shares of Purchaser Common Stock or other equity securities for the account of other Persons that Purchaser is obligated to register pursuant to separate written contractual arrangements with such Persons that can be sold without exceeding the Maximum Number of Securities.

In the event that Purchaser securities that are convertible into shares of Purchaser Common Stock are included in the offering, the calculations under this Section 2.2.2 shall include such Purchaser securities on an as-converted to Purchaser Common Stock basis.

2.2.3 Withdrawal. Any Investor holding Registrable Securities may elect to withdraw such Investor's request for inclusion of Registrable Securities in any Piggy-Back Registration by giving written notice to Purchaser of such request to withdraw prior to the effectiveness of the Registration Statement. Purchaser (whether on its own determination or as the result of a withdrawal by Persons making a demand pursuant to written contractual obligations) may withdraw a Registration Statement at any time prior to the effectiveness of such Registration Statement without any liability to the applicable Investor, subject to the next sentence and the provisions of Section 4. Notwithstanding any such withdrawal, Purchaser shall pay all expenses incurred in connection with such Piggy-Back Registration as provided in Section 3.3 (subject to the limitations set forth therein) by Investors holding Registrable Securities that requested to have their Registrable Securities included in such Piggy-Back Registration.

2.3 Short Form Registrations. After the Closing, subject to Section 2.4, Investors holding Registrable Securities may at any time and from time to time, request in writing that Purchaser register the resale of any or all of such Registrable Securities on Form S-3 or any similar short-form registration which may be available at such time and applicable to such Investor's Registrable Securities ("***Short Form Registration***"); provided, however, that Purchaser shall not be obligated to effect such request through an underwritten offering. Upon receipt of such written request, Purchaser will promptly give written notice of the proposed registration to all other Investors holding Registrable Securities, and, as soon as practicable thereafter, effect the registration of all or such portion of such Investors' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities, if any, of any other Investors joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from Purchaser; provided, however, that Purchaser shall not be obligated to effect any such registration pursuant to this Section 2.3: (i) if Short Form Registration is not available to Purchaser for such offering; or (ii) if Investors holding Registrable Securities, together with the holders of any other securities of Purchaser entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at any aggregate price to the public of less than $500,000. Registrations effected pursuant to this Section 2.3 shall not be counted as Demand Registrations effected pursuant to Section 2.1.

2.4 Restriction of Offerings. Notwithstanding anything to the contrary contained in this Agreement, the Investors shall not be entitled to request, and Purchaser shall not be obligated to effect, or to take any action to effect, any registration (including any Demand Registration but not including Piggy-Back Registration) pursuant to this Section 2 with respect to any Registrable Securities that are subject to the transfer restrictions under the Lock-Up Agreement.

3. REGISTRATION PROCEDURES.

3.1 Filings; Information. Whenever Purchaser is required to effect the registration of any Registrable Securities pursuant to Section 2, Purchaser shall use its best efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method(s) of distribution thereof as expeditiously as practicable, and in connection with any such request:

3.1.1 Filing Registration Statement. Purchaser shall use its best efforts to, as expeditiously as possible after receipt of a request for a Demand Registration pursuant to Section 2.1, prepare and file with the SEC a Registration Statement on any form for which Purchaser then qualifies or which counsel for Purchaser shall deem appropriate and which form shall be available for the sale of all Registrable Securities to be registered thereunder in accordance with the intended method(s) of distribution thereof, and shall use its reasonable efforts to cause such Registration Statement to become effective and use its reasonable efforts to keep it effective for the period required by Section 3.1.3; provided, however, that Purchaser shall have the right to defer any Demand Registration for up to sixty (60) days, and any Piggy-Back Registration for such period as may be applicable to deferment of any demand registration to which such Piggy-Back Registration relates, in each case if Purchaser shall furnish to Investors requesting to include their Registrable Securities in such registration a certificate signed by the Chief Executive Officer, Chief Financial Officer or Chairman of Purchaser stating that, in the good faith judgment of the Board of Directors of Purchaser, it would be materially detrimental to Purchaser and its shareholders for such Registration Statement to be effected at such time or the filing would require premature disclosure of material information which is not in the interests of Purchaser to disclose at such time; provided further, however, that Purchaser shall not have the right to exercise the right set forth in the immediately preceding proviso more than twice in any 365-day period in respect of a Demand Registration hereunder.

3.1.2 Copies. Purchaser shall, prior to filing a Registration Statement or prospectus, or any amendment or supplement thereto, furnish without charge to Investors holding Registrable Securities included in such registration, and such Investors' legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the prospectus included in such Registration Statement (including each preliminary prospectus), and such other documents as Investors holding Registrable Securities included in such registration or legal counsel for any such Investors may request in order to facilitate the disposition of the Registrable Securities owned by such Investors.

3.1.3 Amendments and Supplements. Purchaser shall prepare and file with the SEC such amendments, including post-effective amendments, and supplements to such Registration Statement and the prospectus used in connection therewith as may be necessary to keep such Registration Statement effective and in compliance with the provisions of the Securities Act until all Registrable Securities and other securities covered by such Registration Statement have been disposed of in accordance with the intended method(s) of distribution set forth in such Registration Statement or such securities have been withdrawn or until such time as the Registrable Securities cease to be Registrable Securities as defined by this Agreement.

3.1.4 Reporting Obligations. As long as any Investors shall own Registrable Securities, the Purchaser, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Purchaser after the date hereof pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided that any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering, Analysis and Retrieval System shall be deemed to have been furnished or delivered to the Holders pursuant to this Section 3.1.4.

3.1.5 Other Obligations. In connection with a sale or transfer of Registrable Securities exempt from Section 5 of the Securities Act or through any broker-dealer transactions described in the plan of distribution set forth within the prospectus included in the Registration Statement, the Purchaser shall, subject to the receipt of the any customary documentation reasonably required from the applicable Investors in connection therewith, (a) promptly instruct its transfer agent to remove any restrictive legends applicable to the Registrable Securities being sold or transferred and (b) cause its legal counsel to deliver the necessary legal opinions, if any, to the transfer agent in connection with the instruction under subclause (a). In addition, the Purchaser shall cooperate reasonably with, and take such customary actions as may reasonably be requested by the Holders, in connection with the aforementioned sales or transfers.

3.1.4 Notification. After the filing of a Registration Statement, Purchaser shall promptly, and in no event more than five (5) Business Days after such filing, notify Investors holding Registrable Securities included in such Registration Statement of such filing, and shall further notify such Investors promptly and confirm such advice in writing in all events within five (5) Business Days after the occurrence of any of the following: (i) when such Registration Statement becomes effective; (ii) when any post-effective amendment to such Registration Statement becomes effective; (iii) the issuance or threatened issuance by the SEC of any stop order (and Purchaser shall take all actions required to prevent the entry of such stop order or to remove it if entered); and (iv) any request by the SEC for any amendment or supplement to such Registration Statement or any prospectus relating thereto or for additional information or of the occurrence of an event requiring the preparation of a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of the securities covered by such Registration Statement, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and promptly make available to Investors holding Registrable Securities included in such Registration Statement any such supplement or amendment; except that before filing with the SEC a Registration Statement or prospectus or any amendment or supplement thereto, including documents incorporated by reference, Purchaser shall furnish to Investors holding Registrable Securities included in such Registration Statement and to the legal counsel for any such Investors, copies of all such documents proposed to be filed sufficiently in advance of filing to provide such Investors and legal counsel with a reasonable opportunity to review such documents and comment thereon; provided that such Investors and their legal counsel must provide any comments promptly (and in any event within five (5) Business Days) after receipt of such documents.

3.1.5 State Securities Laws Compliance. Purchaser shall use its reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as Investors holding Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may reasonably request and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of Purchaser and do any and all other acts and things that may be necessary or advisable to enable Investors holding Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that Purchaser shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this paragraph or take any action to which it would be subject to general service of process or to taxation in any such jurisdiction where it is not then otherwise subject.

3.1.6 Agreements for Disposition. To the extent required by the underwriting agreement or similar agreements, Purchaser shall enter into reasonable customary agreements (including, if applicable, an underwriting agreement in customary form) and take such other actions as are reasonably required in order to expedite or facilitate the disposition of such Registrable Securities. The representations, warranties and covenants of Purchaser in any underwriting agreement which are made to or for the benefit of any Underwriters, to the extent applicable, shall also be made to and for the benefit of Investors holding Registrable Securities included in such Registration Statement. No Investor holding Registrable Securities included in such Registration Statement shall be required to make any representations or warranties in the underwriting agreement except, if applicable, with respect to such Investor's organization, good standing, authority, title to Registrable Securities, lack of conflict of such sale with such Investor's material agreements and organizational documents, and with respect to written information relating to such Investor that such Investor has furnished in writing expressly for inclusion in such Registration Statement.

3.1.7 Cooperation. The principal executive officer of Purchaser, the principal financial officer of Purchaser, the principal accounting officer of Purchaser and all other officers and members of the management of Purchaser shall reasonably cooperate in any offering of Registrable Securities hereunder, which cooperation shall include the preparation of the Registration Statement with respect to such offering and all other offering materials and related documents, and participation in meetings with Underwriters, attorneys, accountants and potential investors.

3.1.8 Records. Purchaser shall make available for inspection by Investors holding Registrable Securities included in such Registration Statement, any Underwriter participating in any disposition pursuant to such Registration Statement and any attorney, accountant or other professional retained by any Investor holding Registrable Securities included in such Registration Statement or any Underwriter, all financial and other records, pertinent corporate documents and properties of Purchaser, as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause Purchaser's officers, directors and employees to supply all information reasonably requested by any of them in connection with such Registration Statement; provided that Purchaser may require execution of a reasonable confidentiality agreement prior to sharing any such information.

3.1.9 Opinions and Comfort Letters. Purchaser shall obtain from its counsel and accountants to provide customary legal opinions and customary comfort letters, to the extent so reasonably required by any underwriting agreement.

3.1.10 Earnings Statement. Purchaser shall comply with all applicable rules and regulations of the SEC and the Securities Act, and make available to its shareholders if reasonably required, as soon as reasonably practicable, an earnings statement covering a period of twelve (12) months, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

3.1.11 Listing. Purchaser shall use its best efforts to cause all Registrable Securities that are shares of Purchaser Common Stock included in any registration to be listed on such national security exchange as similar securities issued by Purchaser are then listed or, if no such similar securities are then listed, in a manner satisfactory to Investors holding a majority-in-interest of the Registrable Securities included in such registration.

3.1.12 Road Show. If the registration involves the registration of Registrable Securities involving gross proceeds in excess of $25,000,000, Purchaser shall use its reasonable efforts to make available senior executives of Purchaser to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in any underwritten offering.

3.2 Obligation to Suspend Distribution. Upon receipt of any notice from Purchaser of the happening of any event of the kind described in Section 3.1.4(iv), or in the event that the financial statements contained in the Registration Statement become stale, or in the event that the Registration Statement or prospectus included therein contains a misstatement of material fact or omits to state a material fact due to a bona fide business purpose, or, in the case of a resale registration on Short Form Registration pursuant to Section 2.3 hereof, upon any suspension by Purchaser, pursuant to a written insider trading compliance program adopted by Purchaser's Board of Directors, of the ability of all "insiders" covered by such program to transact in Purchaser's securities because of the existence of material non-public information, each Investor holding Registrable Securities included in any registration shall immediately discontinue disposition of such Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Investor receives the supplemented or amended prospectus contemplated by Section 3.1.4(iv) or the Registration Statement is updated so that the financial statements are no longer stale, or the restriction on the ability of "insiders" to transact in Purchaser's securities is removed, as applicable, and, if so directed by Purchaser, each such Investor will deliver to Purchaser all copies, other than permanent file copies then in such Investor's possession, of the most recent prospectus covering such Registrable Securities at the time of receipt of such notice.

3.3 Registration Expenses. Subject to Section 4, Purchaser shall bear all reasonable costs and expenses incurred in connection with any Demand Registration pursuant to Section 2.1, any Piggy-Back Registration pursuant to Section 2.2, and any registration on Short Form Registration effected pursuant to Section 2.3, and all reasonable expenses incurred in performing or complying with its other obligations under this Agreement, whether or not the Registration Statement becomes effective, including: (i) all registration and filing fees; (ii) fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel in connection with blue sky qualifications of the Registrable Securities); (iii) printing expenses; (iv) Purchaser's internal expenses (including all salaries and expenses of its officers and employees); (v) the fees and expenses incurred in connection with the listing of the Registrable Securities as required by Section 3.1.11; (vi) Financial Industry Regulatory Authority fees; (vii) fees and disbursements of counsel for Purchaser and fees and expenses for independent certified public accountants retained by Purchaser (including the expenses or costs associated with the delivery of any opinions or comfort letters requested pursuant to Section 3.1.9); (viii) the reasonable fees and expenses of any special experts retained by Purchaser in connection with such registration and (ix) the reasonable fees and expenses of one legal counsel selected by Investors holding a majority-in-interest of the Registrable Securities included in such registration for such legal counsel's review, comment and finalization of the proposed Registration Statement and other relevant documents. Purchaser shall have no obligation to pay any underwriting discounts or selling commissions attributable to the Registrable Securities being sold by the holders thereof, which underwriting discounts or selling commissions shall be borne by such holders. Additionally, in an underwritten offering, only if the Underwriters require the selling security holders and/or Purchaser to bear the expenses of the Underwriter following good faith negotiations, all selling security holders and Purchaser shall bear the expenses of the Underwriter pro rata in proportion to the respective amount of securities each is selling in such offering.

3.4 Information. Investors holding Registrable Securities included in any Registration Statement shall provide such information as may reasonably be requested by Purchaser, or the managing Underwriter, if any, in connection with the preparation of such Registration Statement, including amendments and supplements thereto, in order to effect the registration of any Registrable Securities under the Securities Act pursuant to Section 2 and in connection with the obligation to comply with federal and applicable state securities laws. Investors selling Registrable Securities in any offering must provide all questionnaires, powers of attorney, custody agreements, stock powers, and other documentation reasonably requested by Purchaser or the managing Underwriter.

4. INDEMNIFICATION AND CONTRIBUTION.

4.1 Indemnification by Purchaser. Subject to the provisions of this Section 4.1 below, Purchaser agrees to indemnify and hold harmless each Investor, and each Investor's officers, employees, affiliates, directors, partners, members, attorneys and agents, and each Person, if any, who controls an Investor (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) (each, an "***Investor Indemnified Party***"), from and against any expenses, losses, judgments, claims, damages or liabilities, whether joint or several, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement, or arising out of or based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by Purchaser of the Securities Act or any rule or regulation promulgated thereunder applicable to Purchaser and relating to action or inaction required of Purchaser in connection with any such registration (provided, however, that the indemnity agreement contained in this Section 4.1 shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if such settlement is effected without the consent of Purchaser, such consent not to be unreasonably withheld, delayed or conditioned); and Purchaser shall promptly reimburse the Investor Indemnified Party for any legal and any other expenses reasonably incurred by such Investor Indemnified Party in connection with investigating and defending any such expense, loss, judgment, claim, damage, liability or action; provided, however, that Purchaser will not be liable in any such case to the extent that any such expense, loss, claim, damage or liability arises out of or is based upon any untrue or alleged untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus, final prospectus, or summary prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to Purchaser, in writing, by such selling holder or Investor Indemnified Party expressly for use therein. Purchaser also shall indemnify any Underwriter of the Registrable Securities, their officers, affiliates, directors, partners, members and agents and each Person who controls such Underwriter on substantially the same basis as that of the indemnification provided above in this Section 4.1.

4.2 Indemnification by Holders of Registrable Securities. Subject to the provisions of this Section 4.2 below, each Investor selling Registrable Securities will, in the event that any registration is being effected under the Securities Act pursuant to this Agreement of any Registrable Securities held by such selling Investor, indemnify and hold harmless Purchaser, each of its directors and officers and each Underwriter (if any), and each other selling holder and each other Person, if any, who controls another selling holder or such Underwriter within the meaning of the Securities Act, against any losses, claims, judgments, damages or liabilities, whether joint or several, insofar as such losses, claims, judgments, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to Purchaser by such selling Investor expressly for use therein (provided, however, that the indemnity agreement contained in this Section 4.2 shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if such settlement is effected without the consent of the indemnifying Investor, such consent not to be unreasonably withheld, delayed or conditioned), and shall reimburse Purchaser, its directors and officers, each Underwriter and each other selling holder or controlling Person for any legal or other expenses reasonably incurred by any of them in connection with investigation or defending any such loss, claim, damage, liability or action. Each selling Investor's indemnification obligations hereunder shall be several and not joint and shall be limited to the amount of any net proceeds actually received by such selling Investor in the applicable offering.

4.3 Conduct of Indemnification Proceedings. Promptly after receipt by any Person of any notice of any loss, claim, damage or liability or any action in respect of which indemnity may be sought pursuant to Section 4.1 or 4.2, such Person (the "***Indemnified Party***") shall, if a claim in respect thereof is to be made against any other Person for indemnification hereunder, notify such other Person (the "***Indemnifying Party***") in writing of the loss, claim, judgment, damage, liability or action; provided, however, that the failure by the Indemnified Party to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability which the Indemnifying Party may have to such Indemnified Party hereunder, except and solely to the extent the Indemnifying Party is actually prejudiced by such failure. If the Indemnified Party is seeking indemnification with respect to any claim or action brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in such claim or action, and, to the extent that it wishes, jointly with all other Indemnifying Parties, to assume control of the defense thereof with counsel satisfactory to the Indemnified Party if the Indemnifying Party provides notice of such to the Indemnified Party within thirty (30) days of the Indemnifying Party's receipt of notice of such claim. After notice from the Indemnifying Party to the Indemnified Party of its election to assume control of the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that in any action in which both the Indemnified Party and the Indemnifying Party are named as defendants, the Indemnified Party shall have the right to employ separate counsel (but no more than one such separate counsel) to represent the Indemnified Party and its controlling Persons who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Indemnified Party against the Indemnifying Party, with the fees and expenses of such counsel to be paid by such Indemnifying Party if, based upon the written opinion of counsel of such Indemnified Party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (acting reasonably), consent to entry of judgment or effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such judgment or settlement includes an unconditional release of such Indemnified Party from all liability arising out of such claim or proceeding.

4.4 Contribution.

4.4.1 If the indemnification provided for in the foregoing Sections 4.1, 4.2 and 4.3 is unavailable to any Indemnified Party in respect of any loss, claim, damage, liability or action referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or action in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties and the Indemnifying Parties in connection with the actions or omissions which resulted in such loss, claim, damage, liability or action, as well as any other relevant equitable considerations. The relative fault of any Indemnified Party and any Indemnifying Party shall be determined by reference to, among other things, whether the untrue statement of a material fact or the omission to state a material fact relates to information supplied by such Indemnified Party or such Indemnifying Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

4.4.2 The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding Section 4.4.1.

4.4.3 The amount paid or payable by an Indemnified Party as a result of any loss, claim, damage, liability or action referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 4.4, no Investor holding Registrable Securities shall be required to contribute any amount in excess of the dollar amount of the net proceeds (after payment of any underwriting fees, discounts, commissions or taxes) actually received by such Investor from the sale of Registrable Securities which gave rise to such contribution obligation. Any contributions obligation of the Investors shall be several and not joint. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

5. RULE 144 AND 145.

5.1 Rule 144 and 145. Purchaser covenants that it shall file any reports required to be filed by it under the Securities Act and the Exchange Act and shall take such further action as Investors holding Registrable Securities may reasonably request, all to the extent required from time to time to enable such Investors to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and 145 under the Securities Act, as such Rule 144 and 145 may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

6. MISCELLANEOUS.

6.1 Other Registration Rights. Purchaser represents and warrants that as of the date of this Agreement, no Person, other than the holders of (i) Registrable Securities, (ii) Founder Securities and (iii) securities acquired in the PIPE Investment, has any right to require Purchaser to register any of Purchaser's share capital for sale or to include Purchaser's share capital in any registration filed by Purchaser for the sale of share capital for its own account or for the account of any other Person. The Investors hereby acknowledge that Purchaser has granted resale registration rights to holders of PIPE Securities in the PIPE Subscription Agreements, and that nothing herein shall restrict the ability of Purchaser to fulfill its resale registration obligations under the PIPE Subscription Agreements.

6.2 Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations of Purchaser hereunder may not be assigned or delegated by Purchaser in whole or in part, unless Purchaser first provides Investors holding Registrable Securities at least ten (10) Business Days prior written notice; provided that no assignment or delegation by Purchaser will relieve Purchaser of its obligations under this Agreement unless Investors holding a majority-in-interest of the Registrable Securities provide their prior written consent, which consent must not be unreasonably withheld, delayed or conditioned. This Agreement and the rights, duties and obligations of Investors holding Registrable Securities hereunder may be freely assigned or delegated by such Investor in conjunction with and to the extent of any transfer of Registrable Securities by such Investor which is permitted by the Lock-Up Agreement; provided that no assignment by any Investor of its rights, duties and obligations hereunder shall be binding upon or obligate Purchaser unless and until Purchaser shall have received (i) written notice of such assignment and (ii) the written agreement of the assignee, in a form reasonably satisfactory to Purchaser, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement). This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties, to the permitted assigns of the Investors or of any assignee of the Investors. This Agreement is not intended to confer any rights or benefits on any Persons that are not party hereto other than as expressly set forth in Section 4 and this Section 6.2.

6.3 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (i) in person, (ii) by facsimile or other electronic means, with affirmative confirmation of receipt, (iii) one Business Day after being sent, if sent by reputable, nationally recognized overnight courier service or (iv) three (3) Business Days after being mailed, if sent by registered or certified mail, pre-paid and return receipt requested, in each case to the applicable party at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Purchaser, to:
Lakeshore Acquisition I Corp.
667 Madison Avenue
New York, NY 10065
Attn: Bill Chen
Telephone No.: (917) 327-9933
E-mail: bchen65@126.com

With copies to (which shall not constitute notice):
Loeb & Loeb LLP
345 Park Avenue
New York, NY 10154
Attn: Giovanni Caruso
Facsimile No.:
Telephone No.: (212) 407-4866
E-mail: gcaruso@loeb.com

With copies to (which shall not constitute notice):
Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave, NW, Suite 900
Washington, DC 20001
Attn: Peter Strand, Esq.
Facsimile No.: (202) 689-2952
Telephone No.: (202) 689-2983
E-mail: peter.strand@nelsonmullins.com

If to Company, to:
ProSomnus Holdings Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@prosomnus.com

With copies to (which shall not constitute notice):
Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave, NW, Suite 900
Washington, DC 20001
Attn: Peter Strand, Esq.
Facsimile No.: (202) 689-2952
Telephone No.: (202) 689-2983
E-mail: peter.strand@nelsonmullins.com

6.4 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible that is valid and enforceable. Notwithstanding anything to the contrary contained in this Agreement, in the event that a duly executed copy of this Agreement is not delivered to Purchaser by a Person receiving Merger Consideration Shares in connection with the Closing, such Person failing to provide such signature shall not be a party to this Agreement or have any rights or obligations hereunder, but such failure shall not affect the rights and obligations of the other parties to this Agreement as amongst such other parties.

6.5 Entire Agreement. This Agreement (together with the Merger Agreement, and the Lock-Up Agreement to the extent incorporated herein, and including all agreements entered into pursuant hereto or thereto or referenced herein or therein and all certificates and instruments delivered pursuant hereto and thereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written, relating to the subject matter hereof; provided, that, for the avoidance of doubt, the foregoing shall not affect the rights and obligations of the parties under the Merger Agreement or any other Ancillary Document or the rights or obligations of the parties under the Founder Registration Rights Agreement.

6.6 Interpretation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement. In this Agreement, unless the context otherwise requires: (i) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa; (ii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding or succeeding such term and shall be deemed in each case to be followed by the words "without limitation"; (iii) the words "herein," "hereto," and "hereby" and other words of similar import in this Agreement shall be deemed in each case to refer to this Agreement as a whole and not to any particular section or other subdivision of this Agreement; and (iv) the term "or" means "and/or". The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

6.7 Amendments; Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written agreement or consent of Purchaser (after the Closing by a majority of the Disinterested Independent Directors) and Investors holding a majority-in-interest of the Registrable Securities; provided, that any amendment or waiver of this Agreement which affects an Investor in a manner materially and adversely disproportionate to other Investors will also require the consent of such Investor. No failure or delay by a party in exercising any right hereunder shall operate as a waiver thereof. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.8 Remedies Cumulative. In the event a party fails to observe or perform any covenant or agreement to be observed or performed under this Agreement, the other parties may proceed to protect and enforce its rights by suit in equity or action at law, whether for specific performance of any term contained in this Agreement or for an injunction against the breach of any such term or in aid of the exercise of any power granted in this Agreement or to enforce any other legal or equitable right, or to take any one or more of such actions, without being required to post a bond. None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

6.9 Governing Law; Jurisdiction. Sections 10.6 and 10.7 of the Merger Agreement shall apply to this Agreement *mutatis mutandis*.

6.10 Termination of Merger Agreement. This Agreement shall be binding upon each party upon such party's execution and delivery of this Agreement, but this Agreement shall only become effective upon the Closing. In the event that the Merger Agreement is validly terminated in accordance with its terms prior to the Closing, this Agreement shall automatically terminate and become null and void and be of no further force or effect, and the parties shall have no obligations hereunder.

6.11 Counterparts. This Agreement may be executed in multiple counterparts (including by facsimile or pdf or other electronic document transmission), each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Copies of executed counterparts of this Agreement transmitted by electronic transmission (including by email or in .pdf format) or facsimile as well as electronically or digitally executed counterparts (such as DocuSign) shall have the same legal effect as original signatures and shall be considered original executed counterparts of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered as of the date first written above.

Purchaser:

Lakeshore Acquisition I Corp.

By: /s/ Bill Chen
Name: Bill Chen
Title: Chief Executive Officer

{Signature Page to Registration Rights Agreement}

IN WITNESS WHEREOF, the parties have caused this Registration Rights Agreement to be executed and delivered as of the date first written above.

Investors:

[_____]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

{Signature Page to Registration Rights Agreement}

Exhibit 10.5

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of December 6, 2022, between PromSomnus, Inc., a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to (i) the Senior Securities Purchase Agreement, dated as of August 26, 2022, by and among ProSomnus Holdings Inc., Lakeshore Acquisition I Corp., a Cayman Islands corporation (the "SPAC") and each purchaser identified on the signature pages thereto (the "Senior Purchase Agreement") and (ii) the Subordinated Securities Purchase Agreement, dated as of August 26, 2022, by and among the ProSomnus Holdings Inc., the SPAC and each purchaser identified on the signature pages thereto (the "Subordinated Purchase Agreement" and together with the Senior Securities Purchase Agreement, the "Purchase Agreements").

The Company and each Purchaser hereby agrees as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreements shall have the meanings given such terms in the Purchase Agreements. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(c).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 90th calendar day following the date hereof and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 60th calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, the 30th calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, as of any date of determination, (a) all shares of Common Stock then issued and issuable upon conversion in full of the Convertible Notes (assuming on such date the Convertible Notes are converted in full without regard to any conversion limitations therein), (b) all shares of Common Stock issued and issuable as interest or principal on the Convertible Notes assuming all permissible interest and principal payments are made in shares of Common Stock and the Convertible Notes are held until maturity, (c) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (d) any additional shares of Common Stock issued and issuable in connection with any anti-dilution provisions in the Convertible Notes or the Warrants (in each case, without giving effect to any limitations on conversion set forth in the Convertible Notes or limitations on exercise set forth in the Warrants) (e) the Convertible Notes and (f) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

"SEC Guidance" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

"Warrants" means, collectively, the Common Stock purchase warrants issuable pursuant to the Purchase Agreements.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be 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 herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A and substantially the "Selling Stockholder" section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holders via e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities;

b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders);

c. Third, the Company shall reduce Registrable Securities represented by Conversion Shares (applied, in the case that some Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Conversion Shares held by such Holders); and

d. Fourth, the Company shall reduce Registrable Securities represented by Convertible Notes (applied, in the case that some Convertible Notes may be registered, to the Holders on a pro rata basis based on the total number of unregistered Convertible Notes held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least three (3) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein or the Company subsequent withdraws the filing of the Registration Statement, the Company shall be deemed to have not satisfied this clause as of the Filing Date (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement (provided if the Registration Statement does not allow for the resale of Registrable Securities at prevailing market prices (ie. only allows for fixed price sales), the Company shall have been deemed to have not satisfied this clause) or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than five (5) consecutive calendar days or more than an aggregate of ten (10) calendar days (which need not be consecutive calendar days) during any 12-month period or (vi) the Company shall fail to make the Convertible Notes an eligible security with the Depositary Trust Company on or prior to the twelve month anniversary of the date of this Agreement (any such failure or breach being referred to as an "Event", and for purposes of clauses (i) (iv) and (vi), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 1.0% multiplied by the aggregate Subscription Amount paid by such Holder pursuant to such Holder's Purchase Agreement provided, however, the aggregate amount payable to a Holder shall not exceed 6% of such Holder's Subscription Amount. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder provided that if such disclosure is required by law and the Holder wishes not to be named the Company may remove such Holder from the Registration Statement upon the Holder's written consent.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries, and the Company agrees that the Holders shall not have any duty of confidentiality to the Company or any of its Subsidiaries and shall not have any duty to the Company or any of its Subsidiaries not to trade on the basis of such information.

(e) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreements, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an 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, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(c). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(f).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement so long as no new securities are registered on any such existing registration statements.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(d) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(d). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(e) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Senior Purchase Agreement or Subordinated Purchase Agreement, as applicable.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Senior Purchase Agreement or Subordinated Purchase Agreement, as applicable.

(g) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(h) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., www.docusign.com), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such ".pdf" signature page were an original thereof.

(i) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Senior Purchase Agreement or Subordinated Purchase Agreement, as applicable.

(j) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(l) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(m) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

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(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

PROSOMNUS, INC.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO PROSUMNUS RRA]

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

Annex A

Plan of Distribution

Each Selling Stockholder (the "Selling Stockholders") of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

SELLING SHAREHOLDERS

The common stock being offered by the selling shareholders are those previously issued to the selling shareholders, and those issuable to the selling shareholders, upon exercise of the warrants. For additional information regarding the issuances of those shares of common stock and warrants, see “Private Placement of Shares of Common Stock and Warrants” above. We are registering the shares of common stock in order to permit the selling shareholders to offer the shares for resale from time to time. Except for the ownership of the shares of common stock and the warrants, the selling shareholders have not had any material relationship with us within the past three years.

The table below lists the selling shareholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling shareholders. The second column lists the number of shares of common stock beneficially owned by each selling shareholder, based on its ownership of the shares of common stock and warrants, as of _____, 2022, assuming exercise of the warrants held by the selling shareholders on that date, without regard to any limitations on exercises.

The third column lists the shares of common stock being offered by this prospectus by the selling shareholders.

In accordance with the terms of a registration rights agreement with the selling shareholders, this prospectus generally covers the resale of the sum of (i) the number of shares of common stock issued to the selling shareholders in the “Private Placement of Shares of Common Stock and Warrants” described above and (ii) the maximum number of shares of common stock issuable upon exercise of the related warrants, determined as if the outstanding warrants were exercised in full as of the trading day immediately preceding the date this registration statement was initially filed with the SEC, each as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration right agreement, without regard to any limitations on the exercise of the warrants. The fourth column assumes the sale of all of the shares offered by the selling shareholders pursuant to this prospectus.

Under the terms of the warrants [and other warrants held by selling shareholders], a selling shareholder may not exercise [the] [any such] warrants to the extent such exercise would cause such selling shareholder, together with its affiliates and attribution parties, to beneficially own a number of shares of common stock which would exceed 4.99% or 9.99%, as applicable, of our then outstanding common stock following such exercise, excluding for purposes of such determination shares of common stock issuable upon exercise of such warrants which have not been exercised. The number of shares in the second and fourth columns do not reflect this limitation. The selling shareholders may sell all, some or none of their shares in this offering. See "Plan of Distribution."

Name of Selling Shareholder	Number of shares of Common Stock Owned Prior to Offering	Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus	Number of shares of Common Stock Owned After Offering

Annex C

Selling Stockholder Notice and Questionnaire

The undersigned beneficial owner of common stock (the "Registrable Securities") of _____, a _____ corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

_____

2. Address for Notices to Selling Stockholder:

_____

_____

_____

Telephone: _____

E-Mail: _____

Contact Person: _____

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____ Beneficial Owner: _____

By: _____
Name:
Title:

PLEASE EMAIL A .PDF COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:

Exhibit 10.6

LOCK-UP AGREEMENT

THIS LOCK-UP AGREEMENT (this "Agreement") is dated as of December 6, 2022, by and between the undersigned (the "Holder"), Lakeshore Acquisition I Corp., an exempted company incorporated with limited liability under the Laws of Cayman Islands ("Purchaser") and RedOne Investment Limited, a British Virgin Islands company, in its capacity as the representative for the stockholders of the Purchaser (the "Purchaser Representative"). Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Agreement and Plan of Merger (the "Merger Agreement") entered into by and among (i) Purchaser, (ii) LAAA Merger Sub Inc., a Delaware corporation and a wholly-owned subsidiary of the Purchaser, (iii) the Purchaser Representative, (iv) ProSomnus Holdings Inc., a Delaware corporation (the "Company"), and (v) HGP II, LLC, a Delaware limited liability company, in the capacity as the representative for the stockholders of the Company.

BACKGROUND

A. Pursuant to the Merger Agreement, Merger Sub will merge with and into the Company, with the Company continuing as the surviving entity and a wholly-owned subsidiary of Purchaser.

B. The Holder is the record and/or beneficial owner of Company Stock which will be exchanged for Purchaser Common Stock pursuant to the Merger Agreement.

C. As a condition of, and as a material inducement for the Purchaser and the Company to enter into and consummate the transactions contemplated by the Merger Agreement, the Holder has agreed to execute and deliver this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

AGREEMENT

1. Lock-Up.

(a) During the Lock-up Period (as defined below), the Holder irrevocably agrees that it, he or she will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any of the Lock-up Shares (as defined below), enter into a transaction that would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of such Lock-up Shares, whether any of these transactions are to be settled by delivery of any such Lock-up Shares, in cash or otherwise, publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement, or engage in any Short Sales (as defined below) with respect to any security of Purchaser.

(b) In furtherance of the foregoing, Purchaser will (i) place an irrevocable stop order on all Lock-up Shares, including those which may be covered by a registration statement, and (ii) notify Purchaser' transfer agent in writing of the stop order and the restrictions on such Lock-up Shares under this Agreement and direct Purchaser's transfer agent not to process any attempts by the Holder to resell or transfer any Lock-up Shares, except in compliance with this Agreement.

(c) For purposes hereof, "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), and sales and other transactions through non-US broker dealers or foreign regulated brokers.

(d) For purpose of this Agreement, the "Lock-up Period" means the period commencing on the Closing Date and ending on the earlier of:

(i) six months after the Closing; and

(ii) with respect to Lock-up Shares not held by a Significant Company Stockholder (as defined in the Merger Agreement) only, if the volume weighted average price of the Purchaser Common Stock equals or exceeds $12.50 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within any 30 consecutive trading days beginning 90 days after the Closing.

The restrictions set forth herein shall not apply to: (1) transfers or distributions to the Holder's current or former general or limited partners, managers or members, stockholders, other equityholders or direct or indirect affiliates (within the meaning of Rule 405 under the Securities Act of 1933, as amended) or to the estates of any of the foregoing; (2) transfers by bona fide gift to a member of the Holder's immediate family or to a trust, the beneficiary of which is the Holder or a member of the Holder's immediate family for estate planning purposes; (3) by virtue of the laws of descent and distribution upon death of the Holder; (4) pursuant to a qualified domestic relations order, (5) transfers to any charitable foundation controlled by the Holder, its members or stockholders or any of their respective immediate family; or (6) transfers whereby there is no change in beneficial ownership, in each case where such transferee agrees to be bound by the terms of this Agreement.

In addition, after the Closing Date, if there is a Change of Control, then upon the consummation of such Change of Control, all Lock-up Shares shall be released from the restrictions contained herein. A "Change of Control" means: (a) the sale of all or substantially all of the consolidated assets of Purchaser and Purchaser subsidiaries to a third-party purchaser; (b) a sale resulting in no less than a majority of the voting power of the Purchaser being held by person that did not own a majority of the voting power prior to such sale; or (c) a merger, consolidation, recapitalization or reorganization of Purchaser with or into a third-party purchaser that results in the inability of the pre-transaction equity holders to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company.

2. Representations and Warranties. Each of the parties hereto, by their respective execution and delivery of this Agreement, hereby represents and warrants to the others and to all third party beneficiaries of this Agreement that (a) such party has the full right, capacity and authority to enter into, deliver and perform its respective obligations under this Agreement, (b) this Agreement has been duly executed and delivered by such party and is the binding and enforceable obligation of such party, enforceable against such party in accordance with the terms of this Agreement, and (c) the execution, delivery and performance of such party's obligations under this Agreement will not conflict with or breach the terms of any other agreement, contract, commitment or understanding to which such party is a party or to which the assets or securities of such party are bound.

3. Beneficial Ownership. The Holder hereby represents and warrants that it does not beneficially own, directly or through its nominees (as determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder), any shares of capital stock of Purchaser, or any economic interest in or derivative of such stock, other than those securities specified on the signature page hereto. For purposes of this Agreement, "Lock-up Shares" shall mean, with respect to each Holder, (i) the Purchaser Common Stock beneficially owned by the Holder as specified on the signature hereto, (ii) any Purchaser Common Stock issuable upon the exercise of options or warrants to purchase Purchaser Common Stock held by such Holder immediately after Effective Time (along with such options or warrants themselves), (iii) any Purchaser Common Stock acquirable upon the conversion, exercise or exchange of any securities convertible into or exercisable or exchangeable for Purchaser Common Stock held by such Holder immediately after the Effective Time (along with such securities themselves) and (iv) any Earnout Shares to the extent issued pursuant to the Merger Agreement. Notwithstanding the foregoing, "Lock-up Shares" shall not include shares of Purchaser Common Stock issued to any Holder that is not a Significant Company Stockholder (as defined in the Merger Agreement) in connection with the conversion of the Company Subordinated Debt (as defined in the Merger Agreement).

4. No Additional Fees/Payment. Other than the consideration specifically referenced herein, the parties hereto agree that no fee, payment or additional consideration in any form has been or will be paid to the Holder in connection with this Agreement.

5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the mail in the United States mail having been sent registered or certified mail receipt requested, postage pre-paid, (iii) when delivered by FedEx or other nationally recognized overnight courier or delivery service or (iv) when e-mailed during normal business hours (and otherwise as of the immediately following business day) to the Company and Purchaser in accordance with Section 10.2 of the Merger Agreement and to each Holder at its address set forth set forth on the signature page hereto (or at such other address for a party as shall be specified by like notice).

6. Enumeration and Headings. The enumeration and headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7. Counterparts. This Agreement may be executed in facsimile and in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same agreement.

8. Successors and Assigns. This Agreement and the terms, covenants, provisions and conditions hereof shall be binding upon, and shall inure to the benefit of, the respective heirs, successors and assigns of the parties hereto. The Holder hereby acknowledges and agrees that this Agreement is entered into for the benefit of and is enforceable by Purchaser and its successors and assigns.

9. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision will be conformed to prevailing law rather than voided, if possible, in order to achieve the intent of the parties and, in any event, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

10. Amendment. This Agreement may be amended or modified by written agreement executed by each of the parties hereto.

11. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

12. No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

13. Governing Law. Section 10.5, Section 10.6, and Section 10.7 of the Merger Agreement are incorporated by reference herein to apply with full force to any disputes arising under this Agreement.

15. Controlling Agreement. To the extent the terms of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) directly conflicts with a provision in the Merger Agreement, the terms of this Agreement shall control.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

LAKESHORE ACQUISITION I CORP.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

RedOne Investment Limited, solely in the capacity as the Purchaser Representative hereunder

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Lock-up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

HOLDER

By: _____
Name:
Address:
[•]

NUMBER OF LOCK-UP SHARES:
[•]

Exhibit 10.9

PROSOMNUS, INC.

(COMPANY)

THE SUBSIDIARY GUARANTORS NAMED HEREIN

(SUBSIDIARY GUARANTORS)

WILMINGTON TRUST, NATIONAL ASSOCIATION

(TRUSTEE AND COLLATERAL AGENT)

SENIOR SECURED CONVERTIBLE NOTES

DUE DECEMBER 6, 2025

INDENTURE

DATED AS OF DECEMBER 6, 2022

INDENTURE, dated as of December 6, 2022, between ProSomnus, Inc., a Delaware corporation, as issuer (the "**Company**"), ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as the initial Subsidiary Guarantors, and Wilmington Trust, National Association, initially as trustee, collateral agent, conversion agent, registrar and paying agent (in such capacities, and subject to the provisions herein for replacements or successors for such parties, the "**Trustee**", "**Collateral Agent**", "**Conversion Agent**", "**Registrar**" and "**Paying Agent**", respectively).

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of the Company's Senior Secured Convertible Notes due December 6, 2025 (the "**Notes**"), having the terms, tenor, amount and other provisions hereinafter set forth, and, to provide therefor, has duly authorized the execution and delivery of this Indenture (this "**Indenture**"); and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, in connection with the purchase of the Notes, the Initial Holders have entered into that certain Senior Securities Purchase Agreement, dated as of August 26, 2022, (the "**Purchase Agreement**");

WHEREAS, the Initial Holders will enter into that certain Registration Rights Agreement, dated as of the date hereof, (the "**Registration Rights Agreement**") providing for, among other things, certain registration rights in respect of the Common Stock (as defined below) (if any) issuable upon conversion hereunder to the relevant Holders (as defined in the Subscription Agreement) or, in certain circumstances, to the assignees of such Holders; and; and

WHEREAS, all things necessary to make the Notes, when duly executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the legal, valid and binding obligations of the Company and Subsidiary Guarantors, in accordance with the terms of the Notes and this Indenture, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of each other and the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions and References.

The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein", "hereof", "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The word "or" is not exclusive and the word "including" means including without limitation. The terms defined in this Article include the plural as well as the singular. References to any Article, Section, Schedule or Exhibit are to this Indenture except as herein otherwise expressly provided.

"**Act**" has the meaning specified in Section 1.03.

"**Additional Interest**" means all amounts, if any, payable by the Company pursuant to Section 5.08 or Section 6.03, as applicable.

"**Additional Restricted Ownership Person**" has the meaning specified in Section 4.06(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning specified in Section 2.06(b).

"**Agent**" means any Paying Agent, Registrar, Conversion Agent, Collateral Agent or any other agent appointed pursuant to this Indenture.

"**Applicable Procedures**" means, with respect to any matter at any time, the policies and procedures of a Depositary, if any, that are applicable to such matter at such time.

"**Authenticating Agent**" means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Notes.

"**Bankruptcy Law**" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law or foreign law relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"**Board of Directors**" means either the board of directors of the Company or any duly authorized committee of that board.

"**Board Resolution**" when used with reference to the Company means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day other than (x) a Saturday, (y) a Sunday or (z) a day on which state or federally chartered banking institutions in New York, New York or the place of payment are authorized or required by law, regulation or executive order to close.

"**Capitalized Leases**" shall mean, as applied to any Person, all leases of property that have been or should be, in accordance with GAAP, recorded as capitalized leases on the balance sheet of such Person or any of its Subsidiaries, on a consolidated basis; provided, that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability on the balance sheet (excluding the footnotes thereto) of such Person in accordance with GAAP.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the equity of such Person, but excluding any debt securities convertible into such equity.

"**Change of Control"** means an event that will be deemed to have occurred at the time, after the first date of original issuance for the Notes, any of the following occurs:

(i) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) is or becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing 50% or more of the total voting power of the Company's Common Equity, or has the power, directly or indirectly, to elect a majority of the members of the Company's Board of Directors;

(ii) the Company consolidates with, enters into a binding share exchange, merger or similar transaction with or into another person or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of the consolidated assets of the Company, or any Person consolidates with, or merges with or into, the Company; *provided*, that any merger, binding share exchange, consolidation or similar transaction pursuant to which the Persons that "beneficially owned," (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, the Company's Common Equity immediately prior to such transaction "beneficially own," (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, the Common Equity representing at least a majority of the total voting power of all outstanding classes of the Common Equity of the surviving or transferee Person and such holders' proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction will not constitute a "Change of Control"; or

(iii) the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with this Indenture).

If any transaction in which the Common Stock is replaced by the Reference Property comprised of securities of another entity occurs, following completion of any related Fundamental Change Purchase Date, references to the Company in this definition of "Change of Control" will apply to such other entity instead.

"**Clause A Distribution**" has the meaning specified in Section 4.04(c).

"**Clause B Distribution**" has the meaning specified in Section 4.04(c).

"**Clause C Distribution**" has the meaning specified in Section 4.04(c).

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Sale Price**" of the Common Stock for any day, as determined by the Company, means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) at 4:00 p.m. New York City time on that day as reported in composite transactions for the Exchange, or if the Common Stock is not listed on the Exchange, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. at 4:00 p.m. New York City time on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system). If the closing sale price of the Common Stock is not so reported, the "Closing Sale Price" will be the average of the mid-point of the last bid and last ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Cohanzick**" means the lead fund or account managed or advised by Cohanzik Management, LLC.

"**Collateral**" means any and all assets in which the Company or any Grantor Subsidiary grants or purports to grant a Lien in favor of the Collateral Agent as security for the Obligations.

"**Collateral Agent**" means the Person named as the "Collateral Agent" in the first paragraph of this Indenture, in its capacity as the "Collateral Agent" for the Secured Parties, until a successor collateral agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Collateral Agent" shall mean or include each Person who is then a Collateral Agent hereunder.

"**Commission**" means the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Equity**" of any Person means the Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the shares of common stock, par value $0.0001 per share, of the Company authorized at the date of this instrument as originally executed or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided*, *however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**Common Stock Equivalents**" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Company**" has the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 9, shall include its successors and assigns.

"**Company Order**" means a written request or order signed in the name of the Company by one of its Officers, and delivered to the Trustee.

"**Consolidated EBITDA**" means, for any applicable period, the sum of Consolidated Net Income (exclusive of all amounts in respect of any gains and losses realized from Dispositions other than inventory Disposed of in the ordinary course of business), plus the sum, without duplication, of non-cash stock option and other equity-based compensation expenses, any one-time moving expense, and any losses from an early extinguishment of indebtedness, acquisition-related expenses, whether or not such acquisition is successful, transaction fees, costs and expenses related to any issuance of equity securities, whether or not successful.

"**Consolidated Net Income**" means, for any period, calculated in accordance with GAAP, the aggregate of all amounts which would be included as net income on the consolidated financial statements of the Company for such period.

"**Contingent Liability**" shall mean, for any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Stock of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby.

"**Conversion Agent**" has the meaning specified in Section 5.02.

"**Conversion Date**" has the meaning specified in Section 4.02(b).

"**Conversion Notice**" has the meaning specified in Section 4.02(b).

"**Conversion Period**" means, with respect to any Note surrendered for conversion, (i) if the relevant Conversion Date occurs prior to the 25th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive VWAP Trading Day period beginning on, and including, the third VWAP Trading Day immediately following such Conversion Date; and (ii) if the relevant Conversion Date occurs on or after the 25th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive VWAP Trading Day period beginning on, and including, the 22nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Conversion Price**" means, in respect of each Note, as of any date, $1,000 *divided by* the Conversion Rate in effect on such date.

"**Conversion Rate**" means: 76.9230769231 shares of Common Stock per $1,000 of the sum of principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein, which such Conversion Rate shall be reduced and only reduced on each Reset Date to equal the lesser of (i) 76.9230769231 per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein, and (ii) the number of shares of Common Stock per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto obtained by dividing $1,000 by 105% of the applicable Market Price; *provided*, *however*, in no event shall the Conversion Rate be less than 181.818181 per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein. The Company shall notify the Holders, the Trustee and the Conversion Agent of the applicable adjustment to the Conversion Rate as of such date (each notice, a "**Reset Date Adjustment Notice**"). For purposes of clarity, whether or not the Company provides a Reset Date Adjustment Notice, the Holders shall receive a number of shares of Common Stock and retain a principal amount of its Note, plus accrued interest thereon plus the Make-Whole Amount related thereto, based upon the Conversion Rate as adjusted pursuant to this definition, regardless of whether the Holder accurately refers to such Conversion Rate of principal amount of its Notes plus accrued interest thereon plus the Make-Whole Amount related thereto converted in any Conversion Notice. Any adjustment to the Conversion Rate shall be effective on the applicable Reset Date.

"**Corporate Trust Office**" means, with respect to the office of the Trustee, the designated corporate trust office of the Trustee, at which at any particular time this Indenture shall be principally administered, which office at the date hereof is located at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attn: ProSomnus, Inc., Administrator or such other address in the continental United States as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Corporation**" means a corporation, association, joint stock company, limited liability company or business trust.

"**Custodian**" means the Trustee, as custodian for the Depositary with respect to the Notes (so long as the Notes constitute Global Notes), or any successor entity.

"**Daily Conversion Value**" means, for each VWAP Trading Day during any Conversion Period, one-twentieth (1/20th) of the product of (i) the Conversion Rate in effect on such VWAP Trading Day and (ii) the Daily VWAP on such VWAP Trading Day.

"**Daily Measurement Value**" means, for any conversion of Notes, the applicable Specified Dollar Amount *divided by* 20.

"**Daily Net Share Number**" means, for each $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount surrendered for conversion, for each of the 20 consecutive VWAP Trading Days during the Conversion Period, a number of shares of Common Stock equal to (A) the greater of (x) the difference between the Daily Conversion Value for such VWAP Trading Day and the Daily Measurement Value and (y) zero, divided by (B) the Daily VWAP for such VWAP Trading Day.

"**Daily Settlement Amount**" for each $1,000 principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto surrendered for conversion, for each of the 20 consecutive VWAP Trading Days during the Conversion Period, will consist of: (i) if the Daily Conversion Value for such VWAP Trading Day exceeds the Daily Measurement Value, (x) a cash payment of the Daily Measurement Value; and (y) a number of shares of Common Stock equal to the Daily Net Share Number for such VWAP Trading Day; or (ii) if the Daily Conversion Value for such VWAP Trading Day is less than or equal to the Daily Measurement Value, a cash payment equal to the Daily Conversion Value.

"**Daily VWAP**" for the Common Stock (or any security that is part of the Reference Property), in respect of any VWAP Trading Day, means the per share volume-weighted average price of the Common Stock (or other security) as displayed under the heading "Bloomberg VWAP" on Bloomberg Page "TLGT Equity AQR" (or its equivalent successor if such page is not available, or the Bloomberg Page for any security that is part of the Reference Property, if applicable) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day or, if such volume-weighted average price is unavailable (or the Reference Property is not a security), the market value of one share of the Common Stock (or other Reference Property) on such VWAP Trading Day as determined in good faith by the Board of Directors or a duly authorized committee thereof in a commercially reasonable manner, using a volume-weighted average price method (unless the Reference Property is not a security). The "Daily VWAP" will be determined without regard to after-hours trading or any other trading outside the regular trading session.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Depositary**" means, with respect to the Notes issuable or issued in the form of a Global Note, the Person designated as Depositary by the Company until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder. The Company has appointed The Depository Trust Company as the initial Depositary for the Global Notes, as applicable.

"**Disposition**" with respect to any property, means any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. The terms "Dispose" and "Disposed of" have meanings correlative thereto.

"**Disqualified Capital Stock**" of any Person means any class of Capital Stock of such Person that, by its terms, or by the terms of any related agreement or of any security into which it is convertible, puttable or exchangeable, is, or upon the happening of any event or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is 91 days after the final maturity date of the Notes; *provided*, *however*, that any class of Capital Stock of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Capital Stock that are not Disqualified Capital Stock, and that is not convertible, puttable or exchangeable for Disqualified Capital Stock or Indebtedness, will not be deemed to be Disqualified Capital Stock so long as such Person satisfies its obligations with respect thereto solely by the delivery of Capital Stock that are not Disqualified Capital Stock; *provided*, *further*, *however*, that any Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock are convertible, exchangeable or exercisable) the right to require Company to redeem such Capital Stock upon the occurrence of a Change of Control occurring prior to the 91st day after the final maturity date of the Notes shall not constitute Disqualified Capital Stock if the change of control provisions applicable to such Capital Stock are no more favorable to such holders than the provisions of Section 4.19 of the Securities Purchase Agreement and such Capital Stock specifically provide that Company will not redeem any such Capital Stoc pursuant to such provisions prior to Company's purchase of the Notes as required pursuant to Section 4.19 of the Securities Purchase Agreement.

"**Dollar**" or "**$**" means a dollar or other equivalent unit in such coin or currency of the U.S. that is legal tender for the payment of public and private debts at the time of payment.

"**Domestic Holding Company**" any Subsidiary (other than a Foreign Subsidiary) substantially all of the assets of which consist of equity interests in one or more foreign Subsidiaries.

"**Effective Date**" means, with respect to a Fundamental Change, the date such Fundamental Change occurs or becomes effective.

"**Enforcement Action**" means any action or decision taken in connection with the exercise of remedial rights of the Holders of the Notes and the Trustee and/or Collateral Agent, representing the interests of the Holders of the Notes (including in respect of the Collateral pursuant to the Security Documents) following the occurrence and during the continuation of an Event of Default.

"**Event of Default**" has the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means, except to the extent otherwise provided under Section 4.04(c), the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange**" means The Nasdaq Global Select Market or its successor.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Excluded Subsidiary**" shall mean (i) any Foreign Subsidiary or Domestic Holding Company, in each case, solely to the extent that the inclusion of such Person as a Subsidiary Guarantor may result (or may be reasonably likely to result) in adverse tax consequences to the Company and its Subsidiaries, taken as a whole, as determined in good faith by the Company and (ii) each Immaterial Subsidiary.

"**Exempt Issuance**" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and the Concurrent Offering, warrants to the Placement Agent in connection with the transactions pursuant to this Agreement and any securities upon exercise of warrants to the Placement Agent and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibition period in Section 4.13(a) herein, and provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities and (d) shares of Common Stock issued pursuant to a forward purchase agreement consummated prior to the Merger Closing provided that the terms and conditions of such agreement are satisfactory to Cohanzick.

"**Foreign Subsidiary**" means each Subsidiary of the Company other than a Subsidiary that is organized under the laws of the United States, any state, territory, protectorate or commonwealth thereof, or the District of Columbia.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Free Trade Date**" means the date that is one year after the Last Original Issuance Date.

"**Free Transferability Certificate**" means a certificate substantially in the form attached hereto as Exhibit B.

"**Freely Tradable**" means, with respect to any Notes, that such Notes are eligible to be sold by a Person who is not an affiliate of the Company (within the meaning of Rule 144) and has not been an affiliate of the Company (within the meaning of Rule 144) during the immediately preceding 90 days without any volume or manner of sale restrictions under the Securities Act.

"**Fundamental Change**" means the occurrence of a Change of Control or a Termination of Trading.

"**Fundamental Change Purchase Date**" has the meaning specified in the Purchase Agreement.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America.

"**Global Note**" means a Note evidencing all or part of a series of Notes, issued to the Depositary for such series or its nominee, and registered in the name of such Depositary or nominee.

"**Grantor Subsidiaries**" means ProSomnus Holding, Inc. and ProSomnus Sleep Technologies, Inc., and each Person that becomes a party to this Indenture after the Initial Issue Date pursuant to Article 12.

"**Guarantee Obligations**" shall mean, as to any Person, any Contingent Liability of such Person or other obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; provided, that the term "Guarantee Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Issue Date, entered into in connection with any acquisition or disposition of assets permitted under this Indenture (other than with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Hedge Termination Value**" shall mean, in respect of any one or more Hedging Obligations, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Obligations, (a) for any date on or after the date such Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Obligations, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Obligations.

"**Hedging Obligations**" shall mean, with respect to any Person, any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (a) any and all Hedging Transactions, (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (c) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"**Hedging Transaction**" of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Holder**" means the Person in whose name a Note is registered in the Register.

"**Immaterial Subsidiary**" shall mean each Subsidiary of the Company or group of Subsidiaries of the Company (i) the consolidated total assets of which are less than 2.5% of the assets of the Company and its Subsidiaries and (ii) the consolidated EBITDA of which is less than 2.5% of the consolidated EBITDA of the Company and its Subsidiaries.

"**Indebtedness**" means as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(ii) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) available under all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(iii) the Hedge Termination Value of all Hedging Obligations of such Person;

(iv) all obligations of such Person to pay the deferred purchase price of property or services, including earn-out obligations (other than (A) trade accounts payable in the ordinary course of business and (B) to the extent such obligation is not due at any time prior to the date that is six months after the Maturity Date, any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(v) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(vi) shall mean, on any date, in respect of any Capitalized Leases of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP;

(vii) all obligations of such Person in respect of Disqualified Capital Stock; and

(viii) all Guarantee Obligations of such Person in respect of any of the foregoing.

provided, that Indebtedness shall not include (A) prepaid or deferred revenue arising in the ordinary course of business, (B) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset and (C) endorsements of checks or drafts arising in the ordinary course of business.

"**Indenture**" means this Indenture as amended or supplemented from time to time.

"**Indenture Documents**" means this Indenture, the Notes, the Security Documents, the Subsidiary Guarantees included in this Indenture, and any other instrument or agreement entered into, now or in the future, by the Company, any Subsidiary Guarantor and/or any Grantor Subsidiary, on the one hand, and, if necessary, the Collateral Agent and/or Trustee, on the other hand, in connection with the Indenture.

"**Initial Issue Date**" means the Issue Date of the first Notes to be issued under this Indenture.

"**Initial Notes**" has the meaning specified in Section 2.01.

"**Initial Stockholder Meeting Date** has the meaning specified in Section 4.01(c)(iv).

"**Intercreditor Agreement"** means that certain Intercreditor Agreement by and among Wilmington Trust, National Association, as collateral agent for the Subordinated Debt and the Collateral Agent, the Company and each Subsidiary Guarantor.

"**Interest Payment Date**" means, with respect to the payment of interest on the Notes, each January 1, April 1, July 1 and October 1 of each year, beginning on the first such date that is at least 30 calendar days after the Initial Issue Date, on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed), and on the Maturity Date.

"**Intra-Group Liabilities**" has the meaning specified in Section 12.02(b).

"**Issue Date**" means, with respect to any Notes, the date the Notes are originally issued as set forth on the face of the Notes under this Indenture.

"**Largest Stockholder**" as of any given time means the stockholder(s) of the Company that then beneficially owns (including any shares beneficially owned by member of any group of which such stockholder is a member and otherwise calculated in accordance with Section 4.01(c)) the largest number of shares of the Company's Common Stock.

"**Last Original Issuance Date**" means the last date of original issuance of the Initial Notes.

"**Lien**" shall mean any mortgage, pledge, security interest, hypothecation, assignment for collateral purposes, lien (statutory or other) or similar encumbrance, and any easement, right-of-way, license, restriction (including zoning restrictions), defect, exception or irregularity in title or similar charge or encumbrance (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof); provided, that in no event shall an operating lease entered into in the ordinary course of business or any precautionary UCC filings made pursuant thereto by an applicable lessor or lessee, be deemed to be a Lien.

"**Make-Whole Amount**" means, as to the applicable principal amount being converted on any Conversion Date on and prior to the eighteenth (18^{th}) month after the date of issuance of the Notes, the amount of interest that, but for a Holder's exercise of its conversion right pursuant to Section 4.01, would have accrued with respect to the principal amount being converted or redeemed under a Note at the interest rate in effect from the applicable Conversion Date through the date that is the one (1) year anniversary of such Conversion Date. The Company shall calculate the Make-Whole Amount and the Trustee shall have no duty or obligation to confirm or verify any such calculation.

"**Master Agreement**" has the meaning specified in the definition of "Hedging Transaction" under this Section 1.01.

"**Market Disruption Event**" means, if the Common Stock is listed for trading on the Exchange or listed on another U.S. national or regional securities exchange, the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Scheduled Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or futures contracts relating to the Common Stock.

"**Market Price**" means the average of the VWAPs for the 10 consecutive Trading Days ending on the Trading Day immediately preceding the applicable Reset Date.

"**Maturity Date**" means December 6, 2025.

"**Merger Event**" has the meaning specified in Section 4.07(a).

"**Mortgage**" shall mean a mortgage or a deed of trust, deed to secure debt, trust deed or other security document entered into by the Company or any Grantor Subsidiary in favor of the Collateral Agent for the benefit of the Secured Parties in respect of any Real Property owned by the Company or any Grantor Subsidiary, in such form as agreed between the Company or any Grantor Subsidiary and the Collateral Agent, as amended, restated, supplemented or otherwise modified from time to time.

"**Mortgaged Property**" shall mean each parcel of Real Property and improvements thereto with respect to which a Mortgage is granted pursuant to Article 13.

"**Net Assets**" has the meaning specified in Section 12.02(a)(i).

"**Non-Affiliate Legend**" has the meaning specified in the Form of Note attached hereto as Exhibit A.

"**Note**" or "**Notes**" has the meaning specified in the first paragraph of the Recitals of this Indenture. Except as otherwise specified herein, including Article 4, for all purposes of this Indenture the term "Notes" shall include the Initial Notes, and all such Notes shall be treated as a single class of securities for all purposes under this Indenture, including, without limitation, directions, waivers, amendments, consents, redemptions and offers to purchase.

"**Obligations**" means (a) obligations of the Company and the Subsidiary Guarantors from time to time to pay (and otherwise arising under or in respect of the due and punctual payment of) (i) principal, interest (including Additional Interest and interest accruing during the pendency of any bankruptcy, insolvency, reorganization or similar proceeding, regardless of whether allowed or allowable in such proceeding) and all other obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes issued hereunder and the other Indenture Documents (including, without limitation, any applicable premium) when and as due, whether at maturity, by acceleration, upon one or more dates set for redemption or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, reorganization or similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Company and the Subsidiary Guarantors under this Indenture, the other Indenture Documents, and the Intercreditor Agreement, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Company and the Subsidiary Guarantors under or pursuant to this Indenture, the other Indenture Documents, and the Intercreditor Agreement.

"**Offer Expiration Date**" has the meaning specified in Section 4.04(e).

"**Officer**" or "**officer**" shall mean, the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, a Vice President (whether or not designated by a number or word or words added before or after the title "Vice President") or any Director of the Company. Officer of any Subsidiary Guarantor has a correlative meaning.

"**Officer's Certificate**" means a certificate signed by an Officer of the Company and delivered to the Trustee.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion of counsel, who may be an employee of, or counsel for, the Company or an Affiliate of the Company, who is reasonably satisfactory to the Trustee.

"**Optional Redemption Amount**" means the sum of (a) 100% of the then outstanding principal amount of the applicable Notes, (b) accrued but unpaid interest to, but excluding, the Optional Redemption Date, and (c) all liquidated damages and other amounts due in respect of the applicable Notes.

"**Optional Redemption Conversion Rate**" means the lesser of (a) the Conversion Price or (b) 90% of the lesser of (i) the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Optional Redemption Date or (ii) the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the date the applicable Optional Redemption Shares are issued and delivered if such delivery is after the Optional Redemption Date.

"**Optional Redemption Date**" shall have the meaning set forth in Section 10.01.

"**Optional Redemption Notice**" shall have the meaning set forth in Section 10.01.

"**Optional Redemption Notice Date**" shall have the meaning set forth in Section 10.01.

"**Outstanding**" means, with respect to the Notes, any Notes authenticated by the Trustee except (i) Notes cancelled by it, (ii) Notes delivered to it for cancellation and (iii)(A) Notes replaced pursuant to Section 2.09 hereof, on and after the time such Note is replaced (unless the Trustee and the Company receive proof satisfactory to them that such Note is held by a protected purchaser), (B) Notes converted pursuant to Article 4 hereof, on and after their Conversion Date, (C) any and all Notes, the principal of which has become due and payable as of the Maturity Date or otherwise and in respect of which the Paying Agent is holding, in accordance with this Indenture, money sufficient to pay or repurchase all of the Notes then to be paid or repurchased and (D) any and all Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor. In determining whether the Holders of the required principal amount of Notes have concurred in any request, demand, authorization, direction, notice, consent or waiver, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company will be considered as though not Outstanding, except that in determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice, consent or waiver, only such Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be disregarded.

"**Paying Agent**" means, initially, the Trustee or any Person authorized by the Company in the future to pay the principal amount of, any premium on, interest on any Notes on behalf of the Company.

"**Permitted Exchange**" has the meaning specified in the definition of "Termination of Trading" under this Section 1.01.

"**Permitted Indebtedness**" means (a) the indebtedness evidenced by the Notes, (b) the Indebtedness existing on the Original Issue Date and set forth on Schedule 3.01(bb) attached to the Purchase Agreement, (c) lease obligations and purchase money indebtedness of up to $1,000,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets, (d) indebtedness that (i) is expressly subordinate to the Notes pursuant to a written subordination agreement with the Purchasers that is acceptable to each Purchaser in its sole and absolute discretion and (ii) matures at a date later than the 91st day following the Maturity Date, (e) financing for premiums on general business or director and officer insurance up to $3 million per calendar year, and (f) the Subordinated Debt.

"**Permitted Lien**" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a) and (b), Liens incurred in connection with Clause (e) of Permitted Indebtedness and (e) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased..

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"**Physical Notes**" means permanent, non-global certificated Notes in definitive, fully registered form issued in minimum denominations of $1.00 principal amount and integral multiples of $1.00 in excess thereof.

"**Physical Settlement**" has the meaning specified in Section 4.03(a).

"**Primary Obligor**" has the meaning specified in the definition of "Guarantee Obligations" under this Section 1.01.

"**Real Property**" shall mean, with respect to any Person, all right, title and interest of such Person (including, without limitation, any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

"**Reference Property**" has the meaning specified in Section 4.07(a).

"**Refinanced Indebtedness**" has the meaning specified in the definition of "Permitted Refinancing Indebtedness" under this Section 1.01.

"**Registration Rights Agreement**" means the registration rights agreement, dated as of the date of the Purchase Agreement.

"**Register**" and "**Registrar**" have the respective meanings specified in Section 2.06.

"**Regular Record Date**" means, with respect to any scheduled Interest Payment Date, December 15 (whether or not a Business Day), March 15 (whether or not a Business Day), June 15 (whether or not a Business Day) or September 15 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

"**Relevant Distribution**" has the meaning specified in Section 4.04(c).

"**Reporting Event of Default**" has the meaning specified in Section 6.03.

"**Resale Restriction Termination Date**" has the meaning specified in Section 2.08(b)(ii).

"**Reset Date**" means each of (i) 9:00 a.m. (New York City time) on the date that is the six (6) month anniversary of the Initial Issue Date at, and (ii) 9:00 a.m. (New York City time) on the date that is the twelve (12) month anniversary of the Initial Issue Date.

"**Responsible Officer**," when used with respect to the Trustee, means any officer within the corporate trust department (or any other successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers who at the time shall be such officers, respectively, or any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject and who in each case shall have direct responsibility for the administration of this Indenture.

"**Restricted Global Note**" has the meaning specified in Section 2.08(b)(i).

"**Restricted Note**" has the meaning specified in Section 2.07(a)(i).

"**Restricted Notes Legend**" has the meaning specified in the Form of Note attached hereto as Exhibit A.

"**Restricted Stock**" has the meaning specified in Section 2.07(b)(i).

"**Restricted Stock Legend**" means a legend substantially in the form set forth in Exhibit C hereto.

"**Restricted Ownership Percentage**" has the meaning specified in Section 4.01(c).

"**Revenue**" means revenue by the Company and its Subsidiaries from Dispositions of inventory in the ordinary course of business).

"**Rule 144**" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed for trading. If the Common Stock is not so listed, "Scheduled Trading Day" means a "Business Day."

"**Secured Parties**" means, collectively, the Collateral Agent, the Trustee and the Holders.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Security Documents**" means the Senior Security Agreement, the Subsidiary Guarantees, the original Pledged Securities, and any other documents and filing required thereunder in order to grant the Collateral Agent a first priority security interest in the assets of the Company and the Subsidiaries as provided in the Senior Security Agreement, including all UCC-1 filing receipts.

"**Senior Debts**" has the meaning specified in Section 12.02(a)(i).

"**Senior Security Agreement**" means the Senior Security Agreement, dated as of the date of this Indenture.

"**Settlement Amount**" has the meaning specified in Section 4.03(a)(iii).

"**Significant Subsidiary**" means, with respect to any Person at any given time, a Subsidiary of such person that would constitute a "significant subsidiary" as such term is defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as in effect on the Issue Date.

"**Specified Dollar Amount**" means, for any conversion of Notes, the maximum cash amount per $1,000 principal amount of Notes to be received by the Holder upon conversion as specified in the Company's Specified Dollar Amount Election Notice (which may be part of the Settlement Election Notice) or otherwise deemed to be elected by the Company in respect of such conversion as provided herein.

"**Specified Dollar Amount Election**" has the meaning specified in Section 4.03(a)(i).

"**Specified Dollar Amount Election Notice**" has the meaning specified in Section 4.03(a)(i).

"**Spin-Off**" has the meaning specified in Section 4.04(c).

"**Subordinated Debt**" means the Company's Subordinated Secured Convertible Notes issued on the Initial Issue Date.

"**Subsidiary**" of any Person means (a) any corporation, association or other business entity of which more than 50% of the outstanding total voting power ordinarily entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees or other voting members of the governing body thereof is at the time owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries or (b) any partnership the sole general partner or the managing general partner of which is the Company or a Subsidiary of the Company or the only general partners of which are the Company or of one or more Subsidiaries of the Company (or any combination thereof).

"**Subsidiary Guarantee**" means, individually, any guarantee of payment of the Notes by a Subsidiary Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto, and, collectively, all such guarantees.

"**Subsidiary Guarantors**" means ProSomnus Holdings, Inc., ProSomnus Sleep Technologies, Inc. and each other Subsidiary of the Company in existence on the date hereof, as the initial guarantors of the Notes, until such Person is released from its guarantee of the Notes in accordance with this Indenture; *provided* that for the avoidance of doubt every Subsidiary of the Company (other than an Excluded Subsidiary) shall be a guarantor of the Notes.

"**Successor Company**" has the meaning specified in Section 9.01(a).

"**Termination of Trading**" means that the Common Stock (or other Reference Property into which the Notes are then convertible pursuant to the terms of this Indenture) are not listed for trading on any of the Exchange, The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Capital Market (or any of their respective successors) (such exchanges or any of their respective successors, a "**Permitted Exchange**").

"**Trading Day**" means a day on which (i) the Exchange or, if the Common Stock is not listed on the Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day and (ii) a Closing Sale Price for the Common Stock is available on such securities exchange or market. A "Trading Day" only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

"**Transaction Documents**" means the Purchase Agreement, this Indenture, the Notes, the Warrants, the Registration Rights Agreement, the Senior Security Agreement, the Security Documents, the Subsidiary Guarantee, any lock-up agreements entered into in connection therewith, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder

"**Trigger Event**" has the meaning specified in Section 4.04(c).

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this Indenture in its capacity as such until a successor Trustee shall have become such pursuant to Section 11.11, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended.

"**Unit of Reference Property**" has the meaning specified in Section 4.07(a).

"**U.S.**" means the United States of America.

"**Valuation Period**" has the meaning specified in Section 4.04(c).

"**Variable Rate Transaction**" means a transaction in which the Company (a) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (i) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (ii) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (b) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. For avoidance of doubt, no issuance by the Company or any of its Subsidiaries shall be deemed a Variable Rate Transaction solely by virtue of the fact that such issuance includes securities that contain standard price protection anti-dilution provisions (provided that any warrants that contain standard price protection anti-dilution provisions shall not include any related increase in the number of shares of Common Stock underlying the warrants in connection with any anti-dilution adjustment or any allocation of a value based on the Black and Scholes Option Pricing Model to a warrant which is a part of a unit in connection with any anti-dilution adjustment).

"**VWAP Market Disruption Event**" means (i) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (ii) the occurrence or existence for more than one half-hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

"**VWAP Trading Day**" means a day on which (i) there is no VWAP Market Disruption Event and (ii) the Exchange or, if the Common Stock is not listed on the Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day. A "VWAP Trading Day" only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

"**Warrants**" means, collectively, the Common Stock purchase warrants delivered to the Holders at the Closing in accordance with Section 2.2(a) of the Purchase Agreement, which Warrants shall be exercisable immediately and have a term of exercise equal to five years, in the form of Exhibit C attached thereto.

"**Warrant Shares**" means the shares of Common Stock issuable upon exercise of the Warrants

Section 1.02 ***References to Interest.***

Any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest, if, in such context, Additional Interest, is, was or would be payable pursuant hereto. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 1.03 ***Acts of Holders*****.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of Notes, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.03.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The amount of Notes held by any Person executing any such instrument or writings as the Holder thereof, the numbers of such Notes and the date of his holding the same may be proved by the production of such Notes or by a certificate executed, as depositary, by any trust company, bank, banker or member of a national securities exchange (wherever situated), if such certificate is in form satisfactory to the Trustee, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Notes therein described; or such facts may be proved by the certificate or affidavit of the Person executing such instrument or writing as the Holder thereof, if such certificate or affidavit is in form satisfactory to the Trustee. The Trustee and the Company may assume that such ownership of any Notes continues until (1) another certificate bearing a later date issued in respect of the same Notes is produced or (2) such Notes are produced by some other Person or (3) such Notes are no longer Outstanding.

(d) The fact and date of execution of any such instrument or writing and the amount and number of Notes held by the Person so executing such instrument or writing may also be proved in any other manner that the Trustee deems sufficient. The Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.03.

(e) The principal amount (except as otherwise contemplated in clause (ii) of the definition of "Outstanding"), serial numbers of Notes held by any Person and the date of holding the same shall be proved by the Register.

(f) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(g) The Company may but shall not be obligated to set a record date for purposes of determining the identity of Holders of any Outstanding Notes entitled to vote or consent to any action by vote or consent authorized or permitted by Sections 6.02, 6.04, 6.05, 6.06, 8.02 or 11.10. Such record date shall be not less than 10 nor more than 60 days prior to the first solicitation of such consent or the date of the most recent list of Holders of such Notes furnished to the Trustee pursuant to Section 5.13 prior to such solicitation.

(h) If the Company solicits from Holders any request, demand, authorization, direction, notice, consent, election, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, election, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, election, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, election, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of the record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 2
THE NOTES

Section 2.01 ***Title and Terms; Payments.***

The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is $17,763,260.45 (the "**Initial Notes**"), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for other Notes pursuant to Sections 2.05, 2.06, 2.08, 2.09, 2.11, 2.15, 3.07 or 4.02(d).

The Notes shall be known and designated as the "Senior Secured Convertible Notes due 2025" of the Company. The principal amount shall be payable on the Maturity Date unless no longer Outstanding because earlier purchased or converted in accordance with this Indenture.

The Notes shall initially be delivered on the Initial Issue Date in the form of Physical Notes. The Notes shall only be eligible for delivery in the form of Global Notes following the date that the Notes are eligible for delivery in book-entry form through the Depository Trust Company. The Company shall use its best efforts to have the Notes eligible for delivery in the form of Global Notes immediately following the initial Effectiveness Date (as such term is defined in the Registration Rights Agreement). None of the Trustee nor any Agent shall have an obligation to cause the Notes to be made eligible for delivery in the form of Global Notes.

The principal amount of Physical Notes shall be payable in U.S. dollars at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. Interest and the Make-Whole Amount on Physical Notes will be payable (i) to Holders holding Physical Notes having an aggregate principal amount of $1,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Register, and (ii) to Holders holding Physical Notes having an aggregate principal amount of more than $1,000,000 of Notes, either by check mailed to such Holders or, upon written application by a Holder to the Company and Paying Agent by (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash conversion consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that fifteen (15) calendar days immediately before the date such payment is due by wire transfer in immediately available funds to such Holder's account within the U.S., which application shall remain in effect until the Holder notifies the Paying Agent to the contrary in writing. The Company will pay or cause the Trustee or the Paying Agent to pay principal of Global Notes in U.S. dollars and immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note, on each Interest Payment Date, the Maturity Date or other payment date, including for the Make-Whole Payment, as the case may be.

Section 2.02 ***Ranking.***

The Notes constitute direct secured, senior obligations of the Company.

Section 2.03 ***Denominations.***

The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof.

Section 2.04 ***Execution, Authentication, Delivery and Dating.***

The Notes shall be executed on behalf of the Company by one of its Officers.

Notes bearing the electronic, manual or facsimile signatures of individuals who were at any time Officers of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or did not hold such office at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes. The Company Order shall specify the amount of Notes to be authenticated, and shall further specify the amount of such Notes to be issued as one or more Global Notes or as one or more Physical Notes. The Trustee in accordance with such Company Order shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by an authorized signatory of the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.05 ***Temporary Notes*****.**

Pending the preparation of Physical Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Physical Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officer executing such Notes may determine, as evidenced by such Officer's execution of such Notes; *provided* that any such temporary Notes shall bear legends on the face of such Notes as set forth in the Form of Note attached hereto as Exhibit A and/or Sections 2.07 and 2.11.

After the preparation of Physical Notes, the temporary Notes shall be exchangeable for Physical Notes upon surrender of the temporary Notes at any office or agency of the Company designated pursuant to Section 5.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in exchange therefor a like principal amount of Physical Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Physical Notes.

Section 2.06 ***Registration; Registration of Transfer and Exchange*****.**

(a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee in the continental United States a register (the register maintained in such office and in any other office or agency designated pursuant to Section 5.02 being herein sometimes collectively referred to as the "**Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration and transfer of Notes. The Trustee is hereby appointed registrar (the "**Registrar**") for the purpose of registering the transfer and exchange of the Notes as herein provided.

Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 5.02 for such purpose, the Company shall execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination and of a like aggregate principal amount and tenor, each such Note bearing such restrictive legends as may be required by this Indenture (including the Form of Note attached hereto as Exhibit A and Sections 2.07 and 2.11).

At the option of the Holder, and subject to the other provisions of Sections 2.07 and 2.11, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount and tenor, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Notes, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such Notes.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 2.11 not involving any transfer.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Note in the circumstances set forth in Section 2.11(a)(iv).

(b) Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**") nor any other Persons on whose behalf any Agent Member may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee, the Agents and any of their respective agents as the absolute owner and Holder of such Global Note for all purposes whatsoever. Neither the Trustee nor any Agent shall have any liability, responsibility or obligation to any Agent Members or any other Person on whose behalf Agent Members may act with respect to (i) any ownership interests in the Global Note, (ii) the accuracy of the records of the Depositary or its nominee, (iii) any notice required hereunder, (iv) any payments under or with respect to the Global Note or (v) actions taken or not taken by any Agent Members.

(c) Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, any Agent or any of their respective agents from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Section 2.07 Transfer Restrictions.

(a) *Restricted Notes*.

(ii) Every Note (and any security issued in exchange therefor or substitution thereof) that bears, or that is required under this Section 2.07 to bear, the Restricted Notes Legend will be deemed to be a "**Restricted Note**". Each Restricted Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Notes Legend) and will bear a restricted CUSIP number for the Notes unless the Company notifies the Trustee in writing that such restrictions on transfer are eliminated or otherwise waived by written consent of the Company (including, without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein), and each Holder of a Restricted Note, by such Holder's acceptance of such Restricted Note, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Note.

(ii) Until the Resale Restriction Termination Date for a Note, such Note, will bear the Restricted Notes Legend unless:

(A) (1) such Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (I) to a Person other than (x) the Company, (y) an affiliate of the Company (within the meaning of Rule 144) or (z) a Person that was an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding such transfer and (II) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer; or

(2) such Note was transferred (I) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding such transfer and (II) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; and

(B) the Company delivers written notice to the Trustee and the Registrar (including, without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein) stating that the Restricted Notes Legend may be removed from such Note and, with respect to Global Notes, all Applicable Procedures have been complied with.

(iii) In addition, until the applicable Resale Restriction Termination Date, no transfer of any Restricted Note will be registered by the Registrar unless the transferring Holder delivers to the Trustee a completed notice substantially in the form of the Form of Assignment and Transfer, which contains a certification that the transferee is (A) ProSomnus, Inc. or a subsidiary thereof or (B) such other person that is not an affiliate of the Company (within the meaning of Rule 144) and has not been an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding the date of such proposed transfer.

(iv) On and after the applicable Resale Restriction Termination Date, any Note will bear the Restricted Note Legend if at any time the Company determines that, to comply with applicable law, such Note must bear the Restricted Notes Legend and the Company notifies the Trustee in writing.

(b) *Restricted Stock*.

(i) Every share of Common Stock that bears, or that is required under this Section 2.07 to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**". Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Stock Legend) and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent (including, without limitation, by the Company's delivery of the Free Transferability Certificate in connection with the Notes as provided herein) of the Company, and each Holder of Restricted Stock, by such Holder's acceptance of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

(ii) Until the applicable Resale Restriction Termination Date, any shares of Common Stock issued upon the conversion of a Restricted Note will be issued in book-entry form by or on behalf of the Company and will bear the Restricted Stock Legend unless the Company delivers written notice to the transfer agent for the Common Stock stating that such shares of Common Stock need not bear the Restricted Stock Legend.

(iv) On and after the applicable Resale Restriction Termination Date, shares of Common Stock will be issued in book-entry form and will bear the Restricted Stock Legend at any time the Company reasonably determines that, to comply with applicable law, such shares of Common Stock must bear the Restricted Stock Legend.

(c) As used in this Section 2.07, the term "**transfer**" means any sale, pledge, transfer, loan, hypothecation or other disposition whatsoever of any Restricted Note, any interest therein or any Restricted Stock.

(d) All Notes, whether Global Notes or Physical Notes, are required to bear the Non-Affiliate Legend at all times, whether before or after the applicable Resale Restriction Termination Date.

Section 2.08 *Expiration of Restrictions*.

(a) *Physical Notes*. Any Physical Note (or any security issued in exchange or substitution therefor) that does not have a Restricted Notes Legend may be exchanged for a new Note or Notes of like tenor and aggregate principal amount that do not bear the Restricted Notes Legend required by Section 2.07. To exercise such right of exchange, the Holder of such Note must surrender such Note in accordance with the provisions of Section 2.11 and deliver any additional documentation required by this Indenture in connection with such exchange.

(b) *Global Notes; Resale Restriction Termination Date*.

(i) If, on a Free Trade Date, or the next succeeding Business Day if such Free Trade Date is not a Business Day, the Notes to which such Free Trade Date is applicable are represented by a Global Note that is a Restricted Note (any such Global Note, a "**Restricted Global Note**"), as promptly as practicable, the Company will cause an automatic exchange of every beneficial interest in each such Restricted Global Note for beneficial interests in Global Notes that do not bear the Restricted Notes Legend and are not subject to the restrictions set forth in the Restricted Notes Legend and in Section 2.07.

(ii) To effect such automatic exchange, the Company will (A) deliver to the Depositary an instruction letter for the Depositary's mandatory exchange process at least 15 days immediately prior to such Free Trade Date (with a copy to the Trustee), (B) deliver to each of the Trustee and the Registrar a duly completed Free Transferability Certificate on or promptly after such Free Trade Date. The date of the Free Transferability Certificate for any Notes will be known as the "**Resale Restriction Termination Date**" with respect to such Notes and (C) take any other action necessary to comply with the Applicable Procedures. The Trustee shall assume that a Free Trade Date has not occurred with respect to any Notes unless and until it receives a Free Transferability Certificate with respect to such Notes.

(iii) Immediately upon receipt of the Free Transferability Certificate with respect to any Notes by each of the Trustee and the Registrar:

(A) the Restricted Notes Legend will be deemed removed from each of the Global Notes specified in such Free Transferability Certificate and the restricted CUSIP number will be deemed removed from each of such Global Notes and deemed replaced with the unrestricted CUSIP number;

(B) the Restricted Stock Legend will be deemed removed from any shares of Common Stock previously issued upon conversion of such Notes; and

(C) thereafter, shares of Common Stock issued upon conversion of such Notes will be assigned an unrestricted CUSIP number and will not bear the Restricted Stock Legend (except as provided in Section 2.07(b)(iii)) or any similar legend.

(iv) Promptly after the Resale Restriction Termination Date with respect to any Notes, the Company will provide Bloomberg LLP with a copy of the Free Transferability Certificate applicable to such Notes and will use reasonable efforts to cause Bloomberg LLP to adjust its screen page for such Notes to indicate that such Notes are no longer Restricted Notes and are then identified by an unrestricted CUSIP number.

(v) The Company and the Trustee will comply with the Applicable Procedures and the Company shall otherwise use reasonable efforts to cause each Global Note that is not required to bear the Restricted Notes Legend to be identified by an unrestricted CUSIP number in the facilities of the Depositary by the date the Free Transferability Certificate is delivered to the Trustee and the Registrar or as promptly as possible thereafter.

(vi) Notwithstanding anything to the contrary in Sections 2.08(b)(i), (ii) or (iii), the Company will not be required to deliver a Free Transferability Certificate with respect to any Notes if it reasonably believes that removal of the Restricted Notes Legend or the changes to the CUSIP numbers for such Notes could result in or facilitate transfers of such Notes in violation of applicable law.

Section 2.09 ***Mutilated, Destroyed, Lost and Stolen Notes.***

If any mutilated Note is surrendered to the Trustee, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in exchange therefor a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding. If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of written notice to the Company or the Trustee that such Note has been acquired by a protected purchaser, the Company shall execute, and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.09, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.09 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.10 ***Persons Deemed Owners*****.**

Subject to the rights of Holders as of the Regular Record Date to receive payments of interest on the related Interest Payment Date, prior to due presentment of a Note for registration of transfer, the Company, the Trustee, each Agent, and any of their respective agents may treat the Person in whose name such Note is registered in the Register as the owner of such Note for the purpose of receiving payment of the principal of such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, the Agents nor any of their respective agents shall be affected by notice to the contrary.

Section 2.11 ***Transfer and Exchange*****.**

(a) *Provisions Applicable to All Transfers and Exchanges*.

(i) Subject to the restrictions set forth in this Section 2.11, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

(ii) All Notes issued upon any registration of transfer or exchange in accordance with this Indenture will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(iii) No service charge will be imposed on any Holder of a Physical Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company and the Trustee specifies otherwise, none of the Company, the Trustee, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Note (A) that has been selected for redemption or (B) that has been surrendered for conversion or except to the extent any portion of such Note is not subject to the foregoing.

(v) Neither the Trustee nor any Agent will have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law or by Section 2.11(c):

(i) all Notes will be represented by one or more Global Notes;

(ii) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Indenture (including the restrictions on transfer set forth in Section 2.07); and

(iii) each Global Note may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Notes for Physical Notes*.

(i) Notwithstanding any other provision of this Indenture, each Global Note will be exchanged for Physical Notes if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer registered as a clearing agency under the Exchange Act or is otherwise no longer permitted under applicable law to continue as Depositary for such Global Note;

and, in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, the Company will, in accordance with Section 2.04, promptly execute, and, upon receipt of a Company Order, the Trustee will, in accordance with Section 2.04, promptly authenticate and deliver, for each beneficial interest in each Global Note so exchanged, an aggregate principal amount of Physical Notes equal to the aggregate principal amount of such beneficial interest, registered in such names and in such authorized denominations as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 2.07.

(ii) In addition, if an Event of Default has occurred with regard to the Notes represented by the relevant Global Note and such Event of Default has not been cured or waived, any owner of a beneficial interest in a Global Note may deliver a written request through the Depositary to exchange such beneficial interest for Physical Notes.

In such case, (A) the Registrar will deliver notice of such request to the Company and the Trustee, which notice will identify the aggregate principal amount of such beneficial interest and the CUSIP of the relevant Global Note; (B) the Company will, in accordance with Section 2.04, promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 2.04, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged by such owner, Physical Notes registered in such owner's name having an aggregate principal amount equal to the aggregate principal amount of such beneficial interest as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 2.07; and (C) the Trustee, in accordance with the Applicable Procedures, will cause the principal amount of such Global Note to be decreased by the aggregate principal amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Note are so exchanged, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Trustee's customary procedures and the Applicable Procedures.

(d) *Transfer and Exchange of Physical Notes*.

(i) If Physical Notes are issued, a Holder may transfer a Physical Note by: (A) surrendering such Physical Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar; (B) if such Physical Note is a Restricted Note, delivering any documentation required by Section 2.07; and (C) satisfying all other requirements for such transfer set forth in this Section 2.09. Upon the satisfaction of conditions (A), (B) and (C) of the immediately preceding sentence, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 2.04, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Notes, of any authorized denomination, having like aggregate principal amount and bearing any restrictive legends that such Physical Notes are required to bear under Section 2.07.

(ii) If Physical Notes are issued, a Holder may exchange a Physical Note for other Physical Notes of any authorized denominations and aggregate principal amount equal to the aggregate principal amount of the Notes to be exchanged by surrendering such Notes, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02. Whenever a Holder surrenders Notes for exchange, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order and in accordance with Section 2.04, will promptly authenticate and deliver the Notes that such Holder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any legends that such Physical Notes are required to bear under Section 2.07.

(iii) Subject to Section 2.01 herein, if Physical Notes are issued, a Holder may transfer or exchange a Physical Note for a beneficial interest in a Global Note by (A) surrendering such Physical Note for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02; (B) if such Physical Note is a Restricted Note, delivering any documentation required by Section 2.07; (C) satisfying all other requirements for such transfer set forth in this Section 2.11 and Section 2.09; (D) providing written instructions to the Trustee to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate principal amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depositary account to be credited with such increase and (E) complying with the Applicable Procedures to effect such transfer or exchange. Upon the satisfaction of conditions (A), (B), (C), (D) and (E) the Trustee will cancel such Physical Note in accordance with its customary procedures and cause, in accordance with the Applicable Procedures, the aggregate principal amount of Notes represented by such Global Note to be increased by the aggregate principal amount of such Physical Note, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging Holder in an amount equal to the aggregate principal amount of such Physical Note. If no Global Notes are then Outstanding, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order and in accordance with Section 2.04, will authenticate, a new Global Note in the appropriate aggregate principal amount.

Section 2.12 ***Purchase of Notes; Cancellation*****.**

The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), purchase Notes in the open market or by tender offer at any price or by private agreement. The Company will cause any Notes so purchased (other than Notes purchased pursuant to cash-settled swaps or other cash-settled derivatives) to be surrendered to the Trustee for cancellation. For the avoidance of doubt, any such Notes purchased by the Company will be retired and no longer Outstanding hereunder.

The Company shall deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold. Upon written request of the Company, the Trustee shall promptly cancel all Notes surrendered for registration of transfer, exchange, payment, purchase, repurchase, conversion or cancellation in accordance with its customary procedures and the Applicable Procedures (if applicable). If the Company shall acquire any of the Notes in any manner whatsoever, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation. The Notes so acquired, while held by or on behalf of the Company or any of its Subsidiaries, shall not entitle the Holder thereof to convert the Notes. The Company may not issue new Notes to replace Notes it has paid in full or delivered to the Trustee for cancellation.

The Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 2.10. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 2.13 ***CUSIP Numbers*****.**

In issuing the Notes, the Company may use "CUSIP" numbers (if then generally in use); *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Notes, notice, or elsewhere and any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.14 ***Payment and Computation of Interest.***

The Notes will bear interest at a rate of 9% per annum until the Maturity Date, unless earlier purchased or converted in accordance with the provisions herein. Interest on the Notes will accrue from the most recent date on which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, the date of original issuance of such Notes. Interest will be paid to the Person in whose name a Note is registered at the Close of Business on the Regular Record Date immediately preceding the relevant Interest Payment Date quarterly in arrears on each Interest Payment Date in connection with such quarterly interest payment (or, in the case of an Interest Payment Date in connection with a voluntary conversion, an Optional Redemption, the Holder converting its Notes or having its Notes redeemed, as applicable). Interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. Notwithstanding the foregoing, in the event that a Holder converts all or a portion of its Notes, or has all or a portion of its Notes redeemed after the Close of Business on the Regular Record Date and prior to the Interest Payment Date in connection with a quarterly payment of Interest, the Interest payable on the Notes shall be reduced by such amount previously paid to such Holder for the portion of its Notes converted or redeemed.

The Company will pay Additional Interest under certain circumstances as provided in Section 5.08 and 6.03.

Each payment (including any payment made in connection with a redemption) in cash by the Company on account of the principal of and interest on and premium, if any on the Notes, shall be applied to the applicable Notes pro rata according to the outstanding principal amount (subject to any adjustment needed to maintain the minimum denominations of the Notes), unless otherwise expressly provided in the case of partial redemptions. Except as expressly provided herein, all payments (including any payment made in connection with a redemption) to be made by the Company on account of principal, interest, premium, if any, and fees shall be made without set off or counterclaim and all payments made in cash shall be made to the Trustee, in each case on or prior to 10:00 A.M.., New York time, in U.S. Dollars and in immediately available funds.

Section 2.15 ***Cash Interest.***

Other than in connection with a conversion pursuant to Article 4 below, the Company shall pay all interest due on the Notes in cash on the then outstanding principal amount of the Notes.

ARTICLE 3

[RESERVED]

ARTICLE 4
CONVERSION

Section 4.01 ***Right to Convert.***

(a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, to convert all or any portion of its Notes (if a portion, such that the principal amount of such Notes converted equals $1.00 or an integral multiple of $1.00) plus accrued interest plus Make-Whole Amount at an initial Conversion Rate of 76.9230769231 shares of Common Stock per $1,000 of the sum of the aggregate principal amount of Notes, plus all accrued interest thereon and the Make-Whole Amount related thereto into the Settlement Amount determined in accordance with Section 4.03(a)(ii) at any time until the Close of Business on the second Business Day immediately preceding the stated Maturity Date; *provided* that the portion of the principal amount of a Holder's Notes, plus all accrued interest thereon and any Make-Whole Amount related thereto, to be converted must be such that the principal amount of the Notes not converted equals $1.00 or an integral multiple of $1.00.

(b) (i) If the Company elects to issue or distribute, as the case may be, to all or substantially all holders of the Common Stock (x) any rights, options or warrants entitling them to subscribe for or purchase, for a period expiring within 45 calendar days after the declaration date for such issuance, shares of the Common Stock, at a price per share that is less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the declaration date for such issuance; or (y) cash, debt securities (or other evidence of indebtedness) or other assets or securities (excluding dividends or distributions in respect of which an adjustment to the Conversion Rate is made pursuant to Section 4.04(a)), which distribution has a per share value exceeding 10% of the Closing Sale Price of the Common Stock as of the Trading Day immediately preceding the declaration date for such distribution, then, in either case, the Company must deliver notice of such distribution, and of the Ex-Dividend Date for such distribution, to the Holders (with a copy to the Trustee and Conversion Agent) at least 30 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution.

(ii) If a transaction or event that constitutes a Fundamental Change occurs, to the extent practicable, the Company shall give notice to Holders (with a copy to the Trustee and Conversion Agent) of the anticipated effective date for such transaction or event not more than 50 Scheduled Trading Days nor less than 30 Scheduled Trading Days prior to the anticipated effective date or, if the Company does not have knowledge of such transaction or event at least 30 Scheduled Trading Days prior to the anticipated effective date, within two Business Days of the date upon which the Company receives notice, or otherwise becomes aware of such transaction or event (but in no event later than the actual effective date of such transaction or event). Neither the Trustee nor the Conversion Agent shall have any obligation (x) to determine whether the condition described in this Section 4.01(b)(ii) has occurred or (y) to verify the Company's determination regarding such condition.

(iii) If the Company is a party to a consolidation, merger or binding share exchange or a sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Company's property and assets that does not also constitute a Fundamental Change, in each case pursuant to which the Common Stock would be converted into cash, securities or other property, the Company shall notify Holders (with a copy to the Trustee and Conversion Agent) at least 30 Scheduled Trading Days prior to the anticipated effective date of such transaction. Neither the Trustee nor the Conversion Agent shall have any obligation (x) to determine whether the condition described in this Section 4.01(b)(iii) has occurred or (y) to verify the Company's determination regarding such condition. For the avoidance of doubt, any references to Common Stock described in this Section 4.01, including those in Section 4.01(c), shall give effect to, among other things, the provisions of Section 4.07.

(c) Notwithstanding anything herein to the contrary:

(i) The Company shall not effect any conversion of a Note to Common Stock to the extent that, after giving effect to such conversion, ownership of shares of Common Stock owned by the Holder, or such Holder together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (any such person other than Holder, including any group of which Holder is a member, an "**Additional Restricted Ownership Person**"), would beneficially own in excess of the Restricted Ownership Percentage (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and any Additional Restricted Ownership Person shall include the number of shares of Common Stock issuable upon conversion of the sum of the principal amount of Notes plus accrued interest thereon plus any Make-Whole Amount applicable thereto with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted principal amount of Notes plus accrued interest thereon plus any Make-Whole Amount applicable thereto beneficially owned by such Holder or any Additional Restricted Ownership Person and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any Additional Restricted Ownership Person. Except as set forth in the preceding sentence, for purposes of this Section 4.01(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(ii) To the extent that the limitation contained in this Section 4.01(c)(i) applies, the determination of whether the Notes are convertible (in relation to other securities owned by such Holder together with any Additional Restricted Ownership Person) and of how much principal amount of Notes (plus accrued interest thereon plus any Make-Whole Amount related thereto) are convertible shall be in the sole discretion of such Holder, and the submission of a Conversion Notice shall be deemed to be such Holder's determination of whether the applicable Notes may be converted (in relation to other securities owned by such Holder together with any Additional Restricted Ownership Person) and how much principal amount of Notes (plus accrued interest and any Make-Whole related thereto) are convertible, in each case subject to the Restricted Ownership Percentage. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Conversion Notice that, to its knowledge, such Conversion Notice has not violated the restrictions set forth in this paragraph and neither the Trustee nor the Conversion Agent shall have any obligation to verify or confirm the accuracy of such determination. In addition, 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 4.01(c), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the transfer agent for the Company's Common Stock setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to such Holder 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, including the Notes, by such Holder or its Additional Restricted Ownership Persons since the date as of which such number of outstanding shares of Common Stock was reported.

(iii) The "**Restricted Ownership Percentage**" for each Holder shall initially be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Notes held by the applicable Holder. A Holder may (i) increase the Restricted Ownership Percentage applicable to its Notes upon not less than 61 days' prior written notice to the Company, or (ii) decrease the Restricted Ownership Percentage applicable to its Notes effective immediately upon written notice to the Company; *provided*, *however*, that (x) no Holder shall be entitled to effect any increase in the Restricted Ownership Percentage applicable to its Notes if such Holder or any Additional Restricted Ownership Person has acquired beneficial ownership of Notes or any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein with the purpose or effect of changing or influencing the control of the Company and (y) the Restricted Ownership Percentage shall in no event exceed 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Notes held by the applicable Holder. Any such increase will not be effective until the 61st day after such notice is delivered to the Company and any such increase or decrease shall only apply to such Holder and no other Holder.

(iv) The Company shall use commercially reasonable best efforts (which shall include, without limitation, the engagement of a nationally reputable proxy advisor firm acceptable to the Holders) to obtain at its next annual or special meeting of its stockholders following the date of this Indenture such approval of its stockholders as is necessary under the rules or regulations of the Exchange to permit each Holder and/or Additional Restricted Ownership Person to beneficially own shares of Common Stock without being subject to the Nasdaq Change of Control Cap (the "**Nasdaq Change of Control Approval**" and the date of the first meeting of the Company's stockholders after the date hereof at which the Nasdaq Change of Control Approval is voted upon, the "**Initial Stockholder Meeting Date**"). In the event that the Nasdaq Change of Control Approval is not obtained on or before October 31, 2022, the Company shall use commercially reasonable best efforts to obtain the Nasdaq Change of Control Approval at a subsequent annual or special meeting of its stockholders to be held each calendar quarter thereafter until Nasdaq Change of Control Approval is obtained; *provided*, *however* that the Company shall only be required to engage a proxy advisor firm with respect to one of the subsequent meetings of the Company's stockholders after the Initial Stockholder Meeting Date, which meeting shall be determined by Holders of a majority in aggregate principal amount of the outstanding Notes and notice of such determination shall be provided in writing and delivered to the Company and the Trustee.

Section 4.02 ***Conversion Procedures*****.**

(a) Each Physical Note shall be convertible at the office of the Conversion Agent and, if applicable, Global Notes shall be convertible in accordance with the Applicable Procedures.

(b) To exercise the conversion privilege with respect to a beneficial interest in a Global Note, the Holder must comply with the Applicable Procedures for converting a beneficial interest on a Global Note and pay any taxes or duties if required pursuant to Section 4.02(f), and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depositary.

To exercise the conversion privilege with respect to any Physical Notes, the Holder of such Physical Notes shall:

(i) duly sign and complete a conversion notice in the form set forth in the Form of Notice of Conversion (the "**Conversion Notice**") or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay all transfer or similar taxes as set forth in Section 4.02(f).

If the Conversion Notice is being delivered on a date after the Close of Business on a Regular Record Date and prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, the Conversion Notice must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of the Note to be converted.

If, upon conversion of a Note, any shares of Common Stock are to be issued to a Person other than the Holder of such Note, the related Conversion Notice shall include such other Person's name and address.

For any Note, the date on which the Holder of such Note satisfies all of the applicable requirements set forth above with respect to such Note shall be the "**Conversion Date**" with respect to such Note.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion immediately prior to the Close of Business on the applicable Conversion Date; *provided*, *however*, that except to the extent required by Section 4.04, the person in whose name any shares of Common Stock shall be issuable upon conversion, if any, shall be treated as a stockholder of record as of the Close of Business on the Conversion Date in a Physical Settlement. For the avoidance of doubt, subject to the satisfaction by the Company of each of its obligations in connection with such conversion and any other conditions set forth in this Indenture, at the Close of Business on the Conversion Date for such conversion, the applicable Holder shall no longer be the Holder of the Notes so converted.

(c) *Endorsement*. Any Notes surrendered for conversion shall, unless shares of Common Stock issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or its duly authorized attorney.

(d) *Physical Notes*. If any Physical Notes in a denomination greater than $1.00 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Physical Notes so surrendered, without charge, new Physical Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Physical Notes.

(e) *Global Notes*. Upon the conversion of a beneficial interest in Global Notes, the Conversion Agent shall make a notation in its records as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) *Taxes Due upon Conversion*. If a Note is converted, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion, unless the tax is due because the Holder requests that any shares be issued in a name other than the Holder's name, in which case the Holder will pay that tax.

Section 4.03 *Settlement Upon Conversion*.

(a) *Settlement*. Subject to this Section 4.03 and Sections 4.01(c), 4.06 and 4.07, upon conversion of any Note, the Company shall deliver to Holders, in full satisfaction of its conversion obligation under Section 4.01, in respect of each $1,000 of the sum of the principal amount of Notes plus accrued interest plus the Make-Whole Amount related thereto being converted, a Settlement Amount consisting solely of shares of Common Stock (together with cash in lieu of any fractional share of Common Stock pursuant to Section 4.03(b)) ("**Physical Settlement**").

(i) *Settlement Amount*. The shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows: the Company shall deliver to the Holder of the Notes so converting, in respect of each $1,000 of the sum of the principal amount of its Notes plus accrued interest plus the Make-Whole Amount related thereto being converted, a number of shares of Common Stock equal to the applicable Conversion Rate, together with cash in lieu of any fractional shares of Common Stock pursuant to Section 4.03(b);

(ii) *Delivery Obligation*. The Settlement Amounts upon conversion of the Notes will delivered by the Company through the Company's stock transfer agent, in the case of Common Stock or the Conversion Agent, in the case of cash. The Company shall pay or deliver the Settlement Amount due in respect of its conversion obligation under this Section 4.03, on the second Trading Day immediately following the relevant Conversion Date; *provided*, *however*, that if prior to the Conversion Date for any converted Notes, the Common Stock has been replaced by Reference Property consisting solely of cash, the Company will pay the conversion consideration due in respect of such conversion on the third Trading Day immediately following the related Conversion Date, and, notwithstanding the foregoing in this Section 4.03, no Conversion Period will apply to those conversions.

(b) *Fractional Shares*. Notwithstanding the foregoing, the Company will not issue fractional shares of Common Stock as part of the Settlement Amount due with respect to any converted Note. Instead, if any Settlement Amount includes a fraction of a share of the Common Stock, the Company will, in lieu of delivering such fraction of a share of Common Stock, pay an amount of cash equal to the product of such fraction of a share and the Daily VWAP on the relevant Conversion Date, or if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day.

(c) *Conversion of Multiple Notes by a Single Holder*. If a Holder surrenders more than one Note for conversion on a single Conversion Date, the Company will calculate the amount of cash and the number of shares of Common Stock due with respect to such Notes as if such Holder had surrendered for conversion one Note having an aggregate principal amount equal to the sum of the principal amounts of each of the Notes surrendered for conversion by such Holder on such Conversion Date or, if the Notes surrendered for conversion are beneficial interests in a Global Note, based on such other aggregate number of Notes, or beneficial interests therein, being surrendered by the Holder for conversion on the same date as the Depositary may otherwise request.

(d) *Settlement of Accrued Interest, Make-Whole Amount and Deemed Payment of Principal*. If a Note is converted, the Company will adjust the Conversion Rate to account for any accrued and unpaid interest on such Note plus any Make-Whole Amount related to such Note, and the Company's delivery of shares of Common Stock into which a Note is convertible must be in an amount of shares of Common Stock (plus cash in lieu of fractional shares of Common Stock) necessary to satisfy and discharge in full the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on such Note to, but excluding, the Conversion Date, plus any Make-Whole Amount on such Note. As a result, any accrued and unpaid interest and Make-Whole Amount with respect to a converted Note paid with shares of Common Stock (and cash in lieu of fractional shares of Common Stock) as required by this Article 4, will be deemed to be paid in full rather than cancelled, extinguished or forfeited to the extent shares of Common Stock are delivered in the amount of such accrued and unpaid interest and Make-Whole Amount (plus cash for fractional shares of Common Stock). In addition, if the Settlement Amount for any Note includes both cash and shares of Common Stock, accrued but unpaid interest will be deemed to be paid first out of the delivery of Common Shares (and cash in lieu of fractional shares of Common Stock) delivered upon such conversion, then the Make-Whole Amount will be deemed paid, then principal.

(e) *Notices*. Whenever a Conversion Date occurs with respect to a Note, the Conversion Agent will, as promptly as possible, and in no event later than the Business Day immediately following such Conversion Date, deliver to the Company and the Trustee, if it is not then the Conversion Agent, written notice that a Conversion Date has occurred, which notice will state such Conversion Date, the principal amount of Notes, accrued interest and Make-Whole Amount converted on such Conversion Date and the names of the Holders that converted Notes on such Conversion Date.

Section 4.04 ***Adjustment of Conversion Rate*****.**

The Conversion Rate will be adjusted as described in this Section 4.04, except that no adjustment to the Conversion Rate will be made for a given transaction if Holders of the Notes will participate in that transaction, without conversion of the Notes, on the same terms and at the same time as a holder of a number of shares of Common Stock equal to the principal amount of a Holder's Notes plus accrued interest thereon plus the Make-Whole Amount divided by $1,000 and multiplied by the Conversion Rate would participate.

(a) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company subdivides or combines the Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR = the Conversion Rate in effect immediately prior to the Open of Business on such Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable;

CR_0 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately after the Open of Business on the effective date of such share split or combination, as applicable;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable; and

OS_0 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or immediately after the effective date of such subdivision or combination of common stock, as the case may be.

Any adjustment made under this clause (a) will become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution (regardless of whether the dividend or distribution date is scheduled to occur after the Maturity Date), or immediately after the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be. If such dividend, distribution, subdivision or combination described in this clause (a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a duly authorized committee thereof determines not to pay such dividend or distribution or to effect such subdivision or combination, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or subdivision or combination had not been announced.

(b) If an Ex-Dividend Date occurs for a distribution to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days from the announcement date for such distribution, to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution.

Any increase made under this clause (b) will be made successively whenever any such rights, options or warrants are issued and will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution, regardless of whether the distribution date is scheduled to occur after the Maturity Date. To the extent that such rights, options or warrants expire prior to the Maturity Date and shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants were scheduled to be distributed prior to the Maturity Date and are not so distributed, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such distribution had not occurred.

For purposes of this Section 4.04(b) and Section 4.01(b)(i), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price that is less than the average of the Closing Sale Prices of the Common Stock for each Trading Day in the applicable 10 consecutive Trading-Day period, there shall be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors or a duly authorized committee thereof.

(c) If an Ex-Dividend Date occurs for a distribution (the "**Relevant Distribution**") of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other assets or property of the Company's or rights, options or warrants to acquire the Company's Capital Stock or other securities, to all or substantially all holders of Common Stock (excluding (i) dividends or distributions and rights, options or warrants as to which an adjustment was effected under clause (a) or (b) above; (ii) dividends or distributions paid exclusively in cash; and (iii) Spin-Offs), then the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day-period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof) of the shares of Capital Stock, evidences of indebtedness, assets or property or rights, options or warrants distributed with respect to each outstanding share of Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

Any increase made under the above portion of this clause (c) will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if such distribution is scheduled to be paid or made prior to the Maturity Date and is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 of the sum of the principal amount thereof plus accrued and unpaid interest plus the Make-Whole Amount related thereto, at the same time and upon the same terms as holders of the Common Stock, without having to convert its Notes, the amount and kind of the Relevant Distribution that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

With respect to an adjustment pursuant to this clause (c) where there has been an Ex-Dividend Date for a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such Spin-Off;

FMV_0 = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first 10 consecutive Trading-Day period commencing on, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"); and

MP_0 = the average of the Closing Sale Prices of Common Stock over the Valuation Period.

The adjustment to the applicable conversion rate under the preceding paragraph of this clause (c) will be determined on the last day of the Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references within this clause (c) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last VWAP Trading Day of such Conversion Period. In respect of any conversion during the Valuation Period for any Spin-Off, references within this clause (c) related to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the relevant Conversion Date.

For purposes of the second adjustment formula set forth in this Section 4.04(c), (i) the Closing Sale Price of any Capital Stock or similar equity interest shall be calculated in a manner analogous to that used to calculate the Closing Sale Price of the Common Stock in the definition of "Closing Sale Price" set forth in Section 1.01, (ii) whether a day is a Trading Day (and whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for such Capital Stock or similar equity interest shall be determined in a manner analogous to that used to determine whether a day is a Trading Day (or whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for the Common Stock, and (iii) whether a day is a Trading Day to be included in a Valuation Period will be determined based on whether a day is a Trading Day for both the Common Stock and such Capital Stock or similar equity interest.

Subject to Section 4.04(g), for the purposes of this Section 4.04(c), rights, options or warrants distributed to all or substantially all holders of the Common Stock entitling them to acquire the Company's Capital Stock or other securities, (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"): (1) are deemed to be transferred with such shares of Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of Common Stock (including, for the avoidance of doubt, upon settlement of conversions of Notes), shall be deemed not to have been distributed for purposes of this Section 4.04(c) (and no adjustment to the Conversion Rate under this Section 4.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.04(c). If any such rights, options or warrants, distributed prior to the Issue Date are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.04(c) was made, (1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any Holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of Sections 4.04(a) through (c), if any dividend or distribution to which this Section 4.04(c) applies includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 4.04(a) also applies (the "**Clause A Distribution**"); or

(B) an issuance of rights, options or warrants entitling holders of the Common Stock to subscribe for or purchase shares of the Common Stock to which Section 4.04(b) also applies (the "**Clause B Distribution**"),

then (i) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a distribution to which this Section 4.04(c) applies (the "**Clause C Distribution**") and any Conversion Rate adjustment required to be made under this Section 4.04(c) with respect to such Clause C Distribution shall be made, (ii) the Clause B Distribution, if any, shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.04(b) with respect thereto shall then be made, except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause B Distribution and the Clause A Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (B) any shares of Common Stock included in the Clause A Distribution or the Clause B Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date" within the meaning of Section 4.04(b), and (iii) the Clause A Distribution, if any, shall be deemed to immediately follow the Clause C Distribution or the Clause B Distribution, as the case may be, except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution, and (B) any shares of Common Stock included in the Clause A Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date or such effective date" within the meaning of Section 4.04(a).

(d) If an Ex-Dividend Date occurs for a cash dividend or distribution to all, or substantially all, holders of the outstanding Common Stock (other than any dividend or distribution in connection with the Company's liquidation, dissolution or winding up), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share that the Company pays or distributes to substantially all holders of the Common Stock.

Any increase made under this clause (d) shall become effective immediately after the Open of Business on the Ex-Dividend date for such dividend or distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if any dividend or distribution described in this clause (d) is scheduled to be paid or made prior to the Maturity Date but is not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 the sum of the principal amount of Notes plus accrued and unpaid interest thereon plus the Make-Whole Amount related thereto, at the same time and upon the same terms as holders of shares of the Common Stock, without having to convert its Notes, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the applicable Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock, and if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Offer Expiration Date**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Trading Day next succeeding the Offer Expiration Date;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Trading Day next succeeding the Offer Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors or a duly authorized committee thereof) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "**Offer Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Offer Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the Offer Expiration Date.

The adjustment to the Conversion Rate under the preceding paragraph of this clause (e) will be determined at the Close of Business on the tenth Trading Day immediately following, but excluding, the Offer Expiration Date but will be given effect at the Open of Business on the Trading Day next succeeding the Offer Expiration Date. If the Trading Day next succeeding the Offer Expiration Date is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references within this clause (e) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Offer Expiration Date to, and including, the last VWAP Trading Day of such Conversion Period. In respect of any conversion during the 10 Trading Days commencing on the Trading Day next succeeding the Offer Expiration Date, references within this clause (e) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Offer Expiration Date to, but excluding, the relevant Conversion Date. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate.

(f) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if a Note is converted and:

(i) any distribution, transaction or event described in Sections 4.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on such VWAP Trading Day; and

(ii) the shares of Common Stock deliverable in respect of such VWAP Trading Day are not entitled to participate in the relevant distribution or transaction (because such shares of Common Stock were not held on a related Record Date or otherwise),

then the Company will adjust the number of shares of Common Stock delivered in respect of the relevant VWAP Trading Day to reflect the relevant distribution or transaction.

If a Note is converted and:

(i) Physical Settlement is applicable to such Note;

(ii) any distribution or transaction described in Sections 4.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on a given Conversion Date; and

(iii) the shares of Common Stock deliverable on settlement of the related conversion are not entitled to participate in the relevant distribution or transaction (because such shares of Common Stock were not held on a related Record Date or otherwise),

then the Company will adjust the number of shares of Common Stock delivered in respect of the relevant conversion to reflect the relevant distribution or transaction.

Notwithstanding the foregoing, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date as described above, and a Holder of Notes that has converted on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of shares of Common Stock as of the related Conversion Date pursuant to Section 4.03 based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the foregoing Conversion Rate adjustment provisions, the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for the Holder of such converting Notes. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) *Poison Pill*. If a Note is converted, to the extent that the Company has a rights plan in effect on the Conversion Date applicable to such Note, the Holder of such converting Note will receive, in addition to any shares of Common Stock otherwise received in connection with such conversion on such Conversion Date or such VWAP Trading Day, as the case may be, the rights under the rights plan, unless prior to such Conversion Date or such VWAP Trading Day, as the case may be, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of the Common Stock, Distributed Property as described in Section 4.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(h) *Deferral of Adjustments*. Notwithstanding anything to the contrary herein, the Company will not be required to adjust the Conversion Rate unless such adjustment would result in a change of at least one percent; *provided, however*, that the Company shall carry forward any adjustments that are less than one percent of the Conversion Rate and make such carried forward adjustments (i) when the cumulative net effect of all adjustments not yet made will result in a change of at least one percent of the Conversion Rate or (ii) regardless of whether the aggregate adjustment is less than one percent, (1) upon any offer to purchase the Notes following a Fundamental Change, (2) on each of the VWAP Trading Days within any Conversion Period, (3) upon any conversion of Notes and (4) on the Effective Date for any Fundamental Change.

(i) *Limitation on Adjustments*. Except as stated in this Section 4.04, the Company will not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. If, however, the application of the formulas in Sections 4.04(a) through (e) would result in a decrease in the Conversion Rate, then, except to the extent of any readjustment to the Conversion Rate, no adjustment to the Conversion Rate will be made (other than as a result of a reverse share split or share combination).

For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 4.05 *Discretionary and Voluntary Adjustments*.

(a) *Discretionary Adjustments*. Whenever any provision of this Indenture requires the Company to calculate the Closing Sale Prices, the Daily VWAPs or any function thereof over a span of multiple days (including during an Conversion Period), the Company will make appropriate adjustments to each, if any, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the effective date, Ex-Dividend Date or Offer Expiration Date of the event occurs, at any time during the period when such Closing Sale Prices, the Daily VWAPs or function thereof is to be calculated.

(b) *Voluntary Adjustments*. To the extent permitted by law and any applicable rules of the Exchange, the Company is permitted to increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days if such increase is irrevocable for such period and the Board of Directors determines that such increase would be in the Company's best interest; *provided* that the Company must give at least 15 days' prior notice of any such increase in the Conversion Rate to the Holders (with a copy to the Trustee and Conversion Agent). The Company may also (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

Section 4.06 ***Subsequent Financing Adjustments***

If the Company or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "**Base Conversion Price**" and such issuances, collectively, a "**Dilutive Issuance**") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price then in effect, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then simultaneously with the consummation (or, if earlier, the announcement) of each Dilutive Issuance, the Conversion Rate shall be adjusted in order to reduce and only reduce the Conversion Price to equal the Base Conversion Price, provided that the Base Conversion Price shall not be less than $5.50 (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the date of the Purchase Agreement). Notwithstanding the foregoing, no adjustment will be made under this Section 4.06 in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holders in writing (with a copy to the Trustee and Conversion Agent), no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 4.06, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "**Dilutive Issuance Notice**"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 4.06, upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of shares of Common Stock upon conversion of Notes based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether such Holder accurately refers to the Base Conversion Price in the Conversion Notice.

Section 4.07 ***Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.***

(a) *Merger Events*. In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a split, subdivision or combination for which an adjustment was made pursuant to Section 4.04(a));

(ii) any consolidation, merger, combination, binding share exchange or similar transaction involving the Company;

(iii) any sale, assignment, conveyance, transfer, lease or other disposition to a third party of the consolidated property and assets of the Company as an entirety or substantially as an entirety; or

(iv) a liquidation or dissolution of the Company;

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, common stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**," any such common stock, other securities, other property or assets (including cash or any combination thereof), "**Reference Property**," and (i) the amount and kind of Reference Property that a holder of one share of Common Stock is entitled to receive in the applicable Merger Event, or (ii) if as a result of the applicable Merger Event, each share of Common Stock is converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the per share of Common Stock weighted average of the amounts and kinds of Reference Property received by the holders of Common Stock that affirmatively make such an election (disregarding, for these purposes, any arrangement to deliver cash in lieu of any fractional security or other unit of Reference Property), a "**Unit of Reference Property**") then, at the effective time of such Merger Event, Holders of each $1,000 principal amount of Notes shall be entitled thereafter to convert such Notes plus accrued interest thereon plus the Make-Whole Amount related thereto into the kind and amount of Reference Property that a Holder of a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to such Merger Event would have owned or been entitled to receive upon such Merger Event, and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing person, as the case may be, shall execute with the Trustee a supplemental indenture providing for such change in the right to convert each $1,000 principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto; *provided*, *however*, that at and after the effective time of the Merger Event, (y) (i) the number of shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 4.03 and 4.06 shall instead be deliverable in Units of Reference Property that a Holder of that number of shares of Common Stock would have received in such Merger Event and (ii) the Daily VWAP and the Closing Sale Price will, to the extent reasonably possible, be calculated based on the value of a Unit of Reference Property and the definitions of VWAP Trading Day and VWAP Market Disruption Event shall be determined by reference to the components of a Unit of Reference Property. The Company shall notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 4.07. Such supplemental indenture described in the immediately preceding paragraph shall provide for adjustments which shall be as nearly equivalent to the adjustments provided for in this Article 4 in the judgment of the Board of Directors or the board of directors of the successor person. If, in the case of any such Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a person other than the successor or purchasing person, as the case may be, in such Merger Event, then such indenture shall also be executed by such other person.

If the Notes become convertible into, or exchanged for Reference Property, the Company shall notify the Trustee and the Conversion Agent, and shall issue a press release containing the relevant information (and make such press release available on the Company's website).

(b) *Notice of Supplemental Indentures*. The Company shall cause written notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Notes maintained by the Registrar, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 4.07 shall similarly apply to successive Merger Events.

(c) *Prior Notice*. In addition, at least 20 Scheduled Trading Days before any Merger Event, the Company shall give notice to Holders of such Merger Event (with a copy to the Trustee and Conversion Agent), or, if the Company has not publicly announced such Merger Event at such time, as promptly as practicable after publicly announcing such Merger Event. In any such notice, the Company shall also specify the composition of the Unit of Reference Property for such Merger Event, or, if the Company has not determined the composition of such Unit of Reference Property at such time, the Company will provide an additional written notice to Holders (with a copy to the Trustee and Conversion Agent) that states the composition of such Unit of Reference Property as promptly as practicable after determining its composition.

(d) *Cash Mergers*. Notwithstanding anything to the contrary herein, if the consideration paid to holders of the Common Stock in any Merger Event is comprised entirely of cash, then, for any conversion of Notes following such Merger Event, (i) the consideration due upon the conversion of each $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount shall be solely in cash in an amount equal to the Conversion Rate in effect on the Conversion Date (including any adjustment as set forth in Section 4.06), multiplied by the price paid per share of Common Stock in such Merger Event and (ii) the Company's conversion obligation will be determined and paid to Holders in cash on the third Business Day following the applicable Conversion Date.

Section 4.08 *Certain Covenants*.

(a) *Reservation of Shares*. The Company shall reserve and keep available at all times from and after the Initial Issue Date, free from preemptive rights, out of its authorized but unissued Common Stock that is not committed for any other purpose, a number of shares of Common Stock at least equal to the product of (i) the number of Notes then outstanding multiplied by (ii) the maximum Conversion Rate of 360.0334 shares of Common Stock, for the purpose of satisfying conversions of the Notes, which shall be sufficient to satisfy conversions of all Outstanding Notes through Physical Settlement.

(b) *Certain other Covenants*. The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be issued in book-entry form, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder or due to a change in registered owner). The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 4.09 *Responsibility* of *Trustee*.

The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate (or any adjustment thereto), to determine whether any facts exist which may require any adjustment (including any increase) of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any Conversion Agent (if other than the Company) shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, monitoring the Company's stock trading price or of any other securities or property or cash that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent (if other than the Company) make no representations with respect thereto. Neither the Trustee nor any Conversion Agent (if other than the Company) shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 4. Without limiting the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 4.07, relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by the Holders upon conversion of their Notes after any event referred to in such Section 4.07 or to any adjustment to be made with respect thereto, but may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Officer's Certificate (which the Company shall be obligated to deliver to the Trustee prior to the execution of any such supplemental indenture. Neither the Trustee nor any Conversion Agent shall be responsible for determining whether any event contemplated by this Article 4 has occurred that makes the Notes eligible for conversion or no longer eligible therefore until the Company has delivered to the Trustee and the Conversion Agent any requisite notices referred to in this Article 4 with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to delivery such notices to the Trustee and the Conversion Agent as provided for in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Conversion Agent.

Section 4.10 ***Notice of Adjustment*****.**

Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent (if other than the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee (and the Conversion Agent, if different than the Trustee) shall have received such Officer's Certificate, the Trustee (and the Conversion Agent, if different than the Trustee) shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall (i) issue a press release and make the press release available on the Company's website and (ii) prepare a notice of such adjustment of the Conversion Rate, in each case, setting forth the adjusted Conversion Rate and the date as of which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to the Holder of each Note (with a copy to the Trustee and Conversion Agent) at his or her last address appearing on the Register provided for in Section 2.06 of this Indenture, within 20 days after execution thereof. Failure to issue such press release or deliver such notice shall not affect the legality, effectiveness or validity of any such adjustment and shall not be an Event of Default under this Indenture.

Section 4.11 ***Notice to Holders*****.**

(a) *Notice to Holders Prior to Certain Actions*. The Company shall deliver notices of the events specified below at the times specified below and containing the information specified below unless, in each case, (i) pursuant to this Indenture, the Company is already required to deliver notice of such event containing at least the information specified below at an earlier time or, (ii) the Company, at the time it is required to deliver a notice, does not have knowledge of all of the information required to be included in such notice, in which case, the Company shall (A) deliver notice at such time containing only the information that it has knowledge of at such time (if it has knowledge of any such information at such time), and (B) promptly upon obtaining knowledge of any such information not already included in a notice delivered by the Company, deliver notice to each Holder with a copy to the Trustee and the Conversion Agent containing such information. In each case, the failure by the Company to give such notice, or any defect therein, shall not affect the legality or validity of such event.

(i) *Voluntary Increases*. If the Company increases the Conversion Rate pursuant to Section 4.05(b), the Company shall mail to the Holders with a copy to the Trustee and the Conversion Agent a notice of the increased Conversion Rate and the period during which such increased Conversion Rate will be in effect at least 15 calendar days prior to the date the increased Conversion Rate takes effect, in accordance with the applicable law.

(ii) *Dissolutions, Liquidations and Winding-Ups*. If there is a voluntary or involuntary dissolution, liquidation or winding-up of the Company, the Company shall deliver notice to the Holders (with a copy to the Trustee) as promptly as possible, but in any event at least 15 calendar days prior to the earlier of (i) the date on which such dissolution, liquidation or winding-up, as the case may be, is expected to become effective or occur, and (ii) the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be, which notice shall state the expected effective date and record date for such event, as applicable, and the amount and kind of property that a holder of one share of the Common Stock is expected to be entitled, or may elect, to receive in such event. The Company shall deliver an additional notice to holders, as promptly as practicable, whenever the expected effective date or record date, as applicable, or the amount and kind of property that a holder of one share of the Common Stock is expect to be entitled to receive in such event, changes.

(b) *Notices After Certain Actions and Events*. Whenever an adjustment to the Conversion Rate becomes effective pursuant to Sections 4.04, 4.05 or 4.06, the Company will (i) deliver to the Trustee and Conversion Agent an Officer's Certificate stating that such adjustment has become effective, the Conversion Rate, and the manner in which the adjustment was computed and (ii) deliver written notice to the Holders (with a copy to the Trustee and Conversion Agent) stating that such adjustment has become effective and the Conversion Rate or conversion privilege as adjusted. Failure to give any such notice, or any defect therein, shall not affect the validity of any such adjustment.

ARTICLE 5
COVENANTS

Section 5.01 ***Payment of Principal and Interest.***

The Company covenants and agrees that it will cause to be paid the principal of, premium, if any, on and accrued and unpaid interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Principal, premium, if any, on accrued and unpaid interest, if any, shall be considered paid on the date due if the Paying Agent holds, as of 10:00 a.m. (New York City time) on the due date, money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any and interest then due.

Section 5.02 ***Maintenance of Office or Agency***.

The Company will maintain in the continental United States an office of the Paying Agent, an office of the Registrar and an office or agency where Notes may be surrendered for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at the Corporate Trust Office of the Trustee; provided, however, that the Trustee shall not be deemed an agent of the Company for service of legal process.

The Company may also from time to time designate as co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Conversion Agent" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Registrar, Conversion Agent, and its Corporate Trust Office shall be considered as one such office or agency of the Company for each of the aforesaid purposes. The Company or its Affiliates may act as Paying Agent or Registrar.

With respect to any Global Note, the Corporate Trust Office of the Trustee or any Paying Agent shall be the place of payment where such Global Note may be presented or surrendered for payment or conversion or for registration of transfer or exchange, or where successor Notes may be delivered in exchange therefor; *provided*, *however*, that any such payment, conversion, presentation, surrender or delivery effected pursuant to the Applicable Procedures for such Global Note shall be deemed to have been effected at the place of payment for such Global Note in accordance with the provisions of this Indenture.

Section 5.03 ***Provisions as to Paying Agent.***

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree, subject to the provisions of this Section 5.03:

(i) that it will hold all sums held by it as such agent for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal, premium, accrued and unpaid interest, as the case may be, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action, provided that, if such deposit is made on the due date, such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal, any premium, accrued and unpaid interest, if any, as the case may be, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal of, premium on, accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 5.03 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by any Paying Agent hereunder as required by this Section 5.03, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the any Paying Agent to the Trustee, such Paying Agent (if other than the Company) shall be released from all further liability with respect to such sums.

(d) Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, any Note and remaining unclaimed for two years after such principal, premium, accrued and unpaid interest, has become due and payable shall be paid to the Company on written request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 5.04 ***Reports*****.**

As long as any Notes are outstanding, the Company shall (i) file with the Commission within the time periods prescribed by its rules and regulations and (ii) furnish to the Trustee and the Holders within 15 calendar days after it is required to file the same with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), all quarterly and annual financial information required to be contained in Forms 10-Q and 10-K and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors. The Company shall not be required to file any report or other information with the Commission if the Commission does not permit such filing, although such reports will be required to be furnished to the Trustee. Any such report, information or document that the Company files with the Commission through the EDGAR system (or any successor thereto) will be deemed to be delivered to the Trustee and the Holders for the purposes of this Section 5.04 at the time of such filing through the EDGAR system (or such successor thereto).

At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will, so long as any of the Notes or the shares of Common Stock delivered upon conversion of the Notes will, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or such shares of Common Stock the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or such shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company will take such further action as any Holder or beneficial owner of such Notes or any holder or beneficial owner of such shares of Common Stock may reasonably request from time to time to enable such Holder or beneficial owner to sell such Notes or such holder or beneficial owner to sell shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

The Trustee shall have no duty to review or analyze reports delivered to it. Delivery of any such reports, information and documents to the Trustee shall be for informational purposes only, and the Trustee's receipt of such reports, information and documents shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates) or any other agreement or document. The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with the covenants or with respect to any reports or other documents filed with the SEC or EDGAR or any website under the indenture, or participate in any conference calls.

Section 5.05 ***Statements as to Defaults*****.**

The Company is required to deliver to the Trustee (i) within 120 days after the end of each fiscal year ending December 31, an Officer's Certificate stating whether or not the signers thereof know of any default of the Company that occurred during the previous year and whether the Company, to the Officer's knowledge, is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture and (ii) within 30 days after the occurrence thereof, written notice in the form of an Officer's Certificate of any events that would constitute Defaults or Events of Default, setting forth the details of such Defaults or Events of Default, their status and the action the Company is taking or proposes to take in respect thereof. Such Officer's Certificate shall also comply with any additional requirements set forth in Section 5.07. The Trustee shall not be deemed to have notice of any Default or Event of Default except in accordance with Section 11.02(i).

Section 5.06 ***Additional Interest Notice*****.**

If Additional Interest is payable by the Company pursuant to Section 5.08 or Section 6.03, the Company shall deliver to the Trustee and the Paying Agent an Officer's Certificate, prior to the Regular Record Date for each applicable Interest Payment Date, to that effect stating (a) the amount of such Additional Interest that is payable and (b) the date on which such interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. The Trustee shall have no obligation to calculate or determine, or verify the Company's calculations or determinations of, the amount of any Additional Interest payable by the Company under this Indenture. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 5.07 ***Compliance Certificate and Opinions of Counsel.***

(a) Except as otherwise expressly provided in this Indenture, upon any application or request by the Company to the Trustee or the Collateral Agent, as applicable, to take any action under any provision of this Indenture or the other Transaction Documents, the Company shall furnish to the Trustee or the Collateral Agent, as applicable, an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture and any applicable Transaction Documents relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture or any applicable Transaction Document shall include:

(i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

(c) All applications, requests, certificates, statements or other instruments given under this Indenture shall be without personal recourse to any individual giving the same and may include an express statement to such effect.

Section 5.08 ***Additional Interest.***

(a) With respect to any Restricted Notes, if, at any time during the six-month period beginning on, and including, the date which is six months after the Last Original Issuance Date, the Company fails to timely file any periodic report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or such Restricted Notes are not otherwise Freely Tradable, including pursuant to Rule 144 under the Securities Act, by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of such Restricted Notes then Outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or for which the restrictions on transfer are applicable; *provided* that such six-month period shall end on the date that is one year from the Last Original Issuance Date.

(b) With respect to any Notes that do not constitute Restricted Notes, if at any time such Notes are not Freely Tradable, including pursuant to Rule 144 under the Securities Act, by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of Notes then Outstanding for each day during such period for which the restrictions on transfer are applicable.

(c) Further, if, and for so long as, the Restricted Notes Legend has not been removed from any Notes, any Notes are assigned a restricted CUSIP number or any Notes are not otherwise Freely Tradable by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 375th day after the Last Original Issuance Date, the Company will pay Additional Interest on such Notes that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of such Notes then Outstanding until such Restricted Notes Legend is removed, such Notes are assigned an unrestricted CUSIP number and such Notes are Freely Tradable.

(d) Such Additional Interest that is payable under this Section 5.08 shall be payable in kind in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes and will be separate and distinct from, and in addition to, any Additional Interest that may accrue pursuant to Section 6.03, subject to the limitations on the maximum annual rate of Additional Interest set forth in Section 6.03(d).

(e) In no event shall Additional Interest accruing pursuant to this Section 5.08 accrue on any day under the terms of this Indenture (taking any such Additional Interest pursuant to this Section 5.08 together with any Additional Interest pursuant to Sections 6.03(a) and 6.03(c)) at an annual rate in excess of 0.50% for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations.

(f) If Additional Interest is payable by the Company pursuant to Section 5.08, the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 5.09 ***Corporate Existence*****.**

Subject to Article 9, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 5.10 ***Restriction on Resales*****.**

The Company shall not, and shall procure that no "affiliate" (as defined under Rule 144) of the Company shall, resell any of the Notes that have been reacquired by the Company or any such "affiliate" (as defined under Rule 144).

Section 5.11 ***Further Instruments and Acts*****.**

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 5.12 ***Par Value Limitation*****.**

The Company shall not take any action that, after giving effect to any adjustment pursuant to Article 4, would result in the issuance of shares of Common Stock for less than the par value of such shares of Common Stock.

Section 5.13 ***Company to Furnish Trustee Names and Addresses of Holders*****.**

The Company will furnish or cause to be furnished to the Trustee (if not also the Registrar):

(a) semi-annually, not later than the 5th day after each Regular Record Date, a list, in such form as the Trustee may reasonably require, containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, of the names and addresses of the Holders, as of such preceding Regular Record Date, and

(b) at such other times as the Trustee may request in writing, within 15 days after the receipt by the Company of any such request, a list of similar form and content as of a date the Trustee may reasonably require.

Section 5.14 ***Negative Covenants*****.**

(a) As long as any portion of the Notes remains outstanding, unless the Holders of at least a majority in principal amount of the then outstanding Notes shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

(i) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(ii) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(iii) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

(iv) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $100,000 for all officers and directors during the term of this Indenture;

(v) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than (A) the Notes pursuant to the terms of this Indenture and (B) the Subordinated Notes to the extent paid in accordance with the terms of the Intercreditor Agreement in effect as of the Initial Issue Date, provided that with respect to the Subordinated Notes (i) such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur and (ii) such payments shall not be permitted unless financial covenants are satisfied;

(vi) pay cash dividends or distributions on any equity securities of the Company;

(vii) dispose of assets of the Company or any Subsidiary other than (a) obsolete, worn-out and immaterial assets and (b) assets with a value in the aggregate in excess of $1,000,000 in any fiscal year or $5,000,000 during the term of this Indenture provided that any such assets are disposed of at prices for such assets that not less than fair market value of such assets, at least 90% of the consideration paid to the Company for such disposition is in the form of cash, and within 180 days of such disposition, the Company will either reinvest the proceeds into the Company;

(viii) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

(ix) enter into any agreement with respect to any of the foregoing.

Section 5.15 ***Accounting Terms***.

Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements of the Company and its Subsidiaries for the fiscal year ending December 31, 2021, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470–20 on financial liabilities shall be disregarded, (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015, and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 "Financial Instruments" (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Company and its Subsidiary at "fair value", as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to (x) any election by the Company to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard) or (y) any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016–02, Leases (Topic 842), to the extent such adoption would require recognition of a lease liability where such lease (or similar arrangement) would not have required a lease liability under GAAP as in effect on December 31, 2015.

Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Transaction Document, and either the Company or the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding shall so request, the Company shall in good faith determine an amended such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Trustee financial statements and other documents required under this Indenture or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 5.16 ***Future Subsidiary Guarantors.***

The Company will cause each Person that becomes a Subsidiary of the Company after the date hereof (other than an Excluded Subsidiary) to execute and deliver to the Trustee, within 30 days of becoming such a Subsidiary, a Supplemental Indenture (in substantially the form specified in **Exhibit E** to this Indenture) and an assumption agreement to the Guarantee pursuant to which such Subsidiary will become a Subsidiary Guarantor hereunder, whereupon such Subsidiary shall be bound by all of the provisions herein applicable to Subsidiary Guarantors, subject to the limitations set forth herein, including, without limitation, Article 12 hereof.

Section 5.17 ***Financial Covenants.***

Financial Covenants.

(a) Minimum EBITDA. The Company and its Subsidiaries shall not permit the Consolidated EBITDA, (i) as of the last day of any fiscal quarter and calculated for the period of the last twelve months ending on such date, to be less than ($4.5 million) prior to July 1, 2023 and ($4.0 million) thereafter, (ii) as of the last day of any fiscal quarter and calculated for the period of such quarter ending on such date, to be less than ($2.0 million) and (iii) as of the last day of any fiscal quarter and calculated for the period commencing upon the issuance of the Notes and calculated for the period ending on such date, to be less than ($8 million).

(b) Minimum Revenue. The Company and its Subsidiaries shall not permit the Revenue of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP, as of the last day of any fiscal quarter ending on the dates set forth below and calculated for the period of the last twelve months ending on such date, to be less than the amount set forth below for such date.

Fiscal Quarter ending on		Minimum Revenue
12/31/2022	$	15,385,000
3/31/2023	$	17,474,000
6/30/2023	$	20,261,000
9/30/2023	$	24,334,000
12/31/2023	$	29,662,000
3/31/2024	$	34,060,000
6/30/2024	$	39,812,000
9/30/2024	$	46,934,000
12/31/2024	$	55,306,000
3/31/2025	$	61,884,000
6/30/2025	$	70,336,000
9/30/2025	$	81,222,000
12/31/2025 and thereafter	$	94,612,000

(c) Minimum Cash. The Company shall have on hand at all times, on the first of each calendar month, not less than $5.0 million through June 30, 2023, and $4.5 million thereafter, in an account subject to an account control agreement in favor of the Trustee subject to no other Liens other than the Permitted Liens.

ARTICLE 6
REMEDIES

Section 6.01 ***Events of Default.***

Each of the following events shall be an "**Event of Default**":

(a) the Company's failure to pay the principal of or any premium or Make-Whole Amount, if any, on any Note when due and payable on the Maturity Date, upon declaration of acceleration or otherwise;

(b) the Company's failure to comply with its obligations under Article 4 to pay or deliver the Settlement Amount owing upon conversion of any Note within five calendar days;

(c) the Company's failure to pay any interest on any Note when due, and such failure continues for a period of 30 days;

(d) the Company's failure to comply with its obligations under the Purchase Agreement;

(e) the Company's failure to issue a notice of a distribution in accordance with the provisions of Section 4.01(b)(i);

(f) the Company's failure to perform any other covenant required by the Company in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically addressed in Sections 6.01(a) through (e) above) and such failure continues for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then Outstanding (a copy of which notice, if given by Holders, must also to be given to the Trustee) has been received by the Company;

(g) any indebtedness for money borrowed by, or any other payment obligation of, the Company or any of its Subsidiaries that is a Significant Subsidiary of the Company (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company), in an outstanding principal amount, individually or in the aggregate, in excess of $5.0 million (or its foreign currency equivalent at the time) (i) is not paid at final maturity, upon required repurchase, upon redemption or when otherwise due (except upon acceleration that does not result from such a failure to pay) or (ii) is accelerated or otherwise is declared due and payable, unless, in the case of this clause (ii), such indebtedness is discharged or the acceleration is cured, waived or rescinded within 30 days of the date on which such indebtedness was accelerated or was declared due and payable;

(h) the Company or any of its Subsidiaries that is a Significant Subsidiary of the Company (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company), fails to pay one or more final and non-appealable judgments entered by a court or courts of competent jurisdiction, the aggregate uninsured or unbonded portion of which is in excess of $5.0 million, *provided* that, no Event of Default will be deemed to occur under this clause (h) if such judgments are paid, discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company) (i) commences a voluntary case or other proceeding seeking the liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of the Company's or such Significant Subsidiary of the Company's property, (iii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, (iv) makes a general assignment for the benefit of creditors, or (v) fails generally to pay its debts as they become due;

(j) an involuntary case or other proceeding is commenced against the Company or any of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company) (i) seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary of the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of 60 consecutive days;

(k) any Security Document or any Lien granted thereunder with respect to any portion of the Collateral (except (i) in accordance with its terms or (ii) with respect to immaterial assets), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Company or any Grantor Subsidiary party thereto, or the Company, any Grantor Subsidiary or any other Person shall contest in writing such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Indenture Document, any Lien on the Collateral (except with respect to immaterial assets) shall cease to be a perfected Lien (other than as a result of the Collateral Agent's failure to take any action within its control); or

(l) Any Event of Default under the Senior Security Agreement.

Section 6.02 ***Acceleration; Rescission and Annulment.***

(a) If an Event of Default (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company) occurs and is continuing, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then Outstanding may declare 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes then Outstanding to be due and payable immediately. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs, 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all Notes shall automatically become immediately due and payable.

(b) Notwithstanding anything to the contrary in Section 6.02(a), Section 6.04 or any other provision of this Indenture, if, at any time after the principal of, and accrued and unpaid interest, if any, on, the Notes shall have been so declared due and payable in accordance with Section 6.02(a), and before any judgment or decree of a court of competent jurisdiction for the payment of the monies due shall have been obtained, and each of the conditions set forth in the immediately following clauses (i), (ii) and (iii) is satisfied:

(i) the Company delivers or deposits with the Trustee the amount of cash sufficient to pay all matured installments of principal and interest upon all the Notes, and the principal of and accrued and unpaid interest, if any, on all Notes which shall have become due otherwise than by acceleration (with interest on such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the rate or rates, if any, specified in the Notes to the date of such payment or deposit), and such amount as shall be sufficient to pay the Trustee its compensation and reimburse the Trustee for its reasonable expenses, disbursements and advances (including the fees and expenses of its agents and counsel);

(ii) rescission and annulment would not conflict with any judgment or decree of a court of competent jurisdiction; and

(iii) any and all Events of Default under this Indenture, other than the non-payment of the principal of the Notes that became due because of the acceleration, shall have been cured, waived or otherwise remedied as provided herein, then, the Holders of at least majority of the aggregate principal amount of Notes then Outstanding, by written notice to the Company and to the Trustee, may waive all Defaults and Events of Default with respect to the Notes (except for any Default or Event of Default arising from (a) the Company's failure to pay principal, or any interest on, any Notes), (b) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a) or (c) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and may rescind and annul the declaration of acceleration resulting from such Defaults or Events of Default (except for any Default or Event of Default arising from (x) the Company's failure to pay principal , or any interest on, any Notes), (y) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a) or (z) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and their consequences; *provided*, that no such rescission or annulment will extend to or will affect any subsequent Default or Event of Default or shall impair any right consequent on such Default or Event of Default.

Section 6.03 ***Additional Interest.***

(a) Notwithstanding Section 6.02, to the extent the Company elects, the sole remedy for an Event of Default under Section 6.01(f) relating to the Company's failure to comply with Section 5.04 (such Event of Default, a "**Reporting Event of Default**"), will, for the 180 days after the occurrence of such Reporting Event of Default, consist exclusively of the right to receive Additional Interest at an annual rate equal to (i) 0.25% per annum of the principal amount of the Notes then Outstanding commencing on the date on which such a Reporting Event of Default first occurs and ending on the earlier of the date such Reporting Event of Default is cured or waived or the 90th day following the occurrence of such Reporting Event of Default and (ii) 0.50% per annum of the principal amount of such tranche of Notes outstanding commencing on the 91st day following the occurrence of such Reporting Event of Default (if such Reporting Event of Default is continuing on such 91st day) and ending on the earlier of the date such Reporting Event of Default is cured or waived or the 180th day following the occurrence of such Reporting Event of Default, in each case payable in the same manner and on the same dates as the stated interest payable on the Notes.

(b) If the Reporting Event of Default is continuing on the 181st day after the date on which such Reporting Event of Default occurred, the Notes will be subject to acceleration as provided in Section 6.02(a).

(c) In order to elect to pay the Additional Interest as the sole remedy during the first 180 days after the occurrence of a Reporting Event of Default, the Company must notify all Holders of Notes, the Trustee and the Paying Agent in writing of such election on or before the Close of Business on the fifth Business Day prior to the date on which such Reporting Event of Default would otherwise occur. Upon the Company's failure to timely give such notice of such election or to pay the Additional Interest when due, the Notes will be immediately subject to acceleration by declaration of the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes Outstanding as provided in Section 6.02. Nothing in this Section 6.03 shall affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default.

(d) In no event shall Additional Interest accruing pursuant to Sections 6.03(a) and 6.03(c) accrue on any day under the terms of this Indenture (taking any such Additional Interest pursuant to Sections 6.03(a) and 6.03(c) together with any Additional Interest pursuant to Section 5.08) at an annual rate in excess of 0.50% for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations. Such Additional Interest will be payable in kind in the same manner and on the same dates as the stated interest payable on the Notes.

Section 6.04 ***Waiver of Past Defaults*****.**

Subject to Section 6.02(b), the Holders of at least majority of the aggregate principal amount of Notes then Outstanding, by written notice to the Company and to the Trustee, may waive any Default or Event of Default (except for any Default or Event of Default arising from (a) the Company's failure to pay principal of, or any interest on, any Notes), (b) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a), or (c) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and rescind any acceleration resulting from such Default or Event of Default and its consequences; *provided*, that no such waiver will extend to or will affect any subsequent Default or Event of Default or shall impair any right consequent on such Default or Event of Default.

Section 6.05 ***Control by Majority*****.**

The Trustee will not be obligated to exercise any of its rights or powers at the request of the Holders unless such Holders have offered (and if requested, provided) to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense. Subject to this Indenture, applicable law and the Trustee's indemnification, the Holders of a majority in aggregate principal amount of the Outstanding Notes may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any Holder (provided, however, that the Trustee shall not have an affirmative duty to determine whether any such direction is unduly prejudicial to any Holder).

Section 6.06 ***Limitation on Suits.***

Subject to Section 6.07, no Holder will have any right to institute any proceeding under this Indenture, or for the appointment of a receiver or Trustee, or for any other remedy under this Indenture or with respect to the Notes unless:

(a) the Holder has previously delivered to the Trustee written notice of a continuing Event of Default;

(b) the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes deliver to the Trustee a written request that the Trustee pursue a remedy with respect to such Event of Default and have offered (and if requested, provided) indemnity satisfactory to the Trustee to institute such proceeding as Trustee;

(c) the Trustee has failed to institute a proceeding within 60 days after such notice, request and offer; and

(d) the Trustee has not received from the Holders of a majority in aggregate principal amount of the then Outstanding Notes a direction inconsistent with such written request within 60 days after such notice, request and offer.

Section 6.07 ***Rights of Holders to Receive Payment and to Convert*****.**

Notwithstanding anything to the contrary elsewhere in this Indenture, the above limitations set forth under Section 6.06 do not apply to a suit instituted by a Holder for the enforcement of a payment of the principal , or any accrued and unpaid interest on, any Note, on or after the applicable due date or the right to convert the Note or to receive the Settlement Amounts due upon conversion in accordance with Article 4, and such right to receive any such payment or delivery, as the case may be, on or after the applicable due dates shall not be impaired or affected without the consent of such Holder. Payments of principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate from the required payment date.

Section 6.08 ***Collection of Indebtedness; Suit for Enforcement by Trustee.***

If an Event of Default specified in Section 6.01(a), 6.01(b), 6.01(c) or 6.01(d) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium on, interest on, and the Settlement Amounts due upon the conversion of the Notes and such further amount as is sufficient to cover the costs and expenses of collection, including the compensation and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, as well as any other amounts that may be due under Section 11.06.

Section 6.09 ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.10 ***Trustee May File Proofs of Claim.***

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company or any Subsidiary Guarantor, its creditors or its property and, unless prohibited by law or applicable regulations, will be entitled to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the compensation and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.06 out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a lien on, and is paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to, or to accept or to adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.11 ***Restoration of Rights and Remedies.***

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.12 ***Rights and Remedies Cumulative*****.**

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.13 ***Delay or Omission Not a Waiver.***

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time and as often as may be deemed expedient by the Trustee (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

Section 6.14 ***Priorities*****.**

If the Trustee collects any money or property pursuant to this Article 6, it will pay out the money or property in the following order:

FIRST: to the Trustee, each Agent and the Collateral Agent, their respective agents and attorneys for amounts due under this Indenture and the Indenture Documents, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee or the Collateral Agent, as applicable, and the costs and expenses of collection

SECOND: to the Holders, for any amounts due and unpaid on the principal of, premium on, accrued and unpaid interest on, and any cash due upon conversion of, any Note, without preference or priority of any kind, according to such amounts due and payable on all of the Notes; and

THIRD: the balance, if any, to the Company or to such other party as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.14. If the Trustee so fixes a record date and a payment date, at least 15 calendar days prior to such record date, the Trustee will deliver to each Holder (at the Company's cost and expense) a written notice, which notice will state such record date, such payment date and the amount of such payment.

Section 6.15 ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder, by such Holder's acceptance of a Note, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided*, *however*, that the provisions of this Section 6.15 shall not apply to (i) any suit instituted by the Trustee, (ii) any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Notes then Outstanding, (iii) any suit instituted by any Holder for the enforcement of the payment of the principal, or any interest on, any Note on or after the applicable due date expressed or provided for in this Indenture, (iv) any suit for the enforcement of the right to convert any Note or to receive the Settlement Amounts due upon conversion of any Note in accordance with the provisions of Article 4, or (v) any suit for the enforcement of the right of a beneficial owner to exchange its beneficial interest in a Global Note for a Physical Note if an Event of Default has occurred and is continuing in accordance with Section 2.11.

Section 6.16 ***Waiver of Stay, Extension and Usury Laws.***

The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company, to the extent that it may lawfully do so, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will instead suffer and permit the execution of every such power as though no such law has been enacted.

Section 6.17 ***Notices from the Trustee.***

If a Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, the Trustee must send notice of such Default to each Holder within 90 days after such Event of Default has occurred or after a Responsible Officer obtains actual knowledge. Except in the case of a Default in the payment of the principal of, premium, if any, or interest on any Note or of a Default in the payment or delivery of the Settlement Amounts due upon conversion of any Note, the Trustee may withhold notice if and so long as the Trustee in good faith determines that withholding notice is in the interests of the Holders (it is being understood that the Trustee does not have an affirmative duty to determine whether any action is not in the interest of any Holder).

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 ***Discharge of Liability on Notes.***

When (a) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether on the Maturity Date, upon conversion or otherwise) and the Company or any Subsidiary Guarantor shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, an amount of cash (and, to the extent applicable, deliver to the Holders a number of shares of Common Stock to satisfy the Company's obligations with respect to outstanding conversions), sufficient to pay all amounts due on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied, except in the event the Notes are due and payable solely in cash at the Maturity Date, by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and the Company or any Subsidiary Guarantor shall have paid or caused to be paid all other sums payable hereunder by the Company and any Subsidiary Guarantor, then this Indenture shall cease to be of further effect (except as to (i) rights hereunder of Holders to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (ii) the rights, obligations, indemnities and immunities of the Trustee and the Collateral Agent hereunder and the obligations of the Company in respect thereof), and the Trustee, on written demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute instruments acknowledging satisfaction and discharge of this Indenture. Notwithstanding the foregoing, the Company hereby agrees to reimburse the Trustee for any costs or expenses thereafter incurred by the Trustee, including the reasonable fees and expenses of its counsel, and to compensate the Trustee for any services thereafter rendered by the Trustee in connection with this Indenture or the Notes. For the avoidance of doubt, upon the satisfaction and discharge of the Indenture, the Holders of the Notes shall no longer have the right to convert their Notes and shall only be entitled to the payments of funds deposited with the Trustee, in trust.

Section 7.02 ***Deposited Monies to Be Held in Trust by Trustee.***

Subject to Section 7.04, all monies deposited with the Trustee pursuant to Section 7.01 shall be held in trust for the sole benefit of the Holders of the Notes, and such monies and shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment of all sums or amounts due and to become due thereon for principal and interest, if any.

Section 7.03 ***Paying Agent to Repay Monies Held.***

Upon the satisfaction and discharge of this Indenture, all excess monies then held by any Paying Agent (if other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such amounts.

Section 7.04 ***[Reserved.]***

Section 7.05 ***Reinstatement.***

If the Trustee or the Paying Agent is unable to apply any monies in accordance with Section 7.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 until such time as the Trustee or the Paying Agent is permitted to apply all such amounts in accordance with Section 7.02; *provided*, *however*, that if the Company makes any payment of interest on, principal of or delivery in respect of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the monies held by the Trustee or Paying Agent.

ARTICLE 8
SUPPLEMENTAL INDENTURES

Section 8.01 ***Supplemental Indentures Without Consent of Holders.***

Without the consent of any Holder, the Company (when authorized by a Board Resolution), any Subsidiary Guarantor and the Trustee and Collateral Agent, if applicable, at any time and from time to time, may enter into one or more indentures supplemental hereto or any modifications to the Indenture Documents, in form satisfactory to the Trustee and Collateral Agent, if applicable, for any of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture, the Subsidiary Guarantees or the Notes;

(b) to evidence the succession by a Successor Company and to provide for the assumption by a Successor Company of the Company's obligations under this Indenture;

(c) to add guarantees or guarantors, including additional Subsidiary Guarantors, with respect to the Notes;

(d) to add to the Company's or a Subsidiary Guarantor's covenants such further covenants, restrictions or conditions for the benefit of the Holders or surrender any right or power conferred upon the Company by this Indenture or Subsidiary Guarantee;

(e) to make any change that does not adversely affect the rights of any Holder; or

(f) upon the occurrence of an event described in Section 4.07(a), solely (i) to provide that such Notes are convertible into Reference Property, subject to the provisions in Sections 4.03 and 4.07, and (ii) to effect the related changes to the terms of such Notes under Section 4.07.

Section 8.02 ***Supplemental Indentures With Consent of Holders*****.**

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender or exchange offer for, Notes) and by Act of said Holders delivered to the Company and the Trustee, the Company, any Subsidiary Guarantor, the Trustee and the Collateral Agent, if applicable, may amend the Notes or enter into an indenture or indentures supplemental hereto or any modifications to the Indenture Documents for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any Indenture Documents or of modifying in any manner the rights of the Holders under this Indenture or any Indenture Documents, and the Holder of a majority in aggregate principal amount of the Outstanding Notes may waive the Company's compliance with any provision herein without notice to the other Holders; *provided*, *however*, that no such amendment, supplement or waiver shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) change the stated Maturity Date of the principal of or any interest on the Notes;

(b) reduce the principal amount of or interest on the Notes;

(c) reduce the amount of principal payable upon acceleration of the Maturity Date of any Note;

(d) change the place or currency of payment of principal of or interest on any Note;

(e) impair the right of any Holder to receive payment of principal of and interest on its Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on, or with respect to, such Holder's Notes;

(f) modify the provisions with respect to redemption rights of the Company as described under Article 10;

(g) modify the ranking provisions of this Indenture;

(h) modify the Subsidiary Guarantees in any manner adverse to the Holders of the Notes;

(i) make any change that impairs or adversely affects the right of Holders to convert their Notes; or

(j) make any change to the provisions of this Article 8 which require each Holder's consent or in the waiver provisions in Section 6.04 of this Indenture except to increase the percentage required for modification, amendment or waiver or to provide for consent of each affected Holder of Outstanding Notes.

It shall not be necessary for any Act or consent of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act or consent shall approve the substance thereof.

Section 8.03 ***Notice of Amendment or Supplement*****.**

After an amendment or supplement under this Article 8 becomes effective, the Company shall provide to the Holders a written notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

Section 8.04. ***Trustee and Collateral Agent to Sign Amendments, Etc*****.**

The Trustee or the Collateral Agent, as applicable, shall sign any amendment or supplement authorized pursuant to this Article 8 if the amendment or supplement does not adversely affect the rights, duties, liabilities, immunities or indemnities of the Trustee or the Collateral Agent, as applicable. If it does, the Trustee or Collateral Agent, as applicable, may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee or Collateral Agent shall receive, and shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel provided at the expense of the Company providing that such amendment or supplement is authorized or permitted by this Indenture and any applicable Indenture Documents and, with respect to such Opinion of Counsel, such amendment or supplement is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

ARTICLE 9
SUCCESSOR COMPANY

Section 9.01 ***Company May Consolidate, Etc. on Certain Terms.***

Subject to the provisions of Section 9.03, the Company shall not consolidate with, enter into a binding share exchange with, or merge with or into, another Person or sell, assign, convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to another Person, unless:

(a) the resulting, surviving transferee or successor Person (the "**Successor Company**"), if not the Company, is a corporation organized and existing under the laws of the U.S., any state of the U.S. or the District of Columbia and the Successor Company expressly assumes, by supplemental indenture, joinder, amendment or otherwise, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes, this Indenture and the other Indenture Documents;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture with respect to the Notes;

(c) all other conditions specified in this Article 9 are met.

Upon any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person, the Successor Company (if not the Company) shall succeed to, and may exercise every right and power of the Company under this Indenture.

Section 9.02 ***Successor Corporation to Be Substituted.***

In case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person and upon the assumption by the Successor Company (if other than the Company), by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and accrued and unpaid interest, if any, on all of the Notes, the due and punctual payment or delivery of any Settlement Amount due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture and the other Indenture Documents to be performed by the Company under this Indenture and the other Indenture Documents, such Successor Company shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Indenture, with the same effect as if it had been named herein as the party of the first part; *provided*, *however*, that in the case of a sale, assignment, conveyance, transfer, lease or other disposition to one or more of its Subsidiaries of all or substantially all of the properties and assets of the Company, the Notes will remain convertible based on the Settlement Amount, in accordance with Section 4.03, but subject to adjustment (if any) in accordance with Section 4.06. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer or other disposition to another Person (but not in the case of a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 9 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 9.03 ***Officer's Certificate and Opinion of Counsel to Be Given to Trustee.***

In the case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition pursuant to Section 9.01, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel stating that any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition and any such assumption and, if a supplemental indenture, joinder, amendment or other documentation is required in connection with such transaction, such supplemental indenture, joinder, amendment or other documentation, complies with the provisions of this Indenture and an Opinion of Counsel stating that any such supplemental indenture, joinder, amendment or other documentation is the valid, binding and enforceable obligation of the Successor Company.

ARTICLE 10
REDEMPTIONS

Section 10.01 Optional *Redemption at Election of Company*.

Subject to the provisions of this Section 10.01, at any time after the eighteen (18) month anniversary of the Initial Issue Date, the Company may deliver a notice to the Holders (with a copy to the Trustee) (an "**Optional Redemption Notice**" and the date such notice is deemed delivered hereunder, the "**Optional Redemption Notice Date**") of its irrevocable election to redeem some or all of the then outstanding principal amount of the Notes in an amount equal to the Optional Redemption Amount on the 30th Trading Day following the Optional Redemption Notice Date (such date, the "**Optional Redemption Date**", such 30 Trading Day period, the "**Optional Redemption Period**" and such redemption, the "**Optional Redemption**") in cash. Each Optional Redemption Notice shall be irrevocable and specify:

(a) the Optional Redemption Date;

(b) the Optional Redemption Amount;

(c) that, on the Optional Redemption Date, the Optional Redemption Amount will become due and payable upon each Note to be redeemed;

(d) that Notes called for redemption must be surrendered to the Paying Agent to collect the Optional Redemption Amount;

(e) the place or places where such Notes are to be surrendered for payment of the Optional Redemption Amount;

(f) the paragraph or subparagraph of this Indenture pursuant to which the Notes are being called for redemption

(g) with respect to Global Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the Trading Day immediately preceding the Optional Redemption Date and, with respect to Physical Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the third Trading Date immediately preceding the Optional Redemption Date;

(h) the CUSIP, ISIN, or other similar numbers, if any, assigned to such Notes and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes; and

(i) in case any physical Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed on and after the Optional Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed potion thereof shall be issued.

The Optional Redemption Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Optional Redemption Notice by mail or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

Upon the Company's written request in an Officer's Certificate delivered to the Trustee at least 5 Business Days prior to the requested date of delivery (or such shorter period as shall be satisfactory to the Trustee), the Trustee will deliver the Optional Redemption Notice to the Holders in the name of and at the expense of the Company.

If fewer than all of the outstanding Notes are to be redeemed, in the case of a Global Note, the Notes or portions thereof to be redeemed (in principal amounts of $1.00 or multiples thereof) shall be selected according to the applicable procedures of the Depositary, or, in the case of Physical Notes, the Notes to be redeemed (in principal amounts of at least $1.00 or $1.00 multiples in excess thereof) shall, upon written request of the Company, be selected by the Trustee by lot or by any other method the Trustee in its sole discretion deems fair and appropriate. The Company shall notify the Trustee in writing of the percentage of Global Notes and Physical Notes to be redeemed. The Trustee will notify the Company promptly of the Notes or portions of the Notes to be called for redemption. If any Note selected for partial redemption is submitted for conversion after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption (and the Optional Redemption Amount due will be reduced accordingly), subject, in the case of Notes represented by a Global Note, to the Depositary's applicable procedures.

Section 10.02 [RESERVED]

Section 10.03. [RESERVED]

Section 10.04 Redemption Procedure.

If any Optional Redemption Notice has been given in respect of the Notes in accordance with Section 10.01, the Notes shall become due and payable on the Optional Redemption Date at the place or places stated in the Optional Redemption Notice at the Optional Redemption Amount. On presentation and surrender of the Notes at the place or places stated in the Optional Redemption Notice, the Notes shall be paid and redeemed by the Company at the Optional Redemption Amount.

Prior to the open of business on the Optional Redemption Date, the Company shall deposit with the Trustee (or other Paying Agent appointed by the Company) or, if the Company or a subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 5.03(b), an amount of cash (in immediately available funds if deposited on the Optional Redemption Date) sufficient to pay the Optional Redemption Amount of all the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Optional Redemption Date for such Notes. The Trustee (or other Paying Agent appointed by the Company) shall, promptly after such payment and upon written demand of the Company, return to the Company any funds in excess of the Redemption Price.

If any portion of the payment pursuant to an Optional Redemption shall not be paid by the Company in cash by the applicable due date, interest shall accrue thereon at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law until such amount is paid in full. Notwithstanding anything to the contrary in this Section 10, the Company's determination to make an Optional Redemption under Section 10.01 shall be applied by lot among the Holders (and in the case of any Global Notes, redeemed in accordance with the Depositary's applicable procedures). The Holders may elect to convert the outstanding principal amount of the Notes pursuant to Section 4 prior to, in case of Global Notes, the Close of Business on the Trading Day immediately preceding the Optional Redemption Date , and, with respect to Physical Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the third Trading Date immediately preceding the Optional Redemption Date for any redemption under this Section 10 by the delivery of a Conversion Notice to the Company and the Conversion Agent.

ARTICLE 11
THE TRUSTEE

Section 11.01 ***Duties and Responsibilities of Trustee*****.**

(a) In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care in its exercise as a prudent person would use in the conduct of his or her own affairs.

(b) Prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and applicable law, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this subsection (c) does not limit the effect of this Section 11.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding determined as provided in Section 1.03 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture;

(d) Whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 11.01 and Section 11.02.

(e) The Trustee shall not be liable in respect of any payment (as to the correctness or calculation of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Registrar with respect to the Notes.

(f) If any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred.

(g) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 11.02 ***Rights of the Trustee.***

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, judgment, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original, electronic or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution.

(c) The Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture (including upon the occurrence and during the continuance of an Event of Default), unless such Holders shall have offered (and if requested, provided) to the Trustee indemnity or security satisfactory to the Trustee against any loss, expenses and liabilities which may be incurred therein or thereby.

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney (at the reasonable expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation).

(f) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder.

(g) The Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, consequential, incidental or punitive loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and the Indenture.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, the Collateral Agent and each Agent, custodian and other Person employed to act hereunder.

(k) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(l) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(m) The Collateral Agent is expressly authorized to execute and deliver the Intercreditor Agreement in its capacity as such.

(n) The permissive authorizations, entitlements, powers and rights granted to the Trustee in this Indenture shall not be construed as duties.

Section 11.03 ***Trustee's Disclaimer*****.**

The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture, the Subsidiary Guarantees, the Notes or any other Transaction Document. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee under this Indenture and the Trustee shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Notes.

Section 11.04 ***Trustee or Agents May Own Notes*****.**

The Trustee or any Agent, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee or Agent.

Section 11.05 ***Monies to be Held in Trust.***

Subject to the provisions of Section 7.02, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on or the investment of any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 11.06 ***Compensation and Expenses of Trustee.***

The Company covenants and agrees to pay to the Trustee, Agent and Collateral Agent from time to time, and the Trustee, Agent and Collateral Agent shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, Agent and Collateral Agent, and the Company will pay or reimburse the Trustee, Agent and Collateral Agent upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee, Agent and Collateral Agent in accordance with any of the provisions of this Indenture or any other Transaction Document (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its own gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction.

The Company also covenants to indemnify each of the Trustee, Collateral Agent and the Agents (and their respective officers, directors and employees), in any capacity under this Indenture and their respective agents for, and to hold each of them harmless from and against, any and all loss, liability, action, suit, claim, damage, cost or expense incurred without gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction on its own part and arising out of or in connection with the acceptance or administration of this trust and the performance of its duties and/or the exercise of its rights hereunder or in any other capacity hereunder or under any Transaction Document, including the costs and expenses (including attorneys' fees) of defending itself against any claim (whether asserted by the Company, a Holder or any other Person) of liability in the premises, including those incurred with respect to enforcement of its right to indemnity hereunder. The Trustee, Collateral Agent and the Agents shall notify the Company promptly of any third party claim for which it may seek indemnity. Failure by the Trustee, Collateral Agent and the Agents to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend such claim and the Trustee, Collateral Agent and the Agents shall cooperate in the defense. The Trustee, Collateral Agent and the Agents may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent (such consent not to be unreasonably withheld).

The obligations of the Company under this Section 11.06 to compensate or indemnify the Trustee, Collateral Agent and the Agents and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a first lien prior to that of the Notes upon all property and funds held or collected by the Trustee or Collateral Agent as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Company under this Section 11.06 shall survive the payment of the Notes, the satisfaction and discharge of this Indenture and/or the resignation or removal of the Trustee, Agent and the Collateral Agent.

When the Trustee, any Agent, and any of their respective agents incur expenses or render services after an Event of Default specified in Section 6.01(i) and 6.01(j) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute administrative expenses for purposes of priority under any bankruptcy, insolvency or similar laws.

Section 11.07 ***Officer's Certificate or Opinion of Counsel as Evidence*****.**

Subject to Section 11.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate and/or Opinion of Counsel delivered to the Trustee.

Section 11.08 ***Conflicting Interests of Trustee*****.**

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, this Indenture.

Section 11.09 ***Eligibility of Trustee*****.**

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 11.09 the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 11.10 ***Resignation or Removal of Trustee*****.**

(a) The Trustee may at any time resign by giving 30 days' prior written notice of such resignation to the Company and to the Holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment thirty (30) days after such notice of resignation is given to the Company and the Holders, the resigning Trustee may, upon ten (10) Business Days' notice to the Company and the Holders may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 6.15, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 11.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 11.09 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee by 30 days' written notice and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.15, any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided, however*, that if no successor Trustee shall have been appointed and have accepted appointment thirty (30) days after either the Company or the Holders has removed the Trustee, the Trustee so removed may petition at the Company's expense any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time Outstanding may at any time remove the Trustee upon 30 days' prior written notice and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten (10) days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, or if such Trustee so removed or any Holder fails to act, the Company, upon the terms and conditions and otherwise as in Section 11.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 11.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 11.11.

Section 11.11 ***Acceptance by Successor Trustee.***

Any successor trustee appointed as provided in Section 11.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 11.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 11.06.

No successor trustee shall accept appointment as provided in this Section 11.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 11.08 and be eligible under the provisions of Section 11.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 11.11, the Company (or the former trustee, at the written direction of the Company) shall give or cause to be given notice of the succession of such trustee hereunder to the Holders of Notes in accordance with Section 13.08(c). If the Company fails to give such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be given at the expense of the Company.

Section 11.12 ***Succession by Merger, Etc.***

Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any sale, merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 11.08 and eligible under the provisions of Section 11.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, exchange or consolidation.

Section 11.13 ***Preferential Collection of Claims.***

To the extent that this Indenture has been qualified under the Trust Indenture Act, if and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor)

Section 11.14 ***Trustee's Application for Instructions from the Company.***

Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives such application, unless any such Officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 12
SUBSIDIARY GUARANTEES

Section 12.01 ***Subsidiary Guarantees.***

(a) Subject to this Article 12, each of the Subsidiary Guarantors, jointly and severally, fully and unconditionally, guarantees, on a senior unsecured basis (or, with respect to each Subsidiary Guarantor that is a Grantor Subsidiary, a senior secured basis), subject to the Intercreditor Agreement, to the Collateral Agent on behalf of each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and Collateral Agent and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (i) the principal of, premium, if any, and interest on the Notes will be promptly paid in full when due, whether at the stated Maturity Date, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on the Notes, if any, if lawful (subject in all cases to any applicable grace period provided herein), and all other monetary obligations of the Company to the Holders or the Trustee or Collateral Agent hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Subsidiary Guarantors shall be jointly and severally obligated to pay the same immediately. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Subsidiary Guarantors agree that, to the maximum extent permitted under applicable law, their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Subsidiary Guarantor. Subject to Section 6.06, each Subsidiary Guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Subsidiary Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder, Collateral Agent or the Trustee is required by any court or otherwise to return to the Company, the Subsidiary Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either of the Company or the Subsidiary Guarantors, any amount paid by either to the Trustee, Collateral Agent or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders, Collateral Agent and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Nine for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Subsidiary Guarantee. Each Subsidiary Guarantor that makes a payment or distribution under its Subsidiary Guarantee shall have the right to seek contribution from any non-paying Subsidiary Guarantor, in a pro rata amount based on the net assets of each Subsidiary Guarantor determined in accordance with GAAP as in effect from time to time, so long as the exercise of such right does not impair the rights of the Holders under the Subsidiary Guarantee.

(e) In respect to its obligations under its Subsidiary Guarantee, each Subsidiary Guarantor agrees to be bound to, and hereby covenants, with respect to itself, the covenant set forth in Section 6.16.

Section 12.02 ***Reserved***

Section 12.03 ***Limitation on Subsidiary Guarantor Liability.***

Each Subsidiary Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Subsidiary Guarantee of such Subsidiary Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar Federal or state law to the extent applicable to any Subsidiary Guarantee. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and the Subsidiary Guarantors hereby irrevocably agree that the obligations of such Subsidiary Guarantor will be limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor, and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Article 12, will result in the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer under Federal or state law.

Section 12.04 ***Execution and Delivery of Notation of Guarantee.***

(a) To evidence its Subsidiary Guarantee set forth in Section 12.01, with respect to the Notes issued on the Issue Date, a Subsidiary Guarantor shall execute a notation of such Subsidiary Guarantee substantially in the form included in Exhibit D hereto endorsed by an Officer of such Subsidiary Guarantor by manual, electronic or facsimile signature on each Note authenticated and delivered by the Trustee.

(b) Each Subsidiary Guarantor hereby agrees that its Subsidiary Guarantee set forth in Section 12.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

(c) If an Officer whose signature is on this Indenture or on the Notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Notation of Guarantee is endorsed, the Subsidiary Guarantee shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Subsidiary Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantors.

Section 12.05. ***Releases of Subsidiary Guarantors.***

A Subsidiary Guarantor will be deemed automatically and unconditionally released and discharged from all of its obligations under its Subsidiary Guarantee without any further action on the part of the Trustee or any Holder of the Notes:

(a) in the event that a Subsidiary Guarantor is sold or disposed of (whether by merger, consolidation, the sale of its Capital Stock or the sale of all or substantially all of its assets (other than by lease)), and whether or not the Subsidiary Guarantor is the surviving entity in such transaction to a Person which is not the Company or a Subsidiary of the Company, or upon its liquidation or dissolution; or

(b) upon a satisfaction and discharge of the Notes in accordance with Article 7.

Upon written request of the Company accompanied by an Officer's Certificate and Opinion of Counsel stating that all covenants and conditions precedent to such release have been complied with, the Trustee or the Collateral Agent, as applicable, shall execute an acknowledgement of such release or other documents reasonably requested by the Company in connection with such release.

ARTICLE 13
COLLATERAL AND SECURITY

Section 13.01 ***Collateral and Security.***

The Obligations will be secured by a perfected Lien on the Collateral, as provided in the Security Documents, subject to Permitted Liens and the Intercreditor Agreement. Under the terms of the Intercreditor Agreement, the proceeds of any collection, sale, disposition or other realization of Collateral received in connection with the exercise of remedies (including distributions of cash, securities or other property on account of the value of the Collateral in a bankruptcy, insolvency, reorganization or similar proceedings) will be applied in the order of priority set forth in Section 13.05.

Section 13.02 ***Security Documents.***

In order to secure the Obligations, the Company and the Grantor Subsidiaries have entered into and delivered to the Collateral Agent the Senior Security Agreement and the other Security Documents, in each case, to which they are a party, to create the Liens on the Collateral securing their respective Obligations. In the event of a conflict between the terms of this Indenture and the Security Documents in regards to the Collateral, the Security Documents shall control. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Security Documents as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs each of the Collateral Agent and the Trustee to (i) enter into the Intercreditor Agreement and the Security Documents to which it is a party and to perform its obligations and exercise its rights thereunder in accordance therewith (ii) to make the representations of the Holders as set forth in the Intercreditor Agreement and the Security Documents and (iii) to bind the Holders on the terms set forth in the Intercreditor Agreement and the Security Documents. On or before the date that is sixty (60) days after the Initial Issue Date, the Company shall deliver or cause to be delivered to the Collateral Agent duly executed mortgage documents with respect to the Company-owned facility in New Jersey.

Section 13.03 ***Authorization of Actions to Be Taken.***

(a) Each Holder of Notes, by its acceptance thereof, hereby designates and appoints the Collateral Agent as its agent under this Indenture, the Intercreditor Agreement and the Security Documents and each Holder by acceptance of the Notes consents and agrees to the terms of this Indenture, the Intercreditor Agreement, each Security Document, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Collateral Agent to enter into the Intercreditor Agreement, the Security Documents to which it is a party, and irrevocably authorizes and empowers the Collateral Agent to perform its obligations and duties, exercise its rights and powers and take any action permitted or required thereunder that are expressly delegated to the Collateral Agent by the terms of this Indenture, the Intercreditor Agreement and the Security Documents. The Collateral Agent shall hold (directly or through any agent) and is directed by each Holder to so hold, and shall be entitled to enforce on behalf of the Holders all Liens on the Collateral created or perfected by the Security Documents for their benefit.

(b) Subject to the provisions of the applicable Security Documents and the Intercreditor Agreement and to the last sentence of this Section 13.03(b), the Trustee and each Holder, by acceptance of any Notes, agrees that (x) the Collateral Agent may, in its sole discretion and without the consent of the Trustee or the Holders, take all actions it deems necessary or appropriate in order to preserve its interest and the interest of the Holders in the Collateral or the Secured Parties' rights under the Security Documents and (y) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient to protect or enforce the Liens securing the Obligations and/or to prevent any impairment of the Collateral by any act that may be unlawful or in violation of the Indenture Documents, and such suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest thereunder or be prejudicial to the interests of the Collateral Agent, the Holders or the Trustee). Notwithstanding the foregoing, the Collateral Agent may, at the expense of the Company, request the direction of the Holders with respect to any such actions and upon receipt of the written consent of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding, shall take such actions; provided that all actions so taken shall, at all times, be in conformity with the requirements of the Intercreditor Agreement, if applicable. In the absence of such written consent from the Holders of at least a majority of the aggregate principal amount of the Notes then Outstanding, the Collateral Agent shall not be required to take any such actions and shall have no liability for refraining from taking any such action. Until the Notes and the other Obligations are discharged in full or are otherwise no longer outstanding (other than Contingent Liabilities), all remedies and Enforcement Actions in respect of the Collateral and any foreclosure actions in respect of any Liens on the Collateral, and all actions, undertakings or consents by the Collateral Agent in respect of the Collateral, in each case, shall be undertaken solely at the instruction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding and subject to the Intercreditor Agreement.

Section 13.04 ***Release of Collateral.***

(a) The Liens securing the Obligations on the applicable Collateral shall be automatically terminated and released without further action by any party (other than satisfaction of any requirements in the Security Documents, if any), in whole or in part: (i) upon any disposition of all or any portion of Collateral (other than a disposition to the Company or any Grantor Subsidiary) in accordance with the terms of this Indenture; (ii) upon discharge of this Indenture and the other Indenture Documents in accordance with Article 7; (iii) at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding; or (iv) if the Collateral is owned by a Grantor Subsidiary, upon release of such Grantor Subsidiary in its capacity as a Subsidiary Guarantor from the Obligations in accordance with the provisions hereof.

(b) Without the necessity of any consent of or notice to the Trustee or any Holder of the Notes, the Company or any Grantor Subsidiary may request and instruct the Collateral Agent to, on behalf of each Holder of Notes, (i) execute and deliver to the Company or any Officer of the Company, as the case may be, for the benefit of any Person, such release documents as may be reasonably requested in writing, of all Liens held by the Collateral Agent in any Collateral securing the Obligations, and (ii) deliver any such assets in the possession of the Collateral Agent to any Company Indenture Party, as the case may be; and Collateral Agent shall promptly take such actions provided that any such release complies with and is expressly permitted in accordance with the terms of this Indenture, the Intercreditor Agreement and the Security Documents and is accompanied by an Officer's Certificate and Opinion of Counsel to such effect, which Officer's Certificate and Opinion of Counsel shall also state that all covenants and conditions precedent to such actions have been complied with, on which Officer's Certificate and Opinion of Counsel the Collateral Agent shall be permitted to conclusively rely.

(c) The release of any Collateral from the Liens securing the Obligations or the release of, in whole or in part, the Liens securing the Obligations created by any of the Security Document will not be deemed to impair the Liens securing the Obligations in contravention of the provisions hereof if and to the extent the Collateral or the Liens securing the Obligations are released pursuant to the terms of this Indenture and the applicable Security Documents. Each of the Holders of the Notes acknowledges that a release of Collateral or Liens securing the Obligations strictly in accordance with the terms of this Indenture, the Intercreditor Agreement and the Security Documents will not be deemed for any purpose to be an impairment of the Security Documents or otherwise contrary to the terms of this Indenture.

Section 13.05 ***Application of Proceeds of Collateral.***

(a) Upon any realization upon the Collateral from the exercise of any rights or remedies under any Security Document or any other agreement with the Company or any Grantor Subsidiary which secures any of the Obligations, the proceeds thereof shall be applied in accordance with Section 6.14 of this Indenture.

(b) Each of the Collateral Agent and the Trustee is authorized and empowered to receive any funds collected or distributed under the Intercreditor Agreement and the Security Documents and to apply according to the provisions of this Indenture, subject to the Intercreditor Agreement.

Section 13.06 ***Collateral Agent.***

(a) The Company hereby appoints Wilmington Trust, National Association to act as Collateral Act and each Holder, by its acceptance of the Notes irrevocably consents and agrees to such appointment.

(b) Subject to the provisions of Section 11.01 as to the Trustee only, neither the Trustee, nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents shall be responsible or liable (i) for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency, maintenance, renewal or protection of any Lien, or for any defect or deficiency as to any such matters, or (ii) for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so; except, in the case of the Collateral Agent, to the extent such action or omission constitutes gross negligence or willful misconduct (as determined by a final order of a court of competent jurisdiction that is not subject to appeal) on the part of the Collateral Agent, (iii) for the validity, sufficiency, value, genuineness, ownership or transferability of the Collateral, written instructions or any agreement or assignment contained therein and will not be regarded as making nor be required to make, any representations thereto, or for the validity of the title, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral or (iv) for the legality, enforceability, effectiveness or sufficiency of the Intercreditor Agreement, or any subordination agreement or other similar agreement entered into in connection with this Indenture. Neither the Trustee nor the Collateral Agent shall have any obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Company or any Guarantor or is cared for, protected, or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the property constituting Collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the value, genuineness, validity, ownership, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Collateral Agent pursuant to this Indenture, any Security Document or the Intercreditor Agreement other than pursuant to the instructions of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes or as otherwise provided in the Security Documents.

(c) The rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture, including, without limitation, its right to be indemnified, reimbursed and compensated and all other rights, privileges, protections, immunities and benefits set forth in Article 11, are extended to the Collateral Agent, and its agents, receivers and attorneys, and shall be enforceable by, the Collateral Agent, as if fully set forth in this Section 13.06 with respect to the Collateral Agent, except that the Collateral Agent shall only be liable for (and shall be indemnified and held harmless to the extent such Losses do not constitute) its gross negligence or willful misconduct (as determined by a final order of a court of competent jurisdiction that is not subject to appeal). In acting under any Security Document or the Intercreditor Agreement and any other Transaction Document, the Collateral Agent or the Trustee, as applicable, shall enjoy the rights, privileges, protections, immunities, indemnities and benefits that are extended to the Collateral Agent or the Trustee, as applicable, hereunder.

(d) Notwithstanding anything herein to the contrary, the duties of the Collateral Agent shall be ministerial and administrative in nature and the Collateral Agent will not have any duties nor will it have responsibilities or obligations other than those expressly assumed by it in this Indenture, the other Security Documents to which the Collateral Agent is a party and the Intercreditor Agreement. The use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Company hereby agrees that the Collateral Agent shall hold the Collateral on behalf of and for the benefit of the Secured Parties, in each case pursuant to the Security Documents. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or any Security Document at the request, order or direction of the Holders pursuant to the provisions of this Indenture or any Security Document, unless such representative or other party shall have furnished to the Collateral Agent security or indemnity satisfactory to the Collateral Agent against the fees, costs, expenses and liabilities including attorneys' fees and expenses which may be incurred therein or thereby. The Collateral Agent shall have no responsibility or liability for any loss or damages of any nature that may arise from any action taken or not taken by the Collateral Agent in accordance with the written consent of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding. The permissive authorizations, entitlements, powers and rights granted to the Collateral Agent in this Indenture and the Security Documents shall not be construed as duties. The Collateral Agent shall have no duty to review or analyze reports delivered to it. Delivery of reports, documents and other information to the Collateral Agent is for informational purposes only and the Collateral Agent's receipt of the foregoing shall not constitute actual or constructive notice or knowledge of any event or circumstance or any information contained therein or determinable from information contained therein.

(e) Beyond the exercise of reasonable care in the custody of Collateral in its possession, the Collateral Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. In addition, neither the Collateral Agent nor the Trustee will be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral. If, at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding, the Trustee or Collateral Agent files or records any Security Documents or any related UCC financing statement or other similar documents, such filing or recording by the Trustee or Collateral Agent at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding shall be deemed done by Trustee or Collateral Agent without recourse, representation or warranty by the Trustee or the Collateral Agent (and the Trustee and the Collateral Agent disclaim any representation or warranty as to the validity, effectiveness, priority, perfection or otherwise). The Collateral Agent will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords property held by it as a collateral agent or any similar arrangement, and the Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith. The Collateral Agent shall be permitted to use overnight carriers to transmit possessory collateral and shall be not liable for any items lost or damages in transmit.

(f) The Collateral Agent shall not have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or any Indenture Document by the Company or any Company Indenture Party or any other Person that is a party thereto or bound thereby.

(g) The Collateral Agent shall not be required to acquire title to an asset for any reason and shall not be required to carry out any fiduciary or trust obligation for the benefit of another. The Collateral Agent is not a fiduciary and shall not be deemed to have assumed any fiduciary obligation. If the Collateral Agent or the Trustee in its sole discretion believes that any obligation to take or omit to take any action may cause the Collateral Agent or the Trustee, as applicable to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Agent or the Collateral Agent, as applicable, to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent and the Trustee reserve the right, instead of taking such action, either to resign as Collateral Agent or Trustee or to arrange for the transfer of the title or control of the asset to a court appointed receiver. Neither the Collateral Agent nor the Trustee will be liable to any Person for any liability, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's or the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(h) The Collateral Agent may resign or be replaced in accordance with the procedures set forth in Section 11.10 hereof, except that references to the Trustee in such section shall be deemed to be references to the Collateral Agent for this purpose. If the Collateral Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Collateral Agent.

(i) At all times when the Person serving as Trustee is not itself also serving as the Collateral Agent, the Company shall deliver to the Trustee copies of all Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Security Documents.

(j) Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreement or the Security Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(k) Upon the receipt by the Collateral Agent of a written request of the Company signed by an Officer (a "Security Document Order"), the Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Initial Issue Date. Such Security Document Order shall (i) state that it is being delivered to the Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 13.06(k), and (ii) instruct the Collateral Agent to execute and enter into such Security Document; provided that in no event shall the Collateral Agent be required to enter into a Security Document that it determines adversely affects the Collateral Agent in a commercially unreasonable manner (taking into account other security documents it has recently agreed to in similar secured notes transactions). Any such execution of a Security Document shall be at the direction and reasonable expense of the Company, upon delivery to the Collateral Agent of an Officers' Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Security Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Collateral Agent to execute such Security Documents.

(l) Without limiting the foregoing, with respect to any Collateral located outside of the United States ("Foreign Collateral"), the Collateral Agent shall have no obligation to directly enforce, or exercise rights and remedies in respect of, or otherwise exercise any judicial action or appear before any court in any jurisdiction outside of the United States. To the extent the Holders of a majority in aggregate outstanding amount of Notes outstanding determine that it is necessary or advisable in connection with any enforcement or exercise of rights with respect to Foreign Collateral to exercise any judicial action or appear before any such court, the Holders of a majority in aggregate outstanding amount of Notes outstanding shall be entitled to direct the Collateral Agent to appoint a local agent for such purpose (subject to the receipt of such protections, security and indemnities as the Collateral Agent shall determine in its sole discretion to protect the Collateral Agent from liability).

(m) In no event shall the Collateral Agent be required to execute and deliver any landlord lien waiver, estoppel or collateral access letter, or any account control agreement or any instruction or direction letter delivered in connection with such document that the Collateral Agent determines adversely affects it or otherwise subjects it to personal liability, including without limitation agreements to indemnify any contractual counterparty; provided that nothing in this clause (m) shall be implied as imposing any such obligation on the Company or any Guarantor to obtain any such landlord lien waiver, estoppel or collateral access letter, or any account control agreement.

(n) Neither the Trustee nor the Collateral Agent shall be under any obligation to effect or maintain insurance or to renew any policies of insurance or to make any determination or inquire as to the sufficiency of any policies of insurance carried by the Company or any Guarantor, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made.

(o) Nothing in this Indenture shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. The Collateral Agent shall not be liable for any indirect, special, incidental, punitive or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(p) The Collateral Agent (i) shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers, or for any error of judgment made in good faith by the Collateral Agent, unless it is proved that the Collateral Agent was grossly negligent in ascertaining the pertinent facts, (ii) shall not be liable for interest on any money received by it except as the Collateral Agent may agree in writing with the Company (and money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law), (iii) the Collateral Agent may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel.

(q) The Collateral Agent may act through attorneys or agents and shall not be responsible for the acts or omissions of any such attorney or agent appointed with due care. The Collateral Agent shall not be charged with knowledge of (A) any events or other information, or (B) any default under this Indenture or any other agreement unless the Collateral Agent shall have actual knowledge thereof.

Section 13.07 ***Trust Indenture Act; Opinion of Counsel; Certificates of the Company.***

The Company and the Grantor Subsidiaries shall furnish to the Collateral Trustee and the Trustee at least thirty (30) days prior to each anniversary of the Initial Issue Date, an Opinion of Counsel, dated as of such date, stating that, in the opinion of such counsel, (A) action has been taken with respect to the filing of record by each applicable Company Indenture Party of all UCC financing statements, continuation statements or amendments as is necessary to maintain the Liens on the portion of the Collateral securing the Obligations for which perfection of such Lien may be accomplished under the Code by filing a UCC financing statement, continuation statement or financing statement amendment in the office of the Secretary of State of the State of Delaware (or such other applicable filing office) and the payment of all applicable filing fees and (B) based on relevant laws as in effect on the date of such Opinion of Counsel, continuation statements and financing statement amendments have been filed of record that are necessary as of such date and during the succeeding 18 months fully to preserve and perfect the Liens on the portion of the Collateral securing the Obligations for which perfection of such Lien may be accomplished under the Code by filing a UCC financing statement, continuation statement or financing statement amendment in the office of the Secretary of State of the State of Delaware (or such other applicable filing office) and the payment of all applicable filing fees and such Opinion of Counsel may contain customary qualifications and exceptions and may rely on an Officer's Certificate (as to factual matters only); provided that if there is a required filing of a continuation statement or other instrument within such 18 month period and such continuation statement or amendment is not effective if filed at the time of the Opinion of Counsel, such Opinion of Counsel may so state that and in that case the Company Indenture Parties shall cause a continuation statement or amendment to be timely filed so as to maintain such Liens and security interests securing the Obligations.

ARTICLE 14
MISCELLANEOUS

Section 14.01 ***Effect on Successors and Assigns*****.**

All agreements of the Company, the Trustee, the Collateral Agent, the Registrar, the Paying Agent and the Conversion Agent in this Indenture and the Notes will bind their respective successors.

Section 14.02 ***Governing Law*****.**

This Indenture and the Notes, and any claim, controversy or dispute arising under or related to this Indenture or the Notes, will be governed by, and construed in accordance with, the laws of the State of New York, (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).

Section 14.03 ***Trust Indenture Act.***

To the extent this Indenture has been qualified under the Trust Indenture Act, if any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 14.04 ***Benefits of Indenture*****.**

Nothing in this Indenture or in the Notes, expressed or implied, will give to any Person, other than the parties hereto, any Agent or their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.05 ***Calculations*****.**

Neither the Trustee nor any Agent shall be responsible for making any calculation with respect to any matter under this Indenture or the Notes. The Company and its designated agents shall be responsible for making all calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, the Closing Sale Prices of the Common Stock, accrued interest payable on the Notes, and Additional Interest payable on the Notes, the Conversion Rate, the Settlement Amount and the amount of Additional Interest that may be payable by Company from time to time. The Company shall make all these calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent and all other agents appointed by the Company herein are entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Company shall forward the Company's calculations to any Holders upon the written request of that Holder.

Whenever the Company is required to calculate or make adjustments to the Conversion Rate, the Company will do so to the 1/10,000th of a share of Common Stock, rounding any additional decimal places up or down in a commercially reasonable manner.

For the avoidance of doubt, unless the context requires otherwise, all references in this Indenture to an amount calculated per $1,000 of principal amount of Notes shall be appropriately and proportionately adjusted with respect to any Notes with a principal amount that is not an integral multiple of $1,000 (and is instead an integral multiple of $1.00).

Section 14.06 ***Execution in Counterparts*****.**

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of similar import in this Indenture and the Notes shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything herein to the contrary, neither the Trustee nor the Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Collateral Agent, as applicable, pursuant to procedures approved by the Trustee or the Collateral Agent, as applicable

Section 14.07 ***Notices*****.**

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Company, the Trustee or the Collateral Agent shall be in writing and delivered in person or mailed by first class mail, postage prepaid, overnight courier or transmitted by facsimile transmission, email or electronic transmission in PDF format as follows:

(r) if to the Trustee or the Collateral Agent by any Holder or by the Company, at the Corporate Trust Office;

(ii) if to the Company or any Subsidiary Guarantor by the Trustee, the Collateral Agent or by any Holder, at the address of its principal office at ProSomnus, Inc.:

If to ProSomnus, Inc.
ProSomnus, Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@prosomnus.com

with a copy (which will not constitute notice) to:
Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave, NW, Ste 900
Attn: E. Peter Strand, Esq.
Telephone No.: (202) 689-2983
Email: peter.strand@nelsonmullins.com

(b) The Company, the Subsidiary Guarantors, the Trustee or the Collateral Agent by notice given to the other in the manner provided in this Section 14.07, may designate additional or different addresses for subsequent notices or communications.

(c) Notices to Holders will be sent to the address of each Holder as it appears in the Register. Notices will be deemed to have been given on the date of mailing or electronic transmission to such Holder. Whenever a notice is required to be given by the Company, such notice may be given by the Trustee at the Company's request on the Company's behalf. With respect to Global Notes, notice shall be sufficiently given if given to the Depositary for the Notes (or its designee), pursuant to Applicable Procedures of such Depositary (and the Company will make any notices the Company is required to give to Holders available on the Company's website).

(d) Whenever the Company is required to deliver notice to the Holders, the Company will, by the date it is required to deliver such notice to the Holders, deliver a copy of such notice to the Trustee and the Agents. Notices to the Trustee shall be deemed given upon actual receipt thereof.

In respect of this Indenture, the Collateral Agent and the Trustee, in each of its capacities, including without limitation as the Trustee, Registrar, Paying Agent and Conversion Agent, shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and neither the Trustee nor the Collateral Agent shall have any liability for losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information. Each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee or the Collateral Agent, as applicable, including, without limitation the risk of the Trustee or the Collateral Agent, as applicable, acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties.

Section 14.08 ***No Recourse Against Others*****.**

No director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor shall have any liability for any obligations of the Company or Subsidiary Guarantors under the Notes, the Indenture, or the Subsidiary Guarantees or any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Note, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 14.09 ***Tax Withholding*****.**

Nothing herein shall preclude any tax withholding required by law or regulation. Each Holder agrees, and each beneficial owner of an interest in a Note by its acquisition of such interest is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, set off such payments against payments of cash and shares of Common Stock on the Note (or, in certain circumstances, against any payments on the Common Stock).

Each Holder agrees to provide the Company and its agents with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Company or its agents may request. Each Holder understands that if such tax reporting documentation is not provided and certified to the Company or agents, the Company or its agents may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the Notes. The Company shall provide to the Paying Agent any information that the Paying Agent needs to comply to with any tax reporting obligations that it may have under any applicable law.

Section 14.10 ***Waiver of Jury Trial*****.**

EACH OF THE COMPANY, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY (AND THE HOLDERS, BY THEIR ACCEPTANCE OF THE NOTES THEREBY) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 14.11 ***U.S.A. Patriot Act*****.**

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee and the Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee or the Collateral Agent. The parties to this Indenture agree that they will provide the Trustee and the Collateral Agent with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 14.12 ***Force Majeure*****.**

In no event shall the Collateral Agent, the Trustee or any Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, any act or provision of any present or future law or regulation or governmental authority, earthquakes, fires, floods, strikes, work stoppages or other labor disputes, accidents, acts of war or terrorism, civil or military disturbances, riots, disasters, epidemics, pandemics or similar public health emergencies, nuclear or natural catastrophes or acts of God, malware or ransomware attack and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, including the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Collateral Agent, the Trustee or other Agent, as applicable, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 14.13 ***Submission to Jurisdiction*****.**

The Company hereby irrevocably consents to then non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America located in the City of New York and the County of New York, over any suit, action or proceeding with respect to this Indenture or the Notes or the transactions contemplated hereby. The Company waives any objection that it may have to the venue of any suit, action or proceeding with respect to this Indenture or the Notes or the transactions contemplated hereby in the courts of the State of New York or the courts of the United States of America, in each case, located in the City of New York and County of New York, or that such suit, action or proceeding brought in the courts of the State of New York or the United States of America, in each case, located in the City of New York and County of New York was brought in an inconvenient court and agrees not to plead or claim the same. The Company hereby irrevocably appoints Corporation Service Company, 1180 Avenue of the Americas, Suite 210, New York, NY 10036, as its authorized agent in the State of New York upon which process may be served in any such suit or proceedings, and agrees that service of process upon such agent shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for the term of this Indenture. Nothing in this Indenture shall in any way be deemed to limit the ability to serve any such writs, process or summonses in any other manner permitted by applicable law.

Section 14.14 ***Severability*****.**

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 14.15. ***Legal Holidays.***

In any case where any Interest Payment Date, Redemption Date, Conversion Date, Maturity Date or any other date on which the principal and accrued but unpaid interest, if any, on the Notes is due and payable, is not a Business Day or is a day on which the banking institutions in the city of the office of the Paying Agent are authorized or obligated by law to close or be closed, then any payment to be made on such date may be made on the next succeeding day that is a Business Day and is not a day on which the banking institutions in the city of the office of the Paying Agent are authorized or obligated by law to close or be closed with the same force and effect as if made on such Interest Payment Date, Redemption Date, Conversion Date, Maturity Date or such other date, as the case may be, and no interest shall accrue in respect of the delay.

Section 14.16. ***Original Issue Discount***.

The Notes have been issued with "Original Issue Discount" ("OID") for U.S. federal income tax purposes. Holders may obtain the issue price, total amount of OID, issue date and yield to maturity by contacting the Company.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

ProSomnus, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

ProSomnus Holdings, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

ProSomnus Sleep Technologies, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

Wilmington Trust, National Association, as Trustee

By: /s/ Sarah Vilhauer
Name: Sarah Vilhauer
Title: Assistant Vice President

Wilmington Trust, National Association, as Collateral Agent

By: /s/ Sarah Vilhauer
Name: Sarah Vilhauer
Title: Assistant Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[For all Notes, include the following legend (the "**Non-Affiliate Legend**"):]

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS NOTE OR A BENEFICIAL INTEREST HEREIN.

[For Global Notes, include the following legend (the "**Global Notes Legend**"):]

THIS SECURITY IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

[THIS SECURITY AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF PROSOMNUS, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.][1]

[For all Notes, include the following legend:]

[ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, THE LIENS AND SECURITY INTERESTS SECURING THE OBLIGATIONS EVIDENCED BY THIS NOTE, THE EXERCISE OF ANY RIGHT OR REMEDY WITH RESPECT THERETO, AND CERTAIN OF THE RIGHTS OF THE HOLDER HEREOF ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT DATED AS OF DECEMBER 6, 2022 (AS AMENDED, RESTATED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), BY AND AMONG [THE COMPANY, THE SUBSIDIARY GUARANTORS, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SECOND LIEN COLLATERAL AGENT FOR THE SUBORDINATED DEBT AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS FIRST LIEN COLLATERAL AGENT FOR THE SENIOR DEBT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS NOTE, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.]

[1] This Restricted Notes Legend shall be deemed removed from the Note when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depositary.

ProSomnus, Inc.
Senior Secured Convertible Notes due 2025

No.: [ ]
CUSIP: [_____][2]

Principal
Amount $ [ ]

[*For Global Notes, include the following:* as revised by the Schedule of Increases and Decreases in the Global Note attached hereto]

ProSomnus, Inc., a Delaware corporation (the "**Company**"), promises to pay to [ ] [include "*Cede & Co." for Global Note*] or registered assigns, the principal amount of [*add principal amount in words*] $[ ] [*For Global Notes, include the following*: as revised by the Schedule of Increases and Decreases in the Global Note attached hereto,] on December 6, 2025 (the "**Maturity Date**").

Interest Payment Dates: January 1, April 1, July 1 and October 1 of each year, beginning on the first such date that is at least 30 calendar days after the Initial Issue Date, on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed)and on the Maturity Date.

Regular Record Dates: December 15, March 15, June 15 and September 15.

Additional provisions of this Security are set forth on the other side of this Note.

IN WITNESS WHEREOF, ProSomnus, Inc. has caused this instrument to be signed manually or by facsimile or by another electronic method by one of its duly authorized Officers.

ProSomnus, Inc.

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture.

Dated:

Wilmington Trust, National Association, as Trustee

By: _____
Authorized Signatory:
Title:

[2] This Note will be deemed to be identified by CUSIP No. [ ] from and after such time when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depositary.

[FORM OF REVERSE OF NOTE]

ProSomnus, Inc.

Senior Secured Convertible Notes due 2025

This Note is one of a duly authorized issue of securities of the Company (herein called the "**Notes**"), issued under the Indenture dated as of December 6, 2022 by and among the Company, the Subsidiary Guarantors, Wilmington Trust, National Association, as trustee, herein called the "**Trustee**," and as Collateral Agent herein referred to as the "**Collateral Agent**", reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the Collateral Agent and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered.

The Company shall pay all interest due on this Note as set forth in the Indenture on the then outstanding principal amount of this Note.

This Note does not benefit from a sinking fund. This Note is subject to redemption.

The Notes are secured, on a senior secured basis, by the Collateral pursuant to the Security Documents referred to in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert this Note or a portion of this Note such that the principal amount of this Note converted equals $1.00 or an integral multiple of $1.00 into cash, a number of shares of Common Stock or a combination thereof determined in accordance with Article 4 of the Indenture and subject to adjustment as set forth therein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company, the Trustee and the Collateral Agent with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Note, the Holders of not less than 25% in principal amount of the Notes at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered (and if requested, provided) the Trustee indemnity satisfactory to the Trustee, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity, and shall not have received from the Holders of a majority in principal amount of Notes at the time Outstanding a direction inconsistent with such request. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of the principal hereof, premium, if any, or interest hereon, with respect to and the amount of cash, the number of shares of Common Stock or the combination thereof, as the case may be, due upon conversion of this Note or after the respective due dates expressed in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal of, premium, interest on and the amount of cash, a number of shares of Common Stock or a combination of cash and shares of Common Stock, if any, as the case may be, due upon conversion of, this Note at the time, place and rate, and in the coin and currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer to the Trustee, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon a new Note of this series and of like tenor for the same aggregate principal amount will be issued to the designated transferee.

The Notes are issuable only in registered form without coupons in minimum denominations of $1.00 and integral multiples of $1.00. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

Subject to the rights of the Holders as of the Regular Record Date to receive interest on the related Interest Payment Date, prior to due presentment of this Note for registration of transfer, the Company, the Trustee, the Agents and any of their respective agents may treat the Person in whose name the Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee, the Agents nor any agents shall be affected by notice to the contrary.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

Upon the issuance of any new Note, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including fees and expenses of the Trustee) connected therewith.

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture. If any provision of this Note limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION][3]

To: ProSomnus, Inc.

Cc: Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: ProSomnus, Inc., Administrator

Re: SENIOR SECURED CONVERTIBLE NOTES DUE 2025

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (which is such that the principal amount of the portion of this Note that will not be converted equals $1.00 or an integral multiple of $1.00 in excess thereof) below designated, into cash, a number of shares of Common Stock or a combination thereof in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any Notes representing any unconverted principal amount hereof, be paid and/or issued and/or delivered, as the case may be, to the registered Holder hereof unless a different name is indicated below.

Subject to certain exceptions set forth in the Indenture, if this notice is being delivered on a date after the Close of Business on a Regular Record Date and prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, this notice must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Note to be converted which such payment shall, in the case of Physical Notes, be made payable to the Company.. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect to such issuance and transfer as set forth in the Indenture.

The Holder acknowledges that this Conversion Notice is subject to the restrictions set forth in paragraph 4.01(c)(ii) of the Indenture.

Principal amount to be converted (if less than all) which must be $1.00 or an integral multiple in excess thereof:

$

Your contact information:
Participant Name: _____
Participant Number: _____
Contact Name: _____
Contact Email: _____
Contact Telephone: _____

STOCK CERTIFICATE INFORMATION

The undersigned hereby requests that the stock certificate or certificates issued upon conversion be registered in the name(s) of the persons set forth below.

[3] Note to Form: The Conversion Agent and Company reserve the right to include such additional information in the Form of Conversion Notice in order to facilitate any conversion process

The undersigned acknowledges that the Company is not required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the converting holder, and the converting holder is solely responsible for the payment of any such taxes. The undersigned acknowledges that if shares are to be issued in the name of a person other than the converting holder, the converting holder shall pay all transfer taxes payable with respect thereto.

You must check one, and only one, of the following two boxes:

☐ The undersigned is requesting registration in a name other than that of the converting holder. The converting holder acknowledges sole responsibility for the payment of any taxes that may be owing by reason thereof. If any taxes are payable upon transfer, they have already been paid.

☐ No transfer of beneficial ownership is occurring in connection with the conversion.

Registered Holder Information:

Name: _____
SSN or Tax ID No.: _____
Street Address: _____
City, State and Zip Code: _____

Delivery Instructions:

Unless you direct otherwise below, the above-referenced stock certificate(s) will be delivered to the registered holder at the address specified above. If you wish to provide separate delivery instructions, check the box and complete the information set forth below.

☐ The undersigned requests that the above-referenced stock certificate(s) be delivered to the person and address set forth below:

Name: _____
Street Address: _____
City, State and Zip Code: _____
Phone Number: _____

CASH PAYMENT INSTRUCTIONS

The undersigned directs that any cash payment owed for fractional shares (and, if applicable, for any accrued but unpaid interest which may be payable under certain limited circumstances) be wired in accordance with the wire instructions set forth below:

Bank: _____
Address: _____
Name of Account: _____
ABA No.: _____
Account No.: _____

To avoid the application of "backup withholding" under U.S. federal income tax law, each converting holder (or other payee) should complete, sign, and deliver an Internal Revenue Service ("IRS") Form W-9 (in the case of a U.S. person or a resident alien) or an IRS Form W-8BEN or other appropriate IRS Form W-8 (in the case of a foreign holder). IRS Forms W-9 and W-8 are available on the IRS's website at http://www.irs.gov/. Failure to include a properly completed IRS Form W-9 or applicable IRS Form W-8 may result in the application of U.S. backup withholding.

Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

Dated: _____

Signature(s)

(Sign exactly as your name appears on the other side of this Note)

Name:
Title:

Signature Guarantee

(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) another guarantee program acceptable to the Trustee.)

[FORM OF ASSIGNMENT AND TRANSFER]

For value received, hereby sell(s), assign(s) and transfer(s) unto_____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date for such Note, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To ProSomnus, Inc. or a subsidiary thereof; or

☐ Pursuant to a registration statement which has become effective under the Securities Act of 1933, as amended; or

☐ To a qualified institutional buyer in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to an exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

[TO BE SIGNED BY PURCHASER IF THE SECOND, THIRD OR FOURTH BOX ABOVE IS CHECKED]

[*Include if the second, third or fourth box above is checked*] [The undersigned (on the immediately following signature line) represents and warrants that it is not, and has not been for the immediately preceding three months, an "affiliate" (as defined in Rule 144 under the Securities Act of 1933, as amended) of ProSomnus, Inc.]

[*Include if the third box above is checked*] [The undersigned (on the immediately following signature line) represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.]

[Date: _____ Signed: _____]

Unless one of the above boxes is checked, the Trustee and Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof; provided that, if the fourth box is checked, the Company may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.11 of the Indenture shall have been satisfied.

Dated:

_____

Signature(s)

(Sign exactly as your name appears on the other side of this Note)

_____

Signature Guarantee

(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee)

[*Insert for Global Note*]

SCHEDULE OF INCREASES AND DECREASES IN THE GLOBAL NOTE
Initial Principal Amount of Global Note: [$0]

Date	Amount of Increase in Principal Amount of Global Note	Amount of Decrease in Principal Amount of Global Note	Principal Amount of Global Note After Increase or Decrease	Notation by Registrar, Note Custodian or authorized signatory of Trustee

EXHIBIT B

[FORM OF FREE TRANSFERABILITY CERTIFICATE]

Officer's Certificate

[date]

[NAME OF OFFICER], the [TITLE] of ProSomnus, Inc., a Delaware corporation (the "**Company**") does hereby certify, in connection with the occurrence of the Free Trade Date on [date] in respect of $[add principal amount] of the Company's Senior Secured Convertible Notes due 2025 (CUSIP: [_____]) (the "**Notes**") pursuant to the terms of the Indenture, dated as of December 6, 2022 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company, the Subsidiary Guarantors named therein, and Wilmington Trust, National Association, as trustee (the "**Trustee**") and as collateral agent, that:

1. The undersigned is permitted to sign this "Officer's Certificate" on behalf of the Company, as the term "Officer's Certificate" is defined in the Indenture.

2. The undersigned has read, and thoroughly examined, the Indenture and the definitions therein relating thereto.

3. In the opinion of the undersigned, the undersigned has made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the removal of the Restricted Notes Legend described herein from the Notes as provided for in the Indenture have been complied with.

4. All conditions precedent described herein as provided for in the Indenture and, in the case of Global Notes, the Applicable Procedures have been complied with.

5. The Resale Restriction Termination Date for the Notes is the date of this Officer's Certificate. The Company is satisfied that the Notes are not subject to the restrictions set forth in the Restricted Notes Legend and Section 2.07 of the Indenture.

In accordance with Section 2.08 of the Indenture, the Company hereby advises you as follows:

1. The Restricted Notes Legend set forth on the Notes shall be deemed removed from the Notes in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

2. The restricted CUSIP number for the Notes shall be deemed removed from the Notes and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be [_____], in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Indenture.

IN WITNESS WHEREOF, the undersigned signed this Officer's Certificate as of the date written above.

ProSomnus, Inc.

By: _____
Name:
Title:

EXHIBIT C

[FORM OF RESTRICTED STOCK LEGEND]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF PROSOMNUS, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") (X) THAT IS AT LEAST ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE COMPANY'S SENIOR] SECURED CONVERTIBLE NOTES DUE 2025 OR SUCH OTHER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO, AND (Y) ON WHICH THE COMPANY HAS INSTRUCTED THE TRUSTEE FOR THE COMPANY'S SENIOR SECURED CONVERTIBLE NOTES DUE 2025 THAT THE RESTRICTIONS DESCRIBED IN THE LEGEND WILL NO LONGER APPLY IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THE INDENTURE GOVERNING THE COMPANY'S SUBORDINATED SECURED CONVERTIBLE NOTES DUE 2025, EXCEPT:

(A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED (OR HAS BECOME) EFFECTIVE UNDER THE SECURITIES ACT THAT COVERS RESALE OF THE SHARES OF COMMON STOCK UNDERLYING THE COMPANY'S [SUBORDINATED/SENIOR] SECURED CONVERTIBLE NOTES DUE 2025, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, AND THE TRANSFER AGENT WILL NOT BE REQUIRED TO ACCEPT FOR REGISTRATION OF TRANSFER ANY SECURITIES ACQUIRED BY A PURCHASER EXCEPT UPON PRESENTATION OF EVIDENCE SATISFACTORY TO THE TRANSFER AGENT THAT THE RESTRICTIONS SET FORTH HEREIN HAVE BEEN COMPLIED WITH. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT D

FORM OF NOTATION OF GUARANTEE

For value received, each Subsidiary Guarantor has, jointly and severally, fully and unconditionally and irrevocably guaranteed, to the extent set forth in the Indenture, dated as of December 6, 2022 (as supplemented or amended, the "**Indenture**"), among ProSomnus, Inc., a Delaware corporation (the "**Company**"), the Subsidiary Guarantors named therein and Wilmington Trust, National Association, as trustee (the "**Trustee**") and collateral agent, and subject to the provisions in the Indenture, (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Indenture), whether at the stated Maturity Date, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal, premium, and interest, to the extent permitted by law, and the due and punctual performance of all other obligations of the Company to the Holders, the Trustee or the Collateral Agent all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at the stated Maturity Date, by acceleration or otherwise. The obligations of the Subsidiary Guarantors to the Holders of Notes, to the Trustee and the Collateral Agent pursuant to the Guarantee and the Indenture are expressly set forth in Article 12 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York.

[_____]

By: _____
Name:
Title:

Dated:

EXHIBIT E

FORM OF GUARANTOR SUPPLEMENTAL INDENTURE TO BE DELIVERED BY GUARANTORS

GUARANTOR SUPPLEMENTAL INDENTURE (this "**Guarantor Supplemental Indenture**"), dated as of [*date*], by and among ProSomnus, Inc. (the "**Company**"), the Company's Subsidiaries listed on Schedule A hereto (each, a "**New Guarantor**"), the Company's Subsidiaries listed on Schedule B hereto (each, an "**Existing Guarantor**") and Wilmington Trust, National Association, as trustee under the Indenture referred to below (the "**Trustee**").

WITNESSETH

WHEREAS, the Company, the Existing Guarantors, the Trustee and Collateral Agent are parties to an indenture (as supplemented or amended, the "Indenture"), dated as of December 6, 2022, providing for the issuance of the Company's Senior Secured Convertible Notes due 2025 (the "**Notes**");

WHEREAS, Section 8.01 of the Indenture provides that, without the consent of any Holders, the Company, the Existing Guarantors and the Trustee, at any time and from time to time, may modify, supplement or amend the Indenture to add a Guarantor under the Indenture;

WHEREAS, each New Guarantor wishes to guarantee the Notes pursuant to the Indenture;

WHEREAS, pursuant to the Indenture, the Company, the Existing Guarantors, the New Guarantors and the Trustee have agreed to enter into this Guarantor Supplemental Indenture for the purposes stated herein; and

WHEREAS, all things necessary have been done to make this Guarantor Supplemental Indenture, when executed and delivered by the Company, the Existing Guarantors and each New Guarantor, the legal, valid and binding agreement of the Company, the Existing Guarantors and each New Guarantor, in accordance with its terms.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, each New Guarantor, the Existing Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) **Capitalized Terms**. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) **Guarantee**. Each New Guarantor hereby guarantees the obligations of the Company under the Indenture and the Notes related thereto pursuant to the terms and conditions of Article 12 of the Indenture, such Article 12 being incorporated by reference herein as if set forth at length herein and such New Guarantor agrees to be bound as a Subsidiary Guarantor under the Indenture as if it had been an initial signatory thereto; *provided*, *however* that the New Guarantor can be released from its Guarantee to the same extent as any other Subsidiary Guarantor under the Indenture.

(3) **Governing Law**. This Guarantor Supplemental Indenture, and any claim, controversy or dispute arising under or related to this Guarantor Supplemental Indenture, will be governed by, and construed in accordance with, the laws of the State of New York, (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).

(4) **Counterparts**. The parties may sign any number of copies of this Guarantor Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(5) **Effect of Headings**. The section headings herein are for convenience only and shall not affect the construction hereof.

(6) **The Trustee**. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Guarantor Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company, Existing Guarantors and the New Guarantors.

IN WITNESS WHEREOF, the parties hereto have caused this Guarantor Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated:

ProSomnus, Inc.

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON SCHEDULE A HERETO

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON SCHEDULE B HERETO

By: _____
Name:
Title:

Wilmington Trust, National Association, as Trustee

By: _____
Name:
Title:

SCHEDULE A
SCHEDULE B

Exhibit 10.10

PROSOMNUS, INC.

(COMPANY)

THE SUBSIDIARY GUARANTORS NAMED HEREIN

(SUBSIDIARY GUARANTORS)

WILMINGTON TRUST, NATIONAL ASSOCIATION

(TRUSTEE AND COLLATERAL AGENT)

SUBORDINATED SECURED CONVERTIBLE NOTES DUE APRIL 6, 2026

INDENTURE

DATED AS OF DECEMBER 6, 2022

INDENTURE, dated as of December 6, 2022, between ProSomnus, Inc., a Delaware corporation, as issuer (the "**Company**"), ProSomnus Holdings, Inc. and ProSomnus Sleep Technologies, Inc., as the initial Subsidiary Guarantors, and Wilmington Trust, National Association, initially as trustee, collateral agent, conversion agent, registrar and paying agent (in such capacities, and subject to the provisions herein for replacements or successors for such parties, the "**Trustee**", "**Collateral Agent**", "**Conversion Agent**", "**Registrar**" and "**Paying Agent**", respectively).

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of the Company's Subordinated Secured Convertible Notes due April 6, 2026 (the "**Notes**"), having the terms, tenor, amount and other provisions hereinafter set forth, and, to provide therefor, has duly authorized the execution and delivery of this Indenture (this "**Indenture**"); and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, in connection with the purchase of the Notes, the Initial Holders have entered into that certain Subordinated Securities Purchase Agreement, dated as of August 26, 2022, (the "**Purchase Agreement**");

WHEREAS, the Initial Holders will enter into that certain Registration Rights Agreement, dated as of the date hereof, (the "**Registration Rights Agreement**") providing for, among other things, certain registration rights in respect of the Common Stock (as defined below) (if any) issuable upon conversion hereunder to the relevant Holders (as defined in the Subscription Agreement) or, in certain circumstances, to the assignees of such Holders; and; and

WHEREAS, all things necessary to make the Notes, when duly executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the legal, valid and binding obligations of the Company and Subsidiary Guarantors, in accordance with the terms of the Notes and this Indenture, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of each other and the equal and proportionate benefit of all Holders (as hereinafter defined), as follows:

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions and References.

The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein", "hereof", "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The word "or" is not exclusive and the word "including" means including without limitation. The terms defined in this Article include the plural as well as the singular. References to any Article, Section, Schedule or Exhibit are to this Indenture except as herein otherwise expressly provided.

"**Act**" has the meaning specified in Section 1.03.

"**Additional Interest**" means all amounts, if any, payable by the Company pursuant to Section 5.08 or Section 6.03, as applicable.

"**Additional Restricted Ownership Person**" has the meaning specified in Section 4.06(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning specified in Section 2.06(b).

"**Agent**" means any Paying Agent, Registrar, Conversion Agent, Collateral Agent or any other agent appointed pursuant to this Indenture.

"**Applicable Procedures**" means, with respect to any matter at any time, the policies and procedures of a Depositary, if any, that are applicable to such matter at such time.

"**Authenticating Agent**" means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Notes.

"**Bankruptcy Law**" means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law or foreign law relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

"**Board of Directors**" means either the board of directors of the Company or any duly authorized committee of that board.

"**Board Resolution**" when used with reference to the Company means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means any day other than (x) a Saturday, (y) a Sunday or (z) a day on which state or federally chartered banking institutions in New York, New York or the place of payment are authorized or required by law, regulation or executive order to close.

"**Capitalized Leases**" shall mean, as applied to any Person, all leases of property that have been or should be, in accordance with GAAP, recorded as capitalized leases on the balance sheet of such Person or any of its Subsidiaries, on a consolidated basis; provided, that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability on the balance sheet (excluding the footnotes thereto) of such Person in accordance with GAAP.

"**Capital Stock**" means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the equity of such Person, but excluding any debt securities convertible into such equity.

"**Change of Control"** means an event that will be deemed to have occurred at the time, after the first date of original issuance for the Notes, any of the following occurs:

(i) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) is or becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing 50% or more of the total voting power of the Company's Common Equity, or has the power, directly or indirectly, to elect a majority of the members of the Company's Board of Directors;

(ii) the Company consolidates with, enters into a binding share exchange, merger or similar transaction with or into another person or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of the consolidated assets of the Company, or any Person consolidates with, or merges with or into, the Company; *provided*, that any merger, binding share exchange, consolidation or similar transaction pursuant to which the Persons that "beneficially owned," (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, the Company's Common Equity immediately prior to such transaction "beneficially own," (as defined in Rule 13d-3 under the Exchange Act) directly or indirectly, the Common Equity representing at least a majority of the total voting power of all outstanding classes of the Common Equity of the surviving or transferee Person and such holders' proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction will not constitute a "Change of Control"; or

(iii) the holders of the Company's Capital Stock approve any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with this Indenture).

If any transaction in which the Common Stock is replaced by the Reference Property comprised of securities of another entity occurs, following completion of any related Fundamental Change Purchase Date, references to the Company in this definition of "Change of Control" will apply to such other entity instead.

"**Clause A Distribution**" has the meaning specified in Section 4.04(c).

"**Clause B Distribution**" has the meaning specified in Section 4.04(c).

"**Clause C Distribution**" has the meaning specified in Section 4.04(c).

"**Close of Business**" means 5:00 p.m., New York City time.

"**Closing Sale Price**" of the Common Stock for any day, as determined by the Company, means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and last ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) at 4:00 p.m. New York City time on that day as reported in composite transactions for the Exchange, or if the Common Stock is not listed on the Exchange, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. at 4:00 p.m. New York City time on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system). If the closing sale price of the Common Stock is not so reported, the "Closing Sale Price" will be the average of the mid-point of the last bid and last ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Cohanzick**" means the lead fund or account managed or advised by Cohanzik Management, LLC.

"**Collateral**" means any and all assets in which the Company or any Grantor Subsidiary grants or purports to grant a Lien in favor of the Collateral Agent as security for the Obligations.

"**Collateral Agent**" means the Person named as the "Collateral Agent" in the first paragraph of this Indenture, in its capacity as the "Collateral Agent" for the Secured Parties, until a successor collateral agent shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Collateral Agent" shall mean or include each Person who is then a Collateral Agent hereunder.

"**Commission**" means the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Equity**" of any Person means the Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the shares of common stock, par value $0.0001 per share, of the Company authorized at the date of this instrument as originally executed or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided*, *however*, that if at any time there shall be more than one such resulting class, the shares so issuable on conversion of Notes shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**Common Stock Equivalents**" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Company**" has the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 9, shall include its successors and assigns.

"**Company Order**" means a written request or order signed in the name of the Company by one of its Officers, and delivered to the Trustee.

"**Consolidated EBITDA**" means, for any applicable period, the sum of Consolidated Net Income (exclusive of all amounts in respect of any gains and losses realized from Dispositions other than inventory Disposed of in the ordinary course of business), plus the sum, without duplication, of non-cash stock option and other equity-based compensation expenses, any one-time moving expense, and any losses from an early extinguishment of indebtedness, acquisition-related expenses, whether or not such acquisition is successful, transaction fees, costs and expenses related to any issuance of equity securities, whether or not successful.

"**Consolidated Net Income**" means, for any period, calculated in accordance with GAAP, the aggregate of all amounts which would be included as net income on the consolidated financial statements of the Company for such period.

"**Contingent Liability**" shall mean, for any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Stock of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby.

"**Conversion Agent**" has the meaning specified in Section 5.02.

"**Conversion Date**" has the meaning specified in Section 4.02(b).

"**Conversion Notice**" has the meaning specified in Section 4.02(b).

"**Conversion Period**" means, with respect to any Note surrendered for conversion, (i) if the relevant Conversion Date occurs prior to the 25th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive VWAP Trading Day period beginning on, and including, the third VWAP Trading Day immediately following such Conversion Date; and (ii) if the relevant Conversion Date occurs on or after the 25th Scheduled Trading Day immediately preceding the Maturity Date, the 20 consecutive VWAP Trading Day period beginning on, and including, the 22nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Conversion Price**" means, in respect of each Note, as of any date, $1,000 *divided by* the Conversion Rate in effect on such date.

"**Conversion Rate**" means: 86.95652173913043 shares of Common Stock per $1,000 of the sum of principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein, which such Conversion Rate shall be reduced and only reduced on each Reset Date to equal the lesser of (i) 86.95652173913043 per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein, and (ii) the number of shares of Common Stock per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto obtained by dividing $1,000 by 105% of the applicable Market Price; *provided*, *however*, in no event shall the Conversion Rate be less than 222.22222222 per $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto, subject to adjustment as set forth herein. The Company shall notify the Holders, the Trustee and the Conversion Agent of the applicable adjustment to the Conversion Rate as of such date (each notice, a "**Reset Date Adjustment Notice**"). For purposes of clarity, whether or not the Company provides a Reset Date Adjustment Notice, the Holders shall receive a number of shares of Common Stock and retain a principal amount of its Note, plus accrued interest thereon plus the Make-Whole Amount related thereto, based upon the Conversion Rate as adjusted pursuant to this definition, regardless of whether the Holder accurately refers to such Conversion Rate of principal amount of its Notes plus accrued interest thereon plus the Make-Whole Amount related thereto converted in any Conversion Notice. Any adjustment to the Conversion Rate shall be effective on the applicable Reset Date.

"**Corporate Trust Office**" means, with respect to the office of the Trustee, the designated corporate trust office of the Trustee, at which at any particular time this Indenture shall be principally administered, which office at the date hereof is located at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attn: ProSomnus, Inc., Administrator or such other address in the continental United States as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Corporation**" means a corporation, association, joint stock company, limited liability company or business trust.

"**Custodian**" means the Trustee, as custodian for the Depositary with respect to the Notes (so long as the Notes constitute Global Notes), or any successor entity.

"**Daily Conversion Value**" means, for each VWAP Trading Day during any Conversion Period, one-twentieth (1/20th) of the product of (i) the Conversion Rate in effect on such VWAP Trading Day and (ii) the Daily VWAP on such VWAP Trading Day.

"**Daily Measurement Value**" means, for any conversion of Notes, the applicable Specified Dollar Amount *divided by* 20.

"**Daily Net Share Number**" means, for each $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount surrendered for conversion, for each of the 20 consecutive VWAP Trading Days during the Conversion Period, a number of shares of Common Stock equal to (A) the greater of (x) the difference between the Daily Conversion Value for such VWAP Trading Day and the Daily Measurement Value and (y) zero, divided by (B) the Daily VWAP for such VWAP Trading Day.

"**Daily Settlement Amount**" for each $1,000 principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount related thereto surrendered for conversion, for each of the 20 consecutive VWAP Trading Days during the Conversion Period, will consist of: (i) if the Daily Conversion Value for such VWAP Trading Day exceeds the Daily Measurement Value, (x) a cash payment of the Daily Measurement Value; and (y) a number of shares of Common Stock equal to the Daily Net Share Number for such VWAP Trading Day; or (ii) if the Daily Conversion Value for such VWAP Trading Day is less than or equal to the Daily Measurement Value, a cash payment equal to the Daily Conversion Value.

"**Daily VWAP**" for the Common Stock (or any security that is part of the Reference Property), in respect of any VWAP Trading Day, means the per share volume-weighted average price of the Common Stock (or other security) as displayed under the heading "Bloomberg VWAP" on Bloomberg Page "TLGT Equity AQR" (or its equivalent successor if such page is not available, or the Bloomberg Page for any security that is part of the Reference Property, if applicable) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day or, if such volume-weighted average price is unavailable (or the Reference Property is not a security), the market value of one share of the Common Stock (or other Reference Property) on such VWAP Trading Day as determined in good faith by the Board of Directors or a duly authorized committee thereof in a commercially reasonable manner, using a volume-weighted average price method (unless the Reference Property is not a security). The "Daily VWAP" will be determined without regard to after-hours trading or any other trading outside the regular trading session.

"**Default**" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"**Depositary**" means, with respect to the Notes issuable or issued in the form of a Global Note, the Person designated as Depositary by the Company until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder. The Company has appointed The Depository Trust Company as the initial Depositary for the Global Notes, as applicable.

"**Determination Date**" means, with respect to any Interest Period, two Business Days prior to the beginning of such Interest Period.

"**Disposition**" with respect to any property, means any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. The terms "Dispose" and "Disposed of" have meanings correlative thereto.

"Disqualified Capital Stock" of any Person means any class of Capital Stock of such Person that, by its terms, or by the terms of any related agreement or of any security into which it is convertible, puttable or exchangeable, is, or upon the happening of any event or the passage of time would be, required to be redeemed by such Person, whether or not at the option of the holder thereof, or matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is 91 days after the final maturity date of the Notes; *provided*, *however*, that any class of Capital Stock of such Person that, by its terms, authorizes such Person to satisfy in full its obligations with respect to the payment of dividends or upon maturity, redemption (pursuant to a sinking fund or otherwise) or repurchase thereof or otherwise by the delivery of Capital Stock that are not Disqualified Capital Stock, and that is not convertible, puttable or exchangeable for Disqualified Capital Stock or Indebtedness, will not be deemed to be Disqualified Capital Stock so long as such Person satisfies its obligations with respect thereto solely by the delivery of Capital Stock that are not Disqualified Capital Stock; *provided*, *further*, *however*, that any Capital Stock that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Capital Stock are convertible, exchangeable or exercisable) the right to require Company to redeem such Capital Stock upon the occurrence of a Change of Control occurring prior to the 91st day after the final maturity date of the Notes shall not constitute Disqualified Capital Stock if the change of control provisions applicable to such Capital Stock are no more favorable to such holders than the provisions of Section 4.19 of the Securities Purchase Agreement and such Capital Stock specifically provide that Company will not redeem any such Capital Stoc pursuant to such provisions prior to Company's purchase of the Notes as required pursuant to Section 4.19 of the Securities Purchase Agreement.

"**Dollar**" or "**$**" means a dollar or other equivalent unit in such coin or currency of the U.S. that is legal tender for the payment of public and private debts at the time of payment.

"**Domestic Holding Company**" any Subsidiary (other than a Foreign Subsidiary) substantially all of the assets of which consist of equity interests in one or more foreign Subsidiaries.

"**Effective Date**" means, with respect to a Fundamental Change, the date such Fundamental Change occurs or becomes effective.

"**Enforcement Action**" means any action or decision taken in connection with the exercise of remedial rights of the Holders of the Notes and the Trustee and/or Collateral Agent, representing the interests of the Holders of the Notes (including in respect of the Collateral pursuant to the Security Documents) following the occurrence and during the continuation of an Event of Default.

"**Event of Default**" has the meaning specified in Section 6.01.

"**Ex-Dividend Date**" means, except to the extent otherwise provided under Section 4.04(c), the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange**" means The Nasdaq Global Select Market or its successor.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Excluded Subsidiary**" shall mean (i) any Foreign Subsidiary or Domestic Holding Company, in each case, solely to the extent that the inclusion of such Person as a Subsidiary Guarantor may result (or may be reasonably likely to result) in adverse tax consequences to the Company and its Subsidiaries, taken as a whole, as determined in good faith by the Company and (ii) each Immaterial Subsidiary.

"**Exempt Issuance**" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and the Concurrent Offering, warrants to the Placement Agent in connection with the transactions pursuant to this Agreement and any securities upon exercise of warrants to the Placement Agent and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibition period in Section 4.13(a) herein, and provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities and (d) shares of Common Stock issued pursuant to a forward purchase agreement consummated prior to the Merger Closing provided that the terms and conditions of such agreement are satisfactory to Cohanzick.

"**Foreign Subsidiary**" means each Subsidiary of the Company other than a Subsidiary that is organized under the laws of the United States, any state, territory, protectorate or commonwealth thereof, or the District of Columbia.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Free Trade Date**" means the date that is one year after the Last Original Issuance Date.

"**Free Transferability Certificate**" means a certificate substantially in the form attached hereto as Exhibit B.

"**Freely Tradable**" means, with respect to any Notes, that such Notes are eligible to be sold by a Person who is not an affiliate of the Company (within the meaning of Rule 144) and has not been an affiliate of the Company (within the meaning of Rule 144) during the immediately preceding 90 days without any volume or manner of sale restrictions under the Securities Act.

"**Fundamental Change**" means the occurrence of a Change of Control or a Termination of Trading.

"**Fundamental Change Purchase Date**" has the meaning specified in the Purchase Agreement.

"**GAAP**" shall mean generally accepted accounting principles in the United States of America.

"**Global Note**" means a Note evidencing all or part of a series of Notes, issued to the Depositary for such series or its nominee, and registered in the name of such Depositary or nominee.

"**Grantor Subsidiaries**" means ProSomnus Holding, Inc. and ProSomnus Sleep Technologies, Inc., and each Person that becomes a party to this Indenture after the Initial Issue Date pursuant to Article 12.

"**Guarantee Obligations**" shall mean, as to any Person, any Contingent Liability of such Person or other obligation of such Person guaranteeing or intended to guarantee any Indebtedness of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such Indebtedness or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such Indebtedness of the ability of the primary obligor to make payment of such Indebtedness or (d) otherwise to assure or hold harmless the owner of such Indebtedness against loss in respect thereof; provided, that the term "Guarantee Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Issue Date, entered into in connection with any acquisition or disposition of assets permitted under this Indenture (other than with respect to Indebtedness). The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Hedge Termination Value**" shall mean, in respect of any one or more Hedging Obligations, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Obligations, (a) for any date on or after the date such Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Obligations, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Obligations.

"**Hedging Obligations**" shall mean, with respect to any Person, any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (a) any and all Hedging Transactions, (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (c) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"**Hedging Transaction**" of any Person shall mean (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Holder**" means the Person in whose name a Note is registered in the Register.

"**Immaterial Subsidiary**" shall mean each Subsidiary of the Company or group of Subsidiaries of the Company (i) the consolidated total assets of which are less than 2.5% of the assets of the Company and its Subsidiaries and (ii) the consolidated EBITDA of which is less than 2.5% of the consolidated EBITDA of the Company and its Subsidiaries.

"**Indebtedness**" means as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all indebtedness of such Person for borrowed money and all indebtedness of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(ii) the maximum amount (after giving effect to any prior drawings or reductions which may have been reimbursed) available under all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person;

(iii) the Hedge Termination Value of all Hedging Obligations of such Person;

(iv) all obligations of such Person to pay the deferred purchase price of property or services, including earn-out obligations (other than (A) trade accounts payable in the ordinary course of business and (B) to the extent such obligation is not due at any time prior to the date that is six months after the Maturity Date, any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(v) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(vi) shall mean, on any date, in respect of any Capitalized Leases of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP;

(vii) all obligations of such Person in respect of Disqualified Capital Stock; and

(viii) all Guarantee Obligations of such Person in respect of any of the foregoing.

provided, that Indebtedness shall not include (A) prepaid or deferred revenue arising in the ordinary course of business, (B) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset and (C) endorsements of checks or drafts arising in the ordinary course of business.

"**Indenture**" means this Indenture as amended or supplemented from time to time.

"**Indenture Documents**" means this Indenture, the Notes, the Security Documents, the Subsidiary Guarantees included in this Indenture, and any other instrument or agreement entered into, now or in the future, by the Company, any Subsidiary Guarantor and/or any Grantor Subsidiary, on the one hand, and, if necessary, the Collateral Agent and/or Trustee, on the other hand, in connection with the Indenture.

"**Initial Issue Date**" means the Issue Date of the first Notes to be issued under this Indenture.

"**Initial Notes**" has the meaning specified in Section 2.01.

"**Initial Stockholder Meeting Date** has the meaning specified in Section 4.01(c)(iv).

"**Intercreditor Agreement"** means that certain Intercreditor Agreement by and among Wilmington Trust, National Association, as collateral agent for the Senior Debt and the Collateral Agent, the Company and each Subsidiary Guarantor.

"**Interest Payment Date**" means, with respect to the payment of interest on the Notes, each January 1, April 1, July 1 and October 1 of each year (or, if such day is not a Business Day, the next succeeding Business Day), beginning on the first such date that is at least 30 calendar days after the Initial Issue Date, on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed), and on the Maturity Date.

"**Interest Period**" means the period commencing on and including the first day of each calendar month to but excluding the first day of the following calendar month; *provided, however*, if an Interest Payment Date occurs in a calendar month, the Interest Period shall end on the day before such Interest Payment Date and the next succeeding Interest Period shall commence on such Interest Payment Date; it being understood that, subject to the preceding proviso, the first Interest Period shall be from and including the date hereof to and excluding the first day of the following calendar month and the last Interest Period shall end on the Maturity Date.

"**Intra-Group Liabilities**" has the meaning specified in Section 12.02(b).

"**Issue Date**" means, with respect to any Notes, the date the Notes are originally issued as set forth on the face of the Notes under this Indenture.

"**Largest Stockholder**" as of any given time means the stockholder(s) of the Company that then beneficially owns (including any shares beneficially owned by member of any group of which such stockholder is a member and otherwise calculated in accordance with Section 4.01(c)) the largest number of shares of the Company's Common Stock.

"**Last Original Issuance Date**" means the last date of original issuance of the Initial Notes.

"**Lien**" shall mean any mortgage, pledge, security interest, hypothecation, assignment for collateral purposes, lien (statutory or other) or similar encumbrance, and any easement, right-of-way, license, restriction (including zoning restrictions), defect, exception or irregularity in title or similar charge or encumbrance (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof); provided, that in no event shall an operating lease entered into in the ordinary course of business or any precautionary UCC filings made pursuant thereto by an applicable lessor or lessee, be deemed to be a Lien.

"**Make-Whole Amount**" means, as to the applicable principal amount being converted on any Conversion Date on and prior to the eighteenth (18^{th}) month after the date of issuance of the Notes, the amount of interest that, but for a Holder's exercise of its conversion right pursuant to Section 4.01, would have accrued with respect to the principal amount being converted or redeemed under a Note at the interest rate in effect from the applicable Conversion Date through the date that is the one (1) year anniversary of such Conversion Date. The Company shall calculate the Make-Whole Amount and the Trustee shall have no duty or obligation to confirm or verify any such calculation.

"**Master Agreement**" has the meaning specified in the definition of "Hedging Transaction" under this Section 1.01.

"**Market Disruption Event**" means, if the Common Stock is listed for trading on the Exchange or listed on another U.S. national or regional securities exchange, the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Scheduled Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or futures contracts relating to the Common Stock.

"**Market Price**" means the average of the VWAPs for the 10 consecutive Trading Days ending on the Trading Day immediately preceding the applicable Reset Date.

"**Maturity Date**" means April 6, 2026.

"**Merger Event**" has the meaning specified in Section 4.07(a).

"**Mortgage**" shall mean a mortgage or a deed of trust, deed to secure debt, trust deed or other security document entered into by the Company or any Grantor Subsidiary in favor of the Collateral Agent for the benefit of the Secured Parties in respect of any Real Property owned by the Company or any Grantor Subsidiary, in such form as agreed between the Company or any Grantor Subsidiary and the Collateral Agent, as amended, restated, supplemented or otherwise modified from time to time.

"**Mortgaged Property**" shall mean each parcel of Real Property and improvements thereto with respect to which a Mortgage is granted pursuant to Article 13.

"**Net Assets**" has the meaning specified in Section 12.02(a)(i).

"**Non-Affiliate Legend**" has the meaning specified in the Form of Note attached hereto as Exhibit A.

"**Note**" or "**Notes**" has the meaning specified in the first paragraph of the Recitals of this Indenture. Except as otherwise specified herein, including Article 4, for all purposes of this Indenture the term "Notes" shall include the Initial Notes, and any PIK Interest Notes, all references to "principal amount" of the Notes shall include any increase in the principal amount thereof in respect of PIK Interest paid in accordance with the terms of this Indenture, and all such Notes shall be treated as a single class of securities for all purposes under this Indenture, including, without limitation, directions, waivers, amendments, consents, redemptions and offers to purchase.

"**Obligations**" means (a) obligations of the Company and the Subsidiary Guarantors from time to time to pay (and otherwise arising under or in respect of the due and punctual payment of) (i) principal, interest (including Additional Interest and interest accruing during the pendency of any bankruptcy, insolvency, reorganization or similar proceeding, regardless of whether allowed or allowable in such proceeding) and all other obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes issued hereunder and the other Indenture Documents (including, without limitation, any applicable premium) when and as due, whether at maturity, by acceleration, upon one or more dates set for redemption or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, reorganization or similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Company and the Subsidiary Guarantors under this Indenture, the other Indenture Documents, and the Intercreditor Agreement, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Company and the Subsidiary Guarantors under or pursuant to this Indenture, the other Indenture Documents, and the Intercreditor Agreement.

"**Offer Expiration Date**" has the meaning specified in Section 4.04(e).

"**Officer**" or "**officer**" shall mean, the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, a Vice President (whether or not designated by a number or word or words added before or after the title "Vice President") or any Director of the Company. Officer of any Subsidiary Guarantor has a correlative meaning.

"**Officer's Certificate**" means a certificate signed by an Officer of the Company and delivered to the Trustee.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Opinion of Counsel**" means a written opinion of counsel, who may be an employee of, or counsel for, the Company or an Affiliate of the Company, who is reasonably satisfactory to the Trustee.

"**Optional Redemption Amount**" means the sum of (a) 100% of the then outstanding principal amount of the applicable Notes, (b) accrued but unpaid interest to, but excluding, the Optional Redemption Date, and (c) all liquidated damages and other amounts due in respect of the applicable Notes.

"**Optional Redemption Conversion Rate**" means the lesser of (a) the Conversion Price or (b) 90% of the lesser of (i) the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the applicable Optional Redemption Date or (ii) the average of the VWAPs for the 20 consecutive Trading Days ending on the Trading Day that is immediately prior to the date the applicable Optional Redemption Shares are issued and delivered if such delivery is after the Optional Redemption Date.

"**Optional Redemption Date**" shall have the meaning set forth in Section 10.01.

"**Optional Redemption Notice**" shall have the meaning set forth in Section 10.01.

"**Optional Redemption Notice Date**" shall have the meaning set forth in Section 10.01.

"**Outstanding**" means, with respect to the Notes, any Notes authenticated by the Trustee except (i) Notes cancelled by it, (ii) Notes delivered to it for cancellation and (iii)(A) Notes replaced pursuant to Section 2.09 hereof, on and after the time such Note is replaced (unless the Trustee and the Company receive proof satisfactory to them that such Note is held by a protected purchaser), (B) Notes converted pursuant to Article 4 hereof, on and after their Conversion Date, (C) any and all Notes, the principal of which has become due and payable as of the Maturity Date or otherwise and in respect of which the Paying Agent is holding, in accordance with this Indenture, money sufficient to pay or repurchase all of the Notes then to be paid or repurchased and (D) any and all Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor. In determining whether the Holders of the required principal amount of Notes have concurred in any request, demand, authorization, direction, notice, consent or waiver, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company will be considered as though not Outstanding, except that in determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice, consent or waiver, only such Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be disregarded.

"**Paying Agent**" means, initially, the Trustee or any Person authorized by the Company in the future to pay the principal amount of, any premium on, interest on any Notes on behalf of the Company.

"**Permitted Exchange**" has the meaning specified in the definition of "Termination of Trading" under this Section 1.01.

"**Permitted Indebtedness**" means (a) the indebtedness evidenced by the Notes, (b) the Indebtedness existing on the Original Issue Date and set forth on Schedule 3.01(bb) attached to the Purchase Agreement, (c) lease obligations and purchase money indebtedness of up to $1,000,000, in the aggregate, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets, (d) indebtedness that (i) is expressly subordinate to the Notes pursuant to a written subordination agreement with the Purchasers that is acceptable to each Purchaser in its sole and absolute discretion and (ii) matures at a date later than the 91st day following the Maturity Date, (e) financing for premiums on general business or director and officer insurance up to $3 million per calendar year, and (f) the Senior Debt.

"**Permitted Lien**" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a) and (b), Liens incurred in connection with Clause (e) of Permitted Indebtedness and (e) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased..

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"**Physical Notes**" means permanent, non-global certificated Notes in definitive, fully registered form issued in minimum denominations of $1.00 principal amount and integral multiples of $1.00 in excess thereof.

"**Physical Settlement**" has the meaning specified in Section 4.03(a).

"**PIK Interest**" has the meaning specified in Section 2.15.

"**PIK Interest Note**" has the meaning specified in Section 2.15.

"**PIK Payment**" has the meaning specified in Section 2.15.

"**Primary Obligor**" has the meaning specified in the definition of "Guarantee Obligations" under this Section 1.01.

"**Prime Rate**" means for any Determination Date, a per annum rate of interest equal to the "prime rate," as published in the "Money Rates" column of The Wall Street Journal, on such Determination Date, or if for any reason such rate is no longer available it shall be the last available Prime Rate until a new rate is reasonably established by the majority in interest of the Holders as the replacement to the prime rate. For the avoidance of doubt, the Prime Rate published on the applicable Determination Date will apply for the entire applicable Interest Period.

"**Real Property**" shall mean, with respect to any Person, all right, title and interest of such Person (including, without limitation, any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

"**Reference Property**" has the meaning specified in Section 4.07(a).

"**Refinanced Indebtedness**" has the meaning specified in the definition of "Permitted Refinancing Indebtedness" under this Section 1.01.

"**Registration Rights Agreement**" means the registration rights agreement, dated as of the date of the Purchase Agreement.

"**Register**" and "**Registrar**" have the respective meanings specified in Section 2.06.

"**Regular Record Date**" means, with respect to any scheduled Interest Payment Date, December 15 (whether or not a Business Day), March 15 (whether or not a Business Day), June 15 (whether or not a Business Day) or September 15 (whether or not a Business Day), as the case may be, immediately preceding such Interest Payment Date.

"**Relevant Distribution**" has the meaning specified in Section 4.04(c).

"**Reporting Event of Default**" has the meaning specified in Section 6.03.

"**Resale Restriction Termination Date**" has the meaning specified in Section 2.08(b)(ii).

"**Reset Date**" means each of (i) 9:00 a.m. (New York City time) on the date that is the six (6) month anniversary of the Initial Issue Date at, and (ii) 9:00 a.m. (New York City time) on the date that is the twelve (12) month anniversary of the Initial Issue Date.

"**Responsible Officer**," when used with respect to the Trustee, means any officer within the corporate trust department (or any other successor group of the Trustee), including any Vice President, Assistant Vice President, Assistant Secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers who at the time shall be such officers, respectively, or any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject and who in each case shall have direct responsibility for the administration of this Indenture.

"**Restricted Global Note**" has the meaning specified in Section 2.08(b)(i).

"**Restricted Note**" has the meaning specified in Section 2.07(a)(i).

"**Restricted Notes Legend**" has the meaning specified in the Form of Note attached hereto as Exhibit A.

"**Restricted Stock**" has the meaning specified in Section 2.07(b)(i).

"**Restricted Stock Legend**" means a legend substantially in the form set forth in Exhibit C hereto.

"**Restricted Ownership Percentage**" has the meaning specified in Section 4.01(c).

"**Revenue**" means revenue by the Company and its Subsidiaries from Dispositions of inventory in the ordinary course of business).

"**Rule 144**" means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

"**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed for trading. If the Common Stock is not so listed, "Scheduled Trading Day" means a "Business Day."

"**Secured Parties**" means, collectively, the Collateral Agent, the Trustee and the Holders.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"**Security Documents**" means the Subordinated Security Agreement, the Subsidiary Guarantees, the original Pledged Securities, and any other documents and filing required thereunder in order to grant the Collateral Agent a second priority security interest in the assets of the Company and the Subsidiaries as provided in the Subordinated Security Agreement, including all UCC-1 filing receipts.

"**Senior Debt**" means the Senior Secured Convertible Notes issued on the Initial Issue Date.

"**Settlement Amount**" has the meaning specified in Section 4.03(a)(iii).

"**Significant Subsidiary**" means, with respect to any Person at any given time, a Subsidiary of such person that would constitute a "significant subsidiary" as such term is defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as in effect on the Issue Date.

"**Specified Dollar Amount**" means, for any conversion of Notes, the maximum cash amount per $1,000 principal amount of Notes to be received by the Holder upon conversion as specified in the Company's Specified Dollar Amount Election Notice (which may be part of the Settlement Election Notice) or otherwise deemed to be elected by the Company in respect of such conversion as provided herein.

"**Specified Dollar Amount Election**" has the meaning specified in Section 4.03(a)(i).

"**Specified Dollar Amount Election Notice**" has the meaning specified in Section 4.03(a)(i).

"**Spin-Off**" has the meaning specified in Section 4.04(c).

"**Subordinated Debts**" has the meaning specified in Section 12.02(a)(i).

"**Subordinated Security Agreement**" means the Subordinated Security Agreement, dated as of the date of this Indenture.

"**Subsidiary**" of any Person means (a) any corporation, association or other business entity of which more than 50% of the outstanding total voting power ordinarily entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees or other voting members of the governing body thereof is at the time owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries or (b) any partnership the sole general partner or the managing general partner of which is the Company or a Subsidiary of the Company or the only general partners of which are the Company or of one or more Subsidiaries of the Company (or any combination thereof).

"**Subsidiary Guarantee**" means, individually, any guarantee of payment of the Notes by a Subsidiary Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto, and, collectively, all such guarantees.

"**Subsidiary Guarantors**" means ProSomnus Holdings, Inc., ProSomnus Sleep Technologies, Inc. and each other Subsidiary of the Company in existence on the date hereof, as the initial guarantors of the Notes, until such Person is released from its guarantee of the Notes in accordance with this Indenture; *provided* that for the avoidance of doubt every Subsidiary of the Company (other than an Excluded Subsidiary) shall be a guarantor of the Notes.

"**Successor Company**" has the meaning specified in Section 9.01(a).

"**Termination of Trading**" means that the Common Stock (or other Reference Property into which the Notes are then convertible pursuant to the terms of this Indenture) are not listed for trading on any of the Exchange, The New York Stock Exchange, The Nasdaq Global Market or The Nasdaq Capital Market (or any of their respective successors) (such exchanges or any of their respective successors, a "**Permitted Exchange**").

"**Trading Day**" means a day on which (i) the Exchange or, if the Common Stock is not listed on the Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day and (ii) a Closing Sale Price for the Common Stock is available on such securities exchange or market. A "Trading Day" only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

"**Transaction Documents**" means the Purchase Agreement, this Indenture, the Notes, the Warrants, the Registration Rights Agreement, the Subordinated Security Agreement, the Security Documents, the Subsidiary Guarantee, any lock-up agreements entered into in connection therewith, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder

"**Trigger Event**" has the meaning specified in Section 4.04(c).

"**Trustee**" means the Person named as the "Trustee" in the first paragraph of this Indenture in its capacity as such until a successor Trustee shall have become such pursuant to Section 11.11, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended.

"**Unit of Reference Property**" has the meaning specified in Section 4.07(a).

"**U.S.**" means the United States of America.

"**Valuation Period**" has the meaning specified in Section 4.04(c).

"**Variable Rate Transaction**" means a transaction in which the Company (a) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive additional shares of Common Stock either (i) at a conversion price, exercise price or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities, or (ii) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (b) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. For avoidance of doubt, no issuance by the Company or any of its Subsidiaries shall be deemed a Variable Rate Transaction solely by virtue of the fact that such issuance includes securities that contain standard price protection anti-dilution provisions (provided that any warrants that contain standard price protection anti-dilution provisions shall not include any related increase in the number of shares of Common Stock underlying the warrants in connection with any anti-dilution adjustment or any allocation of a value based on the Black and Scholes Option Pricing Model to a warrant which is a part of a unit in connection with any anti-dilution adjustment).

"**VWAP Market Disruption Event**" means (i) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (ii) the occurrence or existence for more than one half-hour period in the aggregate on any Scheduled Trading Day for the Common Stock of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day.

"**VWAP Trading Day**" means a day on which (i) there is no VWAP Market Disruption Event and (ii) the Exchange or, if the Common Stock is not listed on the Exchange, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed is open for trading or, if the Common Stock is not so listed, any Business Day. A "VWAP Trading Day" only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or trading system.

"**Warrants**" means, collectively, the Common Stock purchase warrants delivered to the Holders at the Closing in accordance with Section 2.2(a) of the Purchase Agreement, which Warrants shall be exercisable immediately and have a term of exercise equal to five years, in the form of Exhibit C attached thereto.

"**Warrant Shares**" means the shares of Common Stock issuable upon exercise of the Warrants

Section 1.02 ***References to Interest.***

Any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest, if, in such context, Additional Interest, is, was or would be payable pursuant hereto. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 1.03 ***Acts of Holders*****.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of Notes, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.03.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The amount of Notes held by any Person executing any such instrument or writings as the Holder thereof, the numbers of such Notes and the date of his holding the same may be proved by the production of such Notes or by a certificate executed, as depositary, by any trust company, bank, banker or member of a national securities exchange (wherever situated), if such certificate is in form satisfactory to the Trustee, showing that at the date therein mentioned such Person had on deposit with such depositary, or exhibited to it, the Notes therein described; or such facts may be proved by the certificate or affidavit of the Person executing such instrument or writing as the Holder thereof, if such certificate or affidavit is in form satisfactory to the Trustee. The Trustee and the Company may assume that such ownership of any Notes continues until (1) another certificate bearing a later date issued in respect of the same Notes is produced or (2) such Notes are produced by some other Person or (3) such Notes are no longer Outstanding.

(d) The fact and date of execution of any such instrument or writing and the amount and number of Notes held by the Person so executing such instrument or writing may also be proved in any other manner that the Trustee deems sufficient. The Trustee may in any instance require further proof with respect to any of the matters referred to in this Section 1.03.

(e) The principal amount (except as otherwise contemplated in clause (ii) of the definition of "Outstanding"), serial numbers of Notes held by any Person and the date of holding the same shall be proved by the Register.

(f) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

(g) The Company may but shall not be obligated to set a record date for purposes of determining the identity of Holders of any Outstanding Notes entitled to vote or consent to any action by vote or consent authorized or permitted by Sections 6.02, 6.04, 6.05, 6.06, 8.02 or 11.10. Such record date shall be not less than 10 nor more than 60 days prior to the first solicitation of such consent or the date of the most recent list of Holders of such Notes furnished to the Trustee pursuant to Section 5.13 prior to such solicitation.

(h) If the Company solicits from Holders any request, demand, authorization, direction, notice, consent, election, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, election, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, election, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, election, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of the record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 2
THE NOTES

Section 2.01 ***Title and Terms; Payments.***

The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is $20,849,559.47 (the "**Initial Notes**"), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for other Notes pursuant to Sections 2.05, 2.06, 2.08, 2.09, 2.11, 2.15, 3.07 or 4.02(d).

The Notes shall be known and designated as the "Subordinated Secured Convertible Notes due 2026" of the Company. The principal amount shall be payable on the Maturity Date unless no longer Outstanding because earlier purchased or converted in accordance with this Indenture.

The Notes shall initially be delivered on the Initial Issue Date in the form of Physical Notes. The Notes shall only be eligible for delivery in the form of Global Notes following the date that the Notes are eligible for delivery in book-entry form through the Depository Trust Company. The Company shall use its best efforts to have the Notes eligible for delivery in the form of Global Notes immediately following the initial Effectiveness Date (as such term is defined in the Registration Rights Agreement). None of the Trustee nor any Agent shall have an obligation to cause the Notes to be made eligible for delivery in the form of Global Notes.

The principal amount of Physical Notes shall be payable in U.S. dollars at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. Interest and the Make-Whole Amount on Physical Notes will be payable (i) to Holders holding Physical Notes having an aggregate principal amount of $1,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Register, and (ii) to Holders holding Physical Notes having an aggregate principal amount of more than $1,000,000 of Notes, either by check mailed to such Holders or, upon written application by a Holder to the Company and Paying Agent by (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash conversion consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that fifteen (15) calendar days immediately before the date such payment is due by wire transfer in immediately available funds to such Holder's account within the U.S., which application shall remain in effect until the Holder notifies the Paying Agent to the contrary in writing, and (iii) with respect to PIK Payments by PIK Interest Notes mailed to such Holders at the address set forth in the Register. The Company will pay or cause the Trustee or the Paying Agent to pay principal of Global Notes in U.S. dollars and in immediately available funds (with PIK Interest to be paid as described in Section 2.15) to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note, on each Interest Payment Date the Maturity Date or other payment date, including for the Make-Whole Payment, as the case may be.

Section 2.02 ***Ranking*****.**

The Notes constitute direct secured, subordinated obligations of the Company.

Section 2.03 ***Denominations*****.**

The Notes shall be issuable only in registered form without coupons and in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof.

Section 2.04 ***Execution, Authentication, Delivery and Dating*****.**

The Notes shall be executed on behalf of the Company by one of its Officers.

Notes bearing the electronic, manual or facsimile signatures of individuals who were at any time Officers of the Company shall bind the Company, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Notes or did not hold such office at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes. The Company Order shall specify the amount of Notes to be authenticated, and shall further specify the amount of such Notes to be issued as one or more Global Notes or as one or more Physical Notes. The Trustee in accordance with such Company Order shall authenticate and deliver such Notes as provided in this Indenture and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by an authorized signatory of the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 2.05 ***Temporary Notes*****.**

Pending the preparation of Physical Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Physical Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officer executing such Notes may determine, as evidenced by such Officer's execution of such Notes; *provided* that any such temporary Notes shall bear legends on the face of such Notes as set forth in the Form of Note attached hereto as Exhibit A and/or Sections 2.07 and 2.11.

After the preparation of Physical Notes, the temporary Notes shall be exchangeable for Physical Notes upon surrender of the temporary Notes at any office or agency of the Company designated pursuant to Section 5.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in exchange therefor a like principal amount of Physical Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Physical Notes.

Section 2.06 ***Registration; Registration of Transfer and Exchange.***

(a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee in the continental United States a register (the register maintained in such office and in any other office or agency designated pursuant to Section 5.02 being herein sometimes collectively referred to as the "**Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration and transfer of Notes. The Trustee is hereby appointed registrar (the "**Registrar**") for the purpose of registering the transfer and exchange of the Notes as herein provided.

Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 5.02 for such purpose, the Company shall execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination and of a like aggregate principal amount and tenor, each such Note bearing such restrictive legends as may be required by this Indenture (including the Form of Note attached hereto as Exhibit A and Sections 2.07 and 2.11).

At the option of the Holder, and subject to the other provisions of Sections 2.07 and 2.11, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount and tenor, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Notes, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such Notes.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 2.11 not involving any transfer.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Note in the circumstances set forth in Section 2.11(a)(iv).

(b) Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**") nor any other Persons on whose behalf any Agent Member may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee, the Agents and any of their respective agents as the absolute owner and Holder of such Global Note for all purposes whatsoever. Neither the Trustee nor any Agent shall have any liability, responsibility or obligation to any Agent Members or any other Person on whose behalf Agent Members may act with respect to (i) any ownership interests in the Global Note, (ii) the accuracy of the records of the Depositary or its nominee, (iii) any notice required hereunder, (iv) any payments under or with respect to the Global Note or (v) actions taken or not taken by any Agent Members.

(c) Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, any Agent or any of their respective agents from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Section 2.07 Transfer Restrictions.

(a) *Restricted Notes*.

(ii) Every Note (and any security issued in exchange therefor or substitution thereof) that bears, or that is required under this Section 2.07 to bear, the Restricted Notes Legend will be deemed to be a "**Restricted Note**". Each Restricted Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Notes Legend) and will bear a restricted CUSIP number for the Notes unless the Company notifies the Trustee in writing that such restrictions on transfer are eliminated or otherwise waived by written consent of the Company (including, without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein), and each Holder of a Restricted Note, by such Holder's acceptance of such Restricted Note, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Note.

(ii) Until the Resale Restriction Termination Date for a Note, such Note, will bear the Restricted Notes Legend unless:

(A) (1) such Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (I) to a Person other than (x) the Company, (y) an affiliate of the Company (within the meaning of Rule 144) or (z) a Person that was an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding such transfer and (II) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer; or

(2) such Note was transferred (I) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding such transfer and (II) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; and

(B) the Company delivers written notice to the Trustee and the Registrar (including, without limitation, by the Company's delivery of the Free Transferability Certificate as provided herein) stating that the Restricted Notes Legend may be removed from such Note and, with respect to Global Notes, all Applicable Procedures have been complied with.

(iii) In addition, until the applicable Resale Restriction Termination Date, no transfer of any Restricted Note will be registered by the Registrar unless the transferring Holder delivers to the Trustee a completed notice substantially in the form of the Form of Assignment and Transfer, which contains a certification that the transferee is (A) ProSomnus, Inc. or a subsidiary thereof or (B) such other person that is not an affiliate of the Company (within the meaning of Rule 144) and has not been an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding the date of such proposed transfer.

(iv) On and after the applicable Resale Restriction Termination Date, any Note will bear the Restricted Note Legend if at any time the Company determines that, to comply with applicable law, such Note must bear the Restricted Notes Legend and the Company notifies the Trustee in writing.

(b) *Restricted Stock*.

(i) Every share of Common Stock that bears, or that is required under this Section 2.07 to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**". Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Stock Legend) and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent (including, without limitation, by the Company's delivery of the Free Transferability Certificate in connection with the Notes as provided herein) of the Company, and each Holder of Restricted Stock, by such Holder's acceptance of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

(ii) Until the applicable Resale Restriction Termination Date, any shares of Common Stock issued upon the conversion of a Restricted Note will be issued in book-entry form by or on behalf of the Company and will bear the Restricted Stock Legend unless the Company delivers written notice to the transfer agent for the Common Stock stating that such shares of Common Stock need not bear the Restricted Stock Legend.

(iv) On and after the applicable Resale Restriction Termination Date, shares of Common Stock will be issued in book-entry form and will bear the Restricted Stock Legend at any time the Company reasonably determines that, to comply with applicable law, such shares of Common Stock must bear the Restricted Stock Legend.

(c) As used in this Section 2.07, the term "**transfer**" means any sale, pledge, transfer, loan, hypothecation or other disposition whatsoever of any Restricted Note, any interest therein or any Restricted Stock.

(d) All Notes, whether Global Notes or Physical Notes, are required to bear the Non-Affiliate Legend at all times, whether before or after the applicable Resale Restriction Termination Date.

Section 2.08 ***Expiration of Restrictions*****.**

(a) *Physical Notes*. Any Physical Note (or any security issued in exchange or substitution therefor) that does not have a Restricted Notes Legend may be exchanged for a new Note or Notes of like tenor and aggregate principal amount that do not bear the Restricted Notes Legend required by Section 2.07. To exercise such right of exchange, the Holder of such Note must surrender such Note in accordance with the provisions of Section 2.11 and deliver any additional documentation required by this Indenture in connection with such exchange.

(b) *Global Notes; Resale Restriction Termination Date*.

(i) If, on a Free Trade Date, or the next succeeding Business Day if such Free Trade Date is not a Business Day, the Notes to which such Free Trade Date is applicable are represented by a Global Note that is a Restricted Note (any such Global Note, a "**Restricted Global Note**"), as promptly as practicable, the Company will cause an automatic exchange of every beneficial interest in each such Restricted Global Note for beneficial interests in Global Notes that do not bear the Restricted Notes Legend and are not subject to the restrictions set forth in the Restricted Notes Legend and in Section 2.07.

(ii) To effect such automatic exchange, the Company will (A) deliver to the Depositary an instruction letter for the Depositary's mandatory exchange process at least 15 days immediately prior to such Free Trade Date (with a copy to the Trustee), (B) deliver to each of the Trustee and the Registrar a duly completed Free Transferability Certificate on or promptly after such Free Trade Date. The date of the Free Transferability Certificate for any Notes will be known as the "**Resale Restriction Termination Date**" with respect to such Notes and (C) take any other action necessary to comply with the Applicable Procedures. The Trustee shall assume that a Free Trade Date has not occurred with respect to any Notes unless and until it receives a Free Transferability Certificate with respect to such Notes.

(iii) Immediately upon receipt of the Free Transferability Certificate with respect to any Notes by each of the Trustee and the Registrar:

(A) the Restricted Notes Legend will be deemed removed from each of the Global Notes specified in such Free Transferability Certificate and the restricted CUSIP number will be deemed removed from each of such Global Notes and deemed replaced with the unrestricted CUSIP number;

(B) the Restricted Stock Legend will be deemed removed from any shares of Common Stock previously issued upon conversion of such Notes; and

(C) thereafter, shares of Common Stock issued upon conversion of such Notes will be assigned an unrestricted CUSIP number and will not bear the Restricted Stock Legend (except as provided in Section 2.07(b)(iii)) or any similar legend.

(iv) Promptly after the Resale Restriction Termination Date with respect to any Notes, the Company will provide Bloomberg LLP with a copy of the Free Transferability Certificate applicable to such Notes and will use reasonable efforts to cause Bloomberg LLP to adjust its screen page for such Notes to indicate that such Notes are no longer Restricted Notes and are then identified by an unrestricted CUSIP number.

(v) The Company and the Trustee will comply with the Applicable Procedures and the Company shall otherwise use reasonable efforts to cause each Global Note that is not required to bear the Restricted Notes Legend to be identified by an unrestricted CUSIP number in the facilities of the Depositary by the date the Free Transferability Certificate is delivered to the Trustee and the Registrar or as promptly as possible thereafter.

(vi) Notwithstanding anything to the contrary in Sections 2.08(b)(i), (ii) or (iii), the Company will not be required to deliver a Free Transferability Certificate with respect to any Notes if it reasonably believes that removal of the Restricted Notes Legend or the changes to the CUSIP numbers for such Notes could result in or facilitate transfers of such Notes in violation of applicable law.

Section 2.09 ***Mutilated, Destroyed, Lost and Stolen Notes.***

If any mutilated Note is surrendered to the Trustee, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in exchange therefor a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding. If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of written notice to the Company or the Trustee that such Note has been acquired by a protected purchaser, the Company shall execute, and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 2.09, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 2.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.09 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.10 ***Persons Deemed Owners.***

Subject to the rights of Holders as of the Regular Record Date to receive payments of interest on the related Interest Payment Date, prior to due presentment of a Note for registration of transfer, the Company, the Trustee, each Agent, and any of their respective agents may treat the Person in whose name such Note is registered in the Register as the owner of such Note for the purpose of receiving payment of the principal of such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, the Agents nor any of their respective agents shall be affected by notice to the contrary.

Section 2.11 ***Transfer and Exchange.***

(a) *Provisions Applicable to All Transfers and Exchanges*.

(i) Subject to the restrictions set forth in this Section 2.11, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

(ii) All Notes issued upon any registration of transfer or exchange in accordance with this Indenture will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(iii) No service charge will be imposed on any Holder of a Physical Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

(iv) Unless the Company and the Trustee specifies otherwise, none of the Company, the Trustee, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Note (A) that has been selected for redemption or (B) that has been surrendered for conversion or except to the extent any portion of such Note is not subject to the foregoing.

(v) Neither the Trustee nor any Agent will have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) *In General; Transfer and Exchange of Beneficial Interests in Global Notes.* So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law or by Section 2.11(c):

(i) all Notes will be represented by one or more Global Notes;

(ii) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depositary in accordance with the Applicable Procedures and the provisions of this Indenture (including the restrictions on transfer set forth in Section 2.07); and

(iii) each Global Note may be transferred only as a whole and only (A) by the Depositary to a nominee of the Depositary, (B) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary or (C) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(c) *Transfer and Exchange of Global Notes for Physical Notes*.

(i) Notwithstanding any other provision of this Indenture, each Global Note will be exchanged for Physical Notes if the Depositary delivers notice to the Company that:

(A) the Depositary is unwilling or unable to continue to act as Depositary; or

(B) the Depositary is no longer registered as a clearing agency under the Exchange Act or is otherwise no longer permitted under applicable law to continue as Depositary for such Global Note;

and, in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depositary within 90 days after receiving notice from the Depositary.

In each such case, the Company will, in accordance with Section 2.04, promptly execute, and, upon receipt of a Company Order, the Trustee will, in accordance with Section 2.04, promptly authenticate and deliver, for each beneficial interest in each Global Note so exchanged, an aggregate principal amount of Physical Notes equal to the aggregate principal amount of such beneficial interest, registered in such names and in such authorized denominations as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 2.07.

(ii) In addition, if an Event of Default has occurred with regard to the Notes represented by the relevant Global Note and such Event of Default has not been cured or waived, any owner of a beneficial interest in a Global Note may deliver a written request through the Depositary to exchange such beneficial interest for Physical Notes.

In such case, (A) the Registrar will deliver notice of such request to the Company and the Trustee, which notice will identify the aggregate principal amount of such beneficial interest and the CUSIP of the relevant Global Note; (B) the Company will, in accordance with Section 2.04, promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 2.04, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged by such owner, Physical Notes registered in such owner's name having an aggregate principal amount equal to the aggregate principal amount of such beneficial interest as the Depositary specifies, and bearing any legends that such Physical Notes are required to bear under Section 2.07; and (C) the Trustee, in accordance with the Applicable Procedures, will cause the principal amount of such Global Note to be decreased by the aggregate principal amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Note are so exchanged, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Trustee's customary procedures and the Applicable Procedures.

(d) *Transfer and Exchange of Physical Notes*.

(i) If Physical Notes are issued, a Holder may transfer a Physical Note by: (A) surrendering such Physical Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar; (B) if such Physical Note is a Restricted Note, delivering any documentation required by Section 2.07; and (C) satisfying all other requirements for such transfer set forth in this Section 2.09. Upon the satisfaction of conditions (A), (B) and (C) of the immediately preceding sentence, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 2.04, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Notes, of any authorized denomination, having like aggregate principal amount and bearing any restrictive legends that such Physical Notes are required to bear under Section 2.07.

(ii) If Physical Notes are issued, a Holder may exchange a Physical Note for other Physical Notes of any authorized denominations and aggregate principal amount equal to the aggregate principal amount of the Notes to be exchanged by surrendering such Notes, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02. Whenever a Holder surrenders Notes for exchange, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order and in accordance with Section 2.04, will promptly authenticate and deliver the Notes that such Holder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any legends that such Physical Notes are required to bear under Section 2.07.

(iii) Subject to Section 2.01 herein, if Physical Notes are issued, a Holder may transfer or exchange a Physical Note for a beneficial interest in a Global Note by (A) surrendering such Physical Note for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 5.02; (B) if such Physical Note is a Restricted Note, delivering any documentation required by Section 2.07; (C) satisfying all other requirements for such transfer set forth in this Section 2.11 and Section 2.09; (D) providing written instructions to the Trustee to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate principal amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depositary account to be credited with such increase and (E) complying with the Applicable Procedures to effect such transfer or exchange. Upon the satisfaction of conditions (A), (B), (C), (D) and (E) the Trustee will cancel such Physical Note in accordance with its customary procedures and cause, in accordance with the Applicable Procedures, the aggregate principal amount of Notes represented by such Global Note to be increased by the aggregate principal amount of such Physical Note, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging Holder in an amount equal to the aggregate principal amount of such Physical Note. If no Global Notes are then Outstanding, the Company, in accordance with Section 2.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order and in accordance with Section 2.04, will authenticate, a new Global Note in the appropriate aggregate principal amount.

Section 2.12 ***Purchase of Notes; Cancellation*****.**

The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), purchase Notes in the open market or by tender offer at any price or by private agreement. The Company will cause any Notes so purchased (other than Notes purchased pursuant to cash-settled swaps or other cash-settled derivatives) to be surrendered to the Trustee for cancellation. For the avoidance of doubt, any such Notes purchased by the Company will be retired and no longer Outstanding hereunder.

The Company shall deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold. Upon written request of the Company, the Trustee shall promptly cancel all Notes surrendered for registration of transfer, exchange, payment, purchase, repurchase, conversion or cancellation in accordance with its customary procedures and the Applicable Procedures (if applicable). If the Company shall acquire any of the Notes in any manner whatsoever, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation. The Notes so acquired, while held by or on behalf of the Company or any of its Subsidiaries, shall not entitle the Holder thereof to convert the Notes. The Company may not issue new Notes to replace Notes it has paid in full or delivered to the Trustee for cancellation.

The Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 2.10. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

Section 2.13 ***CUSIP Numbers*****.**

In issuing the Notes, the Company may use "CUSIP" numbers (if then generally in use); *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Notes, notice, or elsewhere and any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.14 ***Payment and Computation of Interest.***

The Notes will bear interest for each Interest Period at a rate of the Prime Rate for such Interest Period plus 9% per annum until the Maturity Date, unless earlier purchased or converted in accordance with the provisions herein. Interest on the Notes will accrue from the most recent date on which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, the date of original issuance of such Notes. Interest will be paid to the Person in whose name a Note is registered at the Close of Business on the Regular Record Date immediately preceding the relevant Interest Payment Date quarterly in arrears on each Interest Payment Date in connection with such quarterly interest payment (or, in the case of an Interest Payment Date in connection with a voluntary conversion, an Optional Redemption, the Holder converting its Notes or having its Notes redeemed, as applicable). Interest on the Notes shall be computed on the basis of a 360-day year and the actual number of days elapsed. The Company shall determine the Prime Rate on the Determination Date in respect of any Interest Period and will provide such interest rate in writing to the Trustee on such Determination Date (or, in the case of the initial Interest Period, on the date hereof). The Company will, upon the written request of any Holder, provide the interest rate the in effect with respect to the Notes. The Trustee may conclusively and without liability rely on the Company's determination of the interest rate and shall have no liability or responsibility for the Company's failure to provide the interest rate on the Determination Date or for any failure or delay in performing its duties hereunder as a result of such failure. The interest rate and amount of interest to be paid on the Note for each Interest Period shall be calculated by the Company. All calculations made by the Company shall, in the absence of manifest error, be conclusive for all purposes and binding on the Trustee and the Holders. All percentages resulting from any calculation of the interest rate on the Notes shall be rounded to the nearest one hundred-thousandth of a percentage point with five one millionths of a percentage point rounded upwards (e.g., 9.876545% (or .09876545) would be rounded to 9.87655% (or .0987655)), and all dollar amounts used in or resulting from such calculation on the Notes be rounded to the nearest cent (with one-half cent being rounded upward). Notwithstanding the foregoing, in the event that a Holder converts all or a portion of its Notes, or has all or a portion of its Notes redeemed after the Close of Business on the Regular Record Date and prior to the Interest Payment Date in connection with a quarterly payment of Interest, the Interest payable on the Notes shall be reduced by such amount previously paid to such Holder for the portion of its Notes converted or redeemed.

The Company will pay Additional Interest under certain circumstances as provided in Section 5.08 and 6.03.

Each payment (including any payment made in connection with a redemption) in cash by the Company on account of the principal of and interest on and premium, if any on the Notes, shall be applied to the applicable Notes pro rata according to the outstanding principal amount (subject to any adjustment needed to maintain the minimum denominations of the Notes), unless otherwise expressly provided in the case of any partial redemption. Except as expressly provided herein, all payments (including any payment made in connection with a redemption) to be made by the Company on account of principal, interest, premium, if any, and fees shall be made without set off or counterclaim and all payments made in cash shall be made to the Trustee, in each case on or prior to 10:00 A.M., New York time, in U.S. Dollars and in immediately available funds.

Section 2.15 ***Cash or PIK Interest.***

The Company shall pay all interest due on the Notes in cash on the then outstanding principal amount of the Notes, or at the option of the Company in kind ("**PIK Interest**") on the then outstanding principal amount of the Notes (as such amount is increased or deemed to have been increased by any PIK Interest) (a "**PIK Payment**") by (a) in the case of interest on any Global Note, increasing the principal amount of such Global Note, rounded up to the nearest whole dollar and (b) with respect to a Physical Note, issuing to the Holder of such Physical Note an additional Physical Note, the principal amount of which shall be rounded up to the nearest whole dollar (a "**PIK Interest Note**"). At least five Business Days prior to the applicable Regular Record Date ("**Interest Notice Period**"), the Company shall deliver to the Holders (with a copy to the Trustee) a written notice in the form of Exhibit F of its election to pay interest hereunder on the applicable Interest Payment Date either in cash, in PIK Interest Notes or a combination thereof as to the applicable Interest Payment Date, provided that the Company may indicate in such notice that the election contained in such notice shall apply to future Interest Payment Dates until revised by a subsequent notice. During any Interest Notice Period, the Company's election (whether specific to an Interest Payment Date or continuous) shall be irrevocable as to such Interest Payment Date. Subject to the aforementioned conditions, failure to timely deliver such written notice to the Holders shall be deemed an election by the Company to pay the interest on such Interest Payment Date in PIK Interest. Notwithstanding anything herein to the contrary, for the initial Interest Payment Date and until notice is provided to the contrary, the Company elects to pay PIK Interest and no additional notice shall be required in connection with such election.

With respect to the payment of any PIK Interest, the Company shall deliver to the Trustee no later than five Business Days prior to the applicable Interest Payment Date, (a) with respect to Physical Notes, certificates representing the required amount of new Physical Notes (rounded up to the nearest whole dollar) and a Company Order for authentication and delivery of such PIK Interest Notes on the relevant Interest Payment Date, and the Trustee in accordance with such Company Order shall authenticate and deliver the PIK Interest Notes, or (b) with respect to Global Notes, unless prohibited by the procedures of the Depositary, a Company Order to increase the principal amount of the outstanding Global Note as of the Regular Record Date for the applicable Interest Payment Date, by an amount equal to the amount of interest payable for the applicable Interest Payment Date (rounded up to the nearest whole dollar), and an adjustment shall be made on the books and records of the Custodian to reflect such increase. Notwithstanding anything to the contrary, the Company shall not be required to deliver to the Trustee an Officer's Certificate or Opinion of Counsel in connection with the issuance of any PIK Interest Notes or any increase in principal amount of a Global Note as a result of any PIK Payment.

Any PIK Interest Note shall, after being executed and authenticated pursuant to Section 2.04 hereof, be mailed or delivered via overnight courier to the Person entitled thereto as shown on the register for the Physical Notes as of the relevant Regular Record Date. The Company will make PIK Payments on Global Notes held by the Depositary or its nominee, to the Depositary or its nominee, as the case may be, as the registered holder of such Global Note. The Trustee shall be permitted to use the U.S. postal service or overnight carriers to transmit Physical Notes and shall be not liable for any items lost or damages in transit.

Any PIK Payment shall be considered paid on the date it is due (a) if PIK Interest Notes have been issued therefor, such PIK Interest Notes have been executed by the Company and authenticated by the Trustee on the date the payment is due in accordance with the terms of this Indenture and (b) if the PIK Payment is made by increasing the principal amount of Global Notes then authenticated, the Company has delivered the Company Order required by this Section 2.15 and the Trustee has increased the principal amount of Global Notes then authenticated by the relevant amount on the date the payment is due.

ARTICLE 3

[RESERVED]

ARTICLE 4
CONVERSION

Section 4.01 ***Right to Convert.***

(a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, to convert all or any portion of its Notes (if a portion, such that the principal amount of such Notes converted equals $1.00 or an integral multiple of $1.00) at an initial Conversion Rate of 86.95652173913043 shares of Common Stock per $1,000 of the sum of the aggregate principal amount of Notes, plus all accrued interest thereon and the Make-Whole Amount related thereto into the Settlement Amount determined in accordance with Section 4.03(a)(ii) at any time until the Close of Business on the second Business Day immediately preceding the stated Maturity Date; *provided* that the portion of the principal amount of a Holder's Notes, plus all accrued interest thereon and any Make-Whole Amount related thereto, to be converted must be such that the principal amount of the Notes not converted equals $1.00 or an integral multiple of $1.00.

(b) (i) If the Company elects to issue or distribute, as the case may be, to all or substantially all holders of the Common Stock (x) any rights, options or warrants entitling them to subscribe for or purchase, for a period expiring within 45 calendar days after the declaration date for such issuance, shares of the Common Stock, at a price per share that is less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the declaration date for such issuance; or (y) cash, debt securities (or other evidence of indebtedness) or other assets or securities (excluding dividends or distributions in respect of which an adjustment to the Conversion Rate is made pursuant to Section 4.04(a)), which distribution has a per share value exceeding 10% of the Closing Sale Price of the Common Stock as of the Trading Day immediately preceding the declaration date for such distribution, then, in either case, the Company must deliver notice of such distribution, and of the Ex-Dividend Date for such distribution, to the Holders (with a copy to the Trustee and Conversion Agent) at least 30 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution.

(ii) If a transaction or event that constitutes a Fundamental Change occurs, to the extent practicable, the Company shall give notice to Holders (with a copy to the Trustee and Conversion Agent) of the anticipated effective date for such transaction or event not more than 50 Scheduled Trading Days nor less than 30 Scheduled Trading Days prior to the anticipated effective date or, if the Company does not have knowledge of such transaction or event at least 30 Scheduled Trading Days prior to the anticipated effective date, within two Business Days of the date upon which the Company receives notice, or otherwise becomes aware of such transaction or event (but in no event later than the actual effective date of such transaction or event). Neither the Trustee nor the Conversion Agent shall have any obligation (x) to determine whether the condition described in this Section 4.01(b)(ii) has occurred or (y) to verify the Company's determination regarding such condition.

(iii) If the Company is a party to a consolidation, merger or binding share exchange or a sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Company's property and assets that does not also constitute a Fundamental Change, in each case pursuant to which the Common Stock would be converted into cash, securities or other property, the Company shall notify Holders (with a copy to the Trustee and Conversion Agent) at least 30 Scheduled Trading Days prior to the anticipated effective date of such transaction. Neither the Trustee nor the Conversion Agent shall have any obligation (x) to determine whether the condition described in this Section 4.01(b)(iii) has occurred or (y) to verify the Company's determination regarding such condition. For the avoidance of doubt, any references to Common Stock described in this Section 4.01, including those in Section 4.01(c), shall give effect to, among other things, the provisions of Section 4.07.

(c) Notwithstanding anything herein to the contrary:

(i) The Company shall not effect any conversion of a Note to Common Stock to the extent that, after giving effect to such conversion, ownership of shares of Common Stock owned by the Holder, or such Holder together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (any such person other than Holder, including any group of which Holder is a member, an "**Additional Restricted Ownership Person**"), would beneficially own in excess of the Restricted Ownership Percentage (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and any Additional Restricted Ownership Person shall include the number of shares of Common Stock issuable upon conversion of the sum of the principal amount of Notes plus accrued interest thereon plus any Make-Whole Amount applicable thereto with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted principal amount of Notes plus accrued interest thereon plus any Make-Whole Amount applicable thereto beneficially owned by such Holder or any Additional Restricted Ownership Person and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by such Holder or any Additional Restricted Ownership Person. Except as set forth in the preceding sentence, for purposes of this Section 4.01(c), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(ii) To the extent that the limitation contained in this Section 4.01(c)(i) applies, the determination of whether the Notes are convertible (in relation to other securities owned by such Holder together with any Additional Restricted Ownership Person) and of how much principal amount of Notes (plus accrued interest thereon plus any Make-Whole Amount related thereto) are convertible shall be in the sole discretion of such Holder, and the submission of a Conversion Notice shall be deemed to be such Holder's determination of whether the applicable Notes may be converted (in relation to other securities owned by such Holder together with any Additional Restricted Ownership Person) and how much principal amount of Notes (plus accrued interest and any Make-Whole related thereto) are convertible, in each case subject to the Restricted Ownership Percentage. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Conversion Notice that, to its knowledge, such Conversion Notice has not violated the restrictions set forth in this paragraph and neither the Trustee nor the Conversion Agent shall have any obligation to verify or confirm the accuracy of such determination. In addition, 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 4.01(c), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the transfer agent for the Company's Common Stock setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to such Holder 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, including the Notes, by such Holder or its Additional Restricted Ownership Persons since the date as of which such number of outstanding shares of Common Stock was reported.

(iii) The "**Restricted Ownership Percentage**" for each Holder shall initially be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Notes held by the applicable Holder. A Holder may (i) increase the Restricted Ownership Percentage applicable to its Notes upon not less than 61 days' prior written notice to the Company, or (ii) decrease the Restricted Ownership Percentage applicable to its Notes effective immediately upon written notice to the Company; *provided*, *however*, that (x) no Holder shall be entitled to effect any increase in the Restricted Ownership Percentage applicable to its Notes if such Holder or any Additional Restricted Ownership Person has acquired beneficial ownership of Notes or any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein with the purpose or effect of changing or influencing the control of the Company and (y) the Restricted Ownership Percentage shall in no event exceed 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Notes held by the applicable Holder. Any such increase will not be effective until the 61st day after such notice is delivered to the Company and any such increase or decrease shall only apply to such Holder and no other Holder.

(iv) The Company shall use commercially reasonable best efforts (which shall include, without limitation, the engagement of a nationally reputable proxy advisor firm acceptable to the Holders) to obtain at its next annual or special meeting of its stockholders following the date of this Indenture such approval of its stockholders as is necessary under the rules or regulations of the Exchange to permit each Holder and/or Additional Restricted Ownership Person to beneficially own shares of Common Stock without being subject to the Nasdaq Change of Control Cap (the "**Nasdaq Change of Control Approval**" and the date of the first meeting of the Company's stockholders after the date hereof at which the Nasdaq Change of Control Approval is voted upon, the "**Initial Stockholder Meeting Date**"). In the event that the Nasdaq Change of Control Approval is not obtained on or before October 31, 2022, the Company shall use commercially reasonable best efforts to obtain the Nasdaq Change of Control Approval at a subsequent annual or special meeting of its stockholders to be held each calendar quarter thereafter until Nasdaq Change of Control Approval is obtained; *provided*, *however* that the Company shall only be required to engage a proxy advisor firm with respect to one of the subsequent meetings of the Company's stockholders after the Initial Stockholder Meeting Date, which meeting shall be determined by Holders of a majority in aggregate principal amount of the outstanding Notes and notice of such determination shall be provided in writing and delivered to the Company and the Trustee.

Section 4.02 ***Conversion Procedures*****.**

(a) Each Physical Note shall be convertible at the office of the Conversion Agent and, if applicable, Global Notes shall be convertible in accordance with the Applicable Procedures.

(b) To exercise the conversion privilege with respect to a beneficial interest in a Global Note, the Holder must comply with the Applicable Procedures for converting a beneficial interest on a Global Note and pay any taxes or duties if required pursuant to Section 4.02(f), and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depositary.

To exercise the conversion privilege with respect to any Physical Notes, the Holder of such Physical Notes shall:

(i) duly sign and complete a conversion notice in the form set forth in the Form of Notice of Conversion (the "**Conversion Notice**") or a facsimile of the Conversion Notice;

(ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay all transfer or similar taxes as set forth in Section 4.02(f).

If the Conversion Notice is being delivered on a date after the Close of Business on a Regular Record Date and prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, the Conversion Notice must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of the Note to be converted.

If, upon conversion of a Note, any shares of Common Stock are to be issued to a Person other than the Holder of such Note, the related Conversion Notice shall include such other Person's name and address.

For any Note, the date on which the Holder of such Note satisfies all of the applicable requirements set forth above with respect to such Note shall be the "**Conversion Date**" with respect to such Note.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion immediately prior to the Close of Business on the applicable Conversion Date; *provided*, *however*, that except to the extent required by Section 4.04, the person in whose name any shares of Common Stock shall be issuable upon conversion, if any, shall be treated as a stockholder of record as of the Close of Business on the Conversion Date in a Physical Settlement. For the avoidance of doubt, subject to the satisfaction by the Company of each of its obligations in connection with such conversion and any other conditions set forth in this Indenture, at the Close of Business on the Conversion Date for such conversion, the applicable Holder shall no longer be the Holder of the Notes so converted.

(c) *Endorsement*. Any Notes surrendered for conversion shall, unless shares of Common Stock issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or its duly authorized attorney.

(d) *Physical Notes*. If any Physical Notes in a denomination greater than $1.00 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Physical Notes so surrendered, without charge, new Physical Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Physical Notes.

(e) *Global Notes*. Upon the conversion of a beneficial interest in Global Notes, the Conversion Agent shall make a notation in its records as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) *Taxes Due upon Conversion*. If a Note is converted, the Company will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the conversion, unless the tax is due because the Holder requests that any shares be issued in a name other than the Holder's name, in which case the Holder will pay that tax.

Section 4.03 *Settlement Upon Conversion*.

(a) *Settlement*. Subject to this Section 4.03 and Sections 4.01(c), 4.06 and 4.07, upon conversion of any Note, the Company shall deliver to Holders, in full satisfaction of its conversion obligation under Section 4.01, in respect of each $1,000 of the sum of the principal amount of Notes plus accrued interest plus the Make-Whole Amount related thereto being converted, a Settlement Amount consisting solely of shares of Common Stock (together with cash in lieu of any fractional share of Common Stock pursuant to Section 4.03(b)) ("**Physical Settlement**").

(i) *Settlement Amount*. The shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows: the Company shall deliver to the Holder of the Notes so converting, in respect of each $1,000 of the sum of the principal amount of its Notes plus accrued interest plus the Make-Whole Amount related thereto being converted, a number of shares of Common Stock equal to the applicable Conversion Rate, together with cash in lieu of any fractional shares of Common Stock pursuant to Section 4.03(b);

(ii) *Delivery Obligation*. The Settlement Amounts upon conversion of the Notes will delivered by the Company through the Company's stock transfer agent, in the case of Common Stock or the Conversion Agent, in the case of cash. The Company shall pay or deliver the Settlement Amount due in respect of its conversion obligation under this Section 4.03, on the second Trading Day immediately following the relevant Conversion Date; *provided*, *however*, that if prior to the Conversion Date for any converted Notes, the Common Stock has been replaced by Reference Property consisting solely of cash, the Company will pay the conversion consideration due in respect of such conversion on the third Trading Day immediately following the related Conversion Date, and, notwithstanding the foregoing in this Section 4.03, no Conversion Period will apply to those conversions.

(b) *Fractional Shares*. Notwithstanding the foregoing, the Company will not issue fractional shares of Common Stock as part of the Settlement Amount due with respect to any converted Note. Instead, if any Settlement Amount includes a fraction of a share of the Common Stock, the Company will, in lieu of delivering such fraction of a share of Common Stock, pay an amount of cash equal to the product of such fraction of a share and the Daily VWAP on the relevant Conversion Date, or if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day.

(c) *Conversion of Multiple Notes by a Single Holder*. If a Holder surrenders more than one Note for conversion on a single Conversion Date, the Company will calculate the amount of cash and the number of shares of Common Stock due with respect to such Notes as if such Holder had surrendered for conversion one Note having an aggregate principal amount equal to the sum of the principal amounts of each of the Notes surrendered for conversion by such Holder on such Conversion Date or, if the Notes surrendered for conversion are beneficial interests in a Global Note, based on such other aggregate number of Notes, or beneficial interests therein, being surrendered by the Holder for conversion on the same date as the Depositary may otherwise request.

(d) *Settlement of Accrued Interest and Deemed Payment of Principal*. If a Note is converted, the Company will adjust the Conversion Rate to account for any accrued and unpaid interest on such Note plus any Make-Whole Amount related to such Note, and the Company's delivery of shares of Common Stock into which a Note is convertible must be in an amount of shares of Common Stock (plus cash in lieu of fractional shares of Common Stock) necessary to satisfy and discharge in full the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, and any Make-Whole Amount, if any, on, such Note to, but excluding, the Conversion Date. As a result any accrued and unpaid interest and Make-Whole Amount with respect to a converted Note paid with shares of Common Stock (and cash in lieu of fractional shares of Common Stock) as required by this Article 4 will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, accrued but unpaid interest will be deemed to be paid first out of the delivery of Common Shares (and cash in lieu of fractional shares of Common Stock) delivered upon such conversion, then the Make-Whole Amount will be deemed paid, then principal.

(e) *Notices*. Whenever a Conversion Date occurs with respect to a Note, the Conversion Agent will, as promptly as possible, and in no event later than the Business Day immediately following such Conversion Date, deliver to the Company and the Trustee, if it is not then the Conversion Agent, written notice that a Conversion Date has occurred, which notice will state such Conversion Date, the principal amount of Notes, accrued interest and Make-Whole Amount converted on such Conversion Date and the names of the Holders that converted Notes on such Conversion Date.

Section 4.04 ***Adjustment of Conversion Rate*****.**

The Conversion Rate will be adjusted as described in this Section 4.04, except that no adjustment to the Conversion Rate will be made for a given transaction if Holders of the Notes will participate in that transaction, without conversion of the Notes, on the same terms and at the same time as a holder of a number of shares of Common Stock equal to the principal amount of a Holder's Notes plus accrued interest thereon plus the Make-Whole Amount divided by $1,000 and multiplied by the Conversion Rate would participate.

(a) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company subdivides or combines the Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR = the Conversion Rate in effect immediately prior to the Open of Business on such Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable;

CR_0 = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately after the Open of Business on the effective date of such share split or combination, as applicable;

OS = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or combination, as applicable; and

OS_0 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or immediately after the effective date of such subdivision or combination of common stock, as the case may be.

Any adjustment made under this clause (a) will become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution (regardless of whether the dividend or distribution date is scheduled to occur after the Maturity Date), or immediately after the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be. If such dividend, distribution, subdivision or combination described in this clause (a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors or a duly authorized committee thereof determines not to pay such dividend or distribution or to effect such subdivision or combination, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or subdivision or combination had not been announced.

(b) If an Ex-Dividend Date occurs for a distribution to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days from the announcement date for such distribution, to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Open of Business on such Ex-Dividend Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution.

Any increase made under this clause (b) will be made successively whenever any such rights, options or warrants are issued and will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution, regardless of whether the distribution date is scheduled to occur after the Maturity Date. To the extent that such rights, options or warrants expire prior to the Maturity Date and shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants were scheduled to be distributed prior to the Maturity Date and are not so distributed, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if the Ex-Dividend Date for such distribution had not occurred.

For purposes of this Section 4.04(b) and Section 4.01(b)(i), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price that is less than the average of the Closing Sale Prices of the Common Stock for each Trading Day in the applicable 10 consecutive Trading-Day period, there shall be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be determined in good faith by the Board of Directors or a duly authorized committee thereof.

(c) If an Ex-Dividend Date occurs for a distribution (the "**Relevant Distribution**") of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other assets or property of the Company's or rights, options or warrants to acquire the Company's Capital Stock or other securities, to all or substantially all holders of Common Stock (excluding (i) dividends or distributions and rights, options or warrants as to which an adjustment was effected under clause (a) or (b) above; (ii) dividends or distributions paid exclusively in cash; and (iii) Spin-Offs), then the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date for such distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day-period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Board of Directors or a duly authorized committee thereof) of the shares of Capital Stock, evidences of indebtedness, assets or property or rights, options or warrants distributed with respect to each outstanding share of Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

Any increase made under the above portion of this clause (c) will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if such distribution is scheduled to be paid or made prior to the Maturity Date and is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 of the sum of the principal amount thereof plus accrued and unpaid interest plus the Make-Whole amount related thereto, at the same time and upon the same terms as holders of the Common Stock, without having to convert its Notes, the amount and kind of the Relevant Distribution that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

With respect to an adjustment pursuant to this clause (c) where there has been an Ex-Dividend Date for a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such Spin-Off;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such Spin-Off;

FMV_0 = the average of the Closing Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first 10 consecutive Trading-Day period commencing on, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"); and

MP_0 = the average of the Closing Sale Prices of Common Stock over the Valuation Period.

The adjustment to the applicable conversion rate under the preceding paragraph of this clause (c) will be determined on the last day of the Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references within this clause (c) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last VWAP Trading Day of such Conversion Period. In respect of any conversion during the Valuation Period for any Spin-Off, references within this clause (c) related to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the relevant Conversion Date.

For purposes of the second adjustment formula set forth in this Section 4.04(c), (i) the Closing Sale Price of any Capital Stock or similar equity interest shall be calculated in a manner analogous to that used to calculate the Closing Sale Price of the Common Stock in the definition of "Closing Sale Price" set forth in Section 1.01, (ii) whether a day is a Trading Day (and whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for such Capital Stock or similar equity interest shall be determined in a manner analogous to that used to determine whether a day is a Trading Day (or whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for the Common Stock, and (iii) whether a day is a Trading Day to be included in a Valuation Period will be determined based on whether a day is a Trading Day for both the Common Stock and such Capital Stock or similar equity interest.

Subject to Section 4.04(g), for the purposes of this Section 4.04(c), rights, options or warrants distributed to all or substantially all holders of the Common Stock entitling them to acquire the Company's Capital Stock or other securities, (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"): (1) are deemed to be transferred with such shares of Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of Common Stock (including, for the avoidance of doubt, upon settlement of conversions of Notes), shall be deemed not to have been distributed for purposes of this Section 4.04(c) (and no adjustment to the Conversion Rate under this Section 4.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.04(c). If any such rights, options or warrants, distributed prior to the Issue Date are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.04(c) was made, (1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any Holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of Sections 4.04(a) through (c), if any dividend or distribution to which this Section 4.04(c) applies includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 4.04(a) also applies (the "**Clause A Distribution**"); or

(B) an issuance of rights, options or warrants entitling holders of the Common Stock to subscribe for or purchase shares of the Common Stock to which Section 4.04(b) also applies (the "**Clause B Distribution**"),

then (i) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a distribution to which this Section 4.04(c) applies (the "**Clause C Distribution**") and any Conversion Rate adjustment required to be made under this Section 4.04(c) with respect to such Clause C Distribution shall be made, (ii) the Clause B Distribution, if any, shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.04(b) with respect thereto shall then be made, except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause B Distribution and the Clause A Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (B) any shares of Common Stock included in the Clause A Distribution or the Clause B Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date" within the meaning of Section 4.04(b), and (iii) the Clause A Distribution, if any, shall be deemed to immediately follow the Clause C Distribution or the Clause B Distribution, as the case may be, except that, if determined by the Company, (A) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution, if any, shall be deemed to be the Ex-Dividend Date of the Clause C Distribution, and (B) any shares of Common Stock included in the Clause A Distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date or such effective date" within the meaning of Section 4.04(a).

(d) If an Ex-Dividend Date occurs for a cash dividend or distribution to all, or substantially all, holders of the outstanding Common Stock (other than any dividend or distribution in connection with the Company's liquidation, dissolution or winding up), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share that the Company pays or distributes to substantially all holders of the Common Stock.

Any increase made under this clause (d) shall become effective immediately after the Open of Business on the Ex-Dividend date for such dividend or distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if any dividend or distribution described in this clause (d) is scheduled to be paid or made prior to the Maturity Date but is not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 of the sum of the principal amount of Notes plus accrued and unpaid interest thereon plus the Make-Whole Amount related thereto, at the same time and upon the same terms as holders of shares of the Common Stock, without having to convert its Notes, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the applicable Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock, and if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Offer Expiration Date**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where,

CR = the Conversion Rate in effect immediately after the Open of Business on the Trading Day next succeeding the Offer Expiration Date;

CR_0 = the Conversion Rate in effect immediately prior to the Open of Business on the Trading Day next succeeding the Offer Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors or a duly authorized committee thereof) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "**Offer Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Offer Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the Offer Expiration Date.

The adjustment to the Conversion Rate under the preceding paragraph of this clause (e) will be determined at the Close of Business on the tenth Trading Day immediately following, but excluding, the Offer Expiration Date but will be given effect at the Open of Business on the Trading Day next succeeding the Offer Expiration Date. If the Trading Day next succeeding the Offer Expiration Date is less than 10 Trading Days prior to, and including, the end of the Conversion Period in respect of any conversion, references within this clause (e) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Offer Expiration Date to, and including, the last VWAP Trading Day of such Conversion Period. In respect of any conversion during the 10 Trading Days commencing on the Trading Day next succeeding the Offer Expiration Date, references within this clause (e) to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Offer Expiration Date to, but excluding, the relevant Conversion Date. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate.

(f) *Special Settlement Provisions*. Notwithstanding anything to the contrary herein, if a Note is converted and:

(i) any distribution, transaction or event described in Sections 4.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on such VWAP Trading Day; and

(ii) the shares of Common Stock deliverable in respect of such VWAP Trading Day are not entitled to participate in the relevant distribution or transaction (because such shares of Common Stock were not held on a related Record Date or otherwise),

then the Company will adjust the number of shares of Common Stock delivered in respect of the relevant VWAP Trading Day to reflect the relevant distribution or transaction.

If a Note is converted and:

(i) Physical Settlement is applicable to such Note;

(ii) any distribution or transaction described in Sections 4.04(a) through (e) has not yet resulted in an adjustment to the Conversion Rate on a given Conversion Date; and

(iii) the shares of Common Stock deliverable on settlement of the related conversion are not entitled to participate in the relevant distribution or transaction (because such shares of Common Stock were not held on a related Record Date or otherwise),

then the Company will adjust the number of shares of Common Stock delivered in respect of the relevant conversion to reflect the relevant distribution or transaction.

Notwithstanding the foregoing, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date as described above, and a Holder of Notes that has converted on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of shares of Common Stock as of the related Conversion Date pursuant to Section 4.03 based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the foregoing Conversion Rate adjustment provisions, the Conversion Rate adjustment relating to such Ex-Dividend Date will not be made for the Holder of such converting Notes. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) *Poison Pill*. If a Note is converted, to the extent that the Company has a rights plan in effect on the Conversion Date applicable to such Note, the Holder of such converting Note will receive, in addition to any shares of Common Stock otherwise received in connection with such conversion on such Conversion Date or such VWAP Trading Day, as the case may be, the rights under the rights plan, unless prior to such Conversion Date or such VWAP Trading Day, as the case may be, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of the Common Stock, Distributed Property as described in Section 4.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(h) *Deferral of Adjustments*. Notwithstanding anything to the contrary herein, the Company will not be required to adjust the Conversion Rate unless such adjustment would result in a change of at least one percent; *provided, however*, that the Company shall carry forward any adjustments that are less than one percent of the Conversion Rate and make such carried forward adjustments (i) when the cumulative net effect of all adjustments not yet made will result in a change of at least one percent of the Conversion Rate or (ii) regardless of whether the aggregate adjustment is less than one percent, (1) upon any offer to purchase the Notes following a Fundamental Change, (2) on each of the VWAP Trading Days within any Conversion Period, (3) upon any conversion of Notes and (4) on the Effective Date for any Fundamental Change.

(i) *Limitation on Adjustments*. Except as stated in this Section 4.04, the Company will not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. If, however, the application of the formulas in Sections 4.04(a) through (e) would result in a decrease in the Conversion Rate, then, except to the extent of any readjustment to the Conversion Rate, no adjustment to the Conversion Rate will be made (other than as a result of a reverse share split or share combination).

For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 4.05 ***Discretionary and Voluntary Adjustments*****.**

(a) *Discretionary Adjustments*. Whenever any provision of this Indenture requires the Company to calculate the Closing Sale Prices, the Daily VWAPs or any function thereof over a span of multiple days (including during an Conversion Period), the Company will make appropriate adjustments to each, if any, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the effective date, Ex-Dividend Date or Offer Expiration Date of the event occurs, at any time during the period when such Closing Sale Prices, the Daily VWAPs or function thereof is to be calculated.

(b) *Voluntary Adjustments*. To the extent permitted by law and any applicable rules of the Exchange, the Company is permitted to increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days if such increase is irrevocable for such period and the Board of Directors determines that such increase would be in the Company's best interest; *provided* that the Company must give at least 15 days' prior notice of any such increase in the Conversion Rate to the Holders (with a copy to the Trustee and Conversion Agent). The Company may also (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

Section 4.06 ***Subsequent Financing Adjustments***

If the Company or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire shares of Common Stock at an effective price per share that is lower than the then Conversion Price (such lower price, the "**Base Conversion Price**" and such issuances, collectively, a "**Dilutive Issuance**") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is lower than the Conversion Price then in effect, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then simultaneously with the consummation (or, if earlier, the announcement) of each Dilutive Issuance, the Conversion Rate shall be adjusted in order to reduce and only reduce the Conversion Price to equal the Base Conversion Price, provided that the Base Conversion Price shall not be less than $5.50 (subject to adjustment for reverse and forward stock splits, recapitalizations and similar transactions following the date of the Purchase Agreement). Notwithstanding the foregoing, no adjustment will be made under this Section 4.06 in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holders in writing (with a copy to the Trustee and Conversion Agent), no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 4.06, indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "**Dilutive Issuance Notice**"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 4.06, upon the occurrence of any Dilutive Issuance, the Holders are entitled to receive a number of shares of Common Stock upon conversion of Notes based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether such Holder accurately refers to the Base Conversion Price in the Conversion Notice.

Section 4.07 ***Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.***

(a) *Merger Events*. In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a split, subdivision or combination for which an adjustment was made pursuant to Section 4.04(a));

(ii) any consolidation, merger, combination, binding share exchange or similar transaction involving the Company;

(iii) any sale, assignment, conveyance, transfer, lease or other disposition to a third party of the consolidated property and assets of the Company as an entirety or substantially as an entirety; or

(iv) a liquidation or dissolution of the Company;

and, in each case, as a result of which the Common Stock would be converted into, or exchanged for, common stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**," any such common stock, other securities, other property or assets (including cash or any combination thereof), "**Reference Property**," and (i) the amount and kind of Reference Property that a holder of one share of Common Stock is entitled to receive in the applicable Merger Event, or (ii) if as a result of the applicable Merger Event, each share of Common Stock is converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the per share of Common Stock weighted average of the amounts and kinds of Reference Property received by the holders of Common Stock that affirmatively make such an election (disregarding, for these purposes, any arrangement to deliver cash in lieu of any fractional security or other unit of Reference Property), a "**Unit of Reference Property**") then, at the effective time of such Merger Event, Holders of each $1,000 principal amount of Notes shall be entitled thereafter to convert such Notes plus accrued interest thereon plus the Make-Whole Amount related thereto into the kind and amount of Reference Property that a Holder of a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to such Merger Event would have owned or been entitled to receive upon such Merger Event, and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing person, as the case may be, shall execute with the Trustee a supplemental indenture providing for such change in the right to convert each $1,000 principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount; *provided*, *however*, that at and after the effective time of the Merger Event, (y) (i) the number of shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 4.03 and 4.06 shall instead be deliverable in Units of Reference Property that a Holder of that number of shares of Common Stock would have received in such Merger Event and (ii) the Daily VWAP and the Closing Sale Price will, to the extent reasonably possible, be calculated based on the value of a Unit of Reference Property and the definitions of VWAP Trading Day and VWAP Market Disruption Event shall be determined by reference to the components of a Unit of Reference Property. The Company shall notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 4.07. Such supplemental indenture described in the immediately preceding paragraph shall provide for adjustments which shall be as nearly equivalent to the adjustments provided for in this Article 4 in the judgment of the Board of Directors or the board of directors of the successor person. If, in the case of any such Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a person other than the successor or purchasing person, as the case may be, in such Merger Event, then such indenture shall also be executed by such other person.

If the Notes become convertible into, or exchanged for Reference Property, the Company shall notify the Trustee and the Conversion Agent, and shall issue a press release containing the relevant information (and make such press release available on the Company's website).

(b) *Notice of Supplemental Indentures*. The Company shall cause written notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Notes maintained by the Registrar, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 4.07 shall similarly apply to successive Merger Events.

(c) *Prior Notice*. In addition, at least 20 Scheduled Trading Days before any Merger Event, the Company shall give notice to Holders of such Merger Event (with a copy to the Trustee and Conversion Agent), or, if the Company has not publicly announced such Merger Event at such time, as promptly as practicable after publicly announcing such Merger Event. In any such notice, the Company shall also specify the composition of the Unit of Reference Property for such Merger Event, or, if the Company has not determined the composition of such Unit of Reference Property at such time, the Company will provide an additional written notice to Holders (with a copy to the Trustee and Conversion Agent) that states the composition of such Unit of Reference Property as promptly as practicable after determining its composition.

(d) *Cash Mergers*. Notwithstanding anything to the contrary herein, if the consideration paid to holders of the Common Stock in any Merger Event is comprised entirely of cash, then, for any conversion of Notes following such Merger Event, (i) the consideration due upon the conversion of each $1,000 of the sum of the principal amount of Notes plus accrued interest thereon plus the Make-Whole Amount shall be solely in cash in an amount equal to the Conversion Rate in effect on the Conversion Date (including any adjustment as set forth in Section 4.06), multiplied by the price paid per share of Common Stock in such Merger Event and (ii) the Company's conversion obligation will be determined and paid to Holders in cash on the third Business Day following the applicable Conversion Date.

Section 4.08 *Certain Covenants*.

(a) *Reservation of Shares*. The Company shall reserve and keep available at all times from and after the Initial Issue Date, free from preemptive rights, out of its authorized but unissued Common Stock that is not committed for any other purpose, a number of shares of Common Stock at least equal to the product of (i) the number of Notes then outstanding multiplied by (ii) the maximum Conversion Rate of 360.0334 shares of Common Stock, for the purpose of satisfying conversions of the Notes, which shall be sufficient to satisfy conversions of all Outstanding Notes through Physical Settlement.

(b) *Certain other Covenants*. The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be issued in book-entry form, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder or due to a change in registered owner). The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 4.09 *Responsibility* of *Trustee*.

The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate (or any adjustment thereto), to determine whether any facts exist which may require any adjustment (including any increase) of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any Conversion Agent (if other than the Company) shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, monitoring the Company's stock trading price or of any other securities or property or cash that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent (if other than the Company) make no representations with respect thereto. Neither the Trustee nor any Conversion Agent (if other than the Company) shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 4. Without limiting the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 4.07, relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by the Holders upon conversion of their Notes after any event referred to in such Section 4.07 or to any adjustment to be made with respect thereto, but may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Officer's Certificate (which the Company shall be obligated to deliver to the Trustee prior to the execution of any such supplemental indenture. Neither the Trustee nor any Conversion Agent shall be responsible for determining whether any event contemplated by this Article 4 has occurred that makes the Notes eligible for conversion or no longer eligible therefore until the Company has delivered to the Trustee and the Conversion Agent any requisite notices referred to in this Article 4 with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to delivery such notices to the Trustee and the Conversion Agent as provided for in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Conversion Agent.

Section 4.10 *Notice of Adjustment*.

Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent (if other than the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee (and the Conversion Agent, if different than the Trustee) shall have received such Officer's Certificate, the Trustee (and the Conversion Agent, if different than the Trustee) shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall (i) issue a press release and make the press release available on the Company's website and (ii) prepare a notice of such adjustment of the Conversion Rate, in each case, setting forth the adjusted Conversion Rate and the date as of which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to the Holder of each Note (with a copy to the Trustee and Conversion Agent) at his or her last address appearing on the Register provided for in Section 2.06 of this Indenture, within 20 days after execution thereof. Failure to issue such press release or deliver such notice shall not affect the legality, effectiveness or validity of any such adjustment and shall not be an Event of Default under this Indenture.

Section 4.11 ***Notice to Holders.***

(a) *Notice to Holders Prior to Certain Actions*. The Company shall deliver notices of the events specified below at the times specified below and containing the information specified below unless, in each case, (i) pursuant to this Indenture, the Company is already required to deliver notice of such event containing at least the information specified below at an earlier time or, (ii) the Company, at the time it is required to deliver a notice, does not have knowledge of all of the information required to be included in such notice, in which case, the Company shall (A) deliver notice at such time containing only the information that it has knowledge of at such time (if it has knowledge of any such information at such time), and (B) promptly upon obtaining knowledge of any such information not already included in a notice delivered by the Company, deliver notice to each Holder with a copy to the Trustee and the Conversion Agent containing such information. In each case, the failure by the Company to give such notice, or any defect therein, shall not affect the legality or validity of such event.

(i) *Voluntary Increases*. If the Company increases the Conversion Rate pursuant to Section 4.05(b), the Company shall mail to the Holders with a copy to the Trustee and the Conversion Agent a notice of the increased Conversion Rate and the period during which such increased Conversion Rate will be in effect at least 15 calendar days prior to the date the increased Conversion Rate takes effect, in accordance with the applicable law.

(ii) *Dissolutions, Liquidations and Winding-Ups*. If there is a voluntary or involuntary dissolution, liquidation or winding-up of the Company, the Company shall deliver notice to the Holders (with a copy to the Trustee) as promptly as possible, but in any event at least 15 calendar days prior to the earlier of (i) the date on which such dissolution, liquidation or winding-up, as the case may be, is expected to become effective or occur, and (ii) the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be, which notice shall state the expected effective date and record date for such event, as applicable, and the amount and kind of property that a holder of one share of the Common Stock is expected to be entitled, or may elect, to receive in such event. The Company shall deliver an additional notice to holders, as promptly as practicable, whenever the expected effective date or record date, as applicable, or the amount and kind of property that a holder of one share of the Common Stock is expect to be entitled to receive in such event, changes.

(b) *Notices After Certain Actions and Events*. Whenever an adjustment to the Conversion Rate becomes effective pursuant to Sections 4.04, 4.05 or 4.06, the Company will (i) deliver to the Trustee and Conversion Agent an Officer's Certificate stating that such adjustment has become effective, the Conversion Rate, and the manner in which the adjustment was computed and (ii) deliver written notice to the Holders (with a copy to the Trustee and Conversion Agent) stating that such adjustment has become effective and the Conversion Rate or conversion privilege as adjusted. Failure to give any such notice, or any defect therein, shall not affect the validity of any such adjustment.

ARTICLE 5
COVENANTS

Section 5.01 ***Payment of Principal and Interest.***

The Company covenants and agrees that it will cause to be paid the principal of, premium, if any, on and accrued and unpaid interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Other than as set forth in Section 2.15 with respect to PIK Interest, principal, premium, if any, on accrued and unpaid interest, if any, shall be considered paid on the date due if the Paying Agent holds, as of 10:00 a.m. (New York City time) on the due date, money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any and interest then due.

Section 5.02 ***Maintenance of Office or Agency***.

The Company will maintain in the continental United States an office of the Paying Agent, an office of the Registrar and an office or agency where Notes may be surrendered for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at the Corporate Trust Office of the Trustee; provided, however, that the Trustee shall not be deemed an agent of the Company for service of legal process.

The Company may also from time to time designate as co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Conversion Agent" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Registrar, Conversion Agent, and its Corporate Trust Office shall be considered as one such office or agency of the Company for each of the aforesaid purposes. The Company or its Affiliates may act as Paying Agent or Registrar.

With respect to any Global Note, the Corporate Trust Office of the Trustee or any Paying Agent shall be the place of payment where such Global Note may be presented or surrendered for payment or conversion or for registration of transfer or exchange, or where successor Notes may be delivered in exchange therefor; *provided*, *however*, that any such payment, conversion, presentation, surrender or delivery effected pursuant to the Applicable Procedures for such Global Note shall be deemed to have been effected at the place of payment for such Global Note in accordance with the provisions of this Indenture.

Section 5.03 ***Provisions as to Paying Agent.***

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree, subject to the provisions of this Section 5.03:

(i) that it will hold all sums held by it as such agent for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal, premium, accrued and unpaid interest, as the case may be, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action, provided that, if such deposit is made on the due date, such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, any premium on, accrued and unpaid interest, if any, on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal, any premium, accrued and unpaid interest, if any, as the case may be, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal of, premium on, accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 5.03 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by any Paying Agent hereunder as required by this Section 5.03, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the any Paying Agent to the Trustee, such Paying Agent (if other than the Company) shall be released from all further liability with respect to such sums.

(d) Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, any premium on, accrued and unpaid interest, if any, on, any Note and remaining unclaimed for two years after such principal, premium, accrued and unpaid interest, has become due and payable shall be paid to the Company on written request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 5.04 ***Reports*****.**

As long as any Notes are outstanding, the Company shall (i) file with the Commission within the time periods prescribed by its rules and regulations and (ii) furnish to the Trustee and the Holders within 15 calendar days after it is required to file the same with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), all quarterly and annual financial information required to be contained in Forms 10-Q and 10-K and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors. The Company shall not be required to file any report or other information with the Commission if the Commission does not permit such filing, although such reports will be required to be furnished to the Trustee. Any such report, information or document that the Company files with the Commission through the EDGAR system (or any successor thereto) will be deemed to be delivered to the Trustee and the Holders for the purposes of this Section 5.04 at the time of such filing through the EDGAR system (or such successor thereto).

At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company will, so long as any of the Notes or the shares of Common Stock delivered upon conversion of the Notes will, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or such shares of Common Stock the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or such shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company will take such further action as any Holder or beneficial owner of such Notes or any holder or beneficial owner of such shares of Common Stock may reasonably request from time to time to enable such Holder or beneficial owner to sell such Notes or such holder or beneficial owner to sell shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

The Trustee shall have no duty to review or analyze reports delivered to it. Delivery of any such reports, information and documents to the Trustee shall be for informational purposes only, and the Trustee's receipt of such reports, information and documents shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates) or any other agreement or document. The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with the covenants or with respect to any reports or other documents filed with the SEC or EDGAR or any website under the indenture, or participate in any conference calls.

Section 5.05 ***Statements as to Defaults*****.**

The Company is required to deliver to the Trustee (i) within 120 days after the end of each fiscal year ending December 31, an Officer's Certificate stating whether or not the signers thereof know of any default of the Company that occurred during the previous year and whether the Company, to the Officer's knowledge, is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture and (ii) within 30 days after the occurrence thereof, written notice in the form of an Officer's Certificate of any events that would constitute Defaults or Events of Default, setting forth the details of such Defaults or Events of Default, their status and the action the Company is taking or proposes to take in respect thereof. Such Officer's Certificate shall also comply with any additional requirements set forth in Section 5.07. The Trustee shall not be deemed to have notice of any Default or Event of Default except in accordance with Section 11.02(i).

Section 5.06 ***Additional Interest Notice*****.**

If Additional Interest is payable by the Company pursuant to Section 5.08 or Section 6.03, the Company shall deliver to the Trustee and the Paying Agent an Officer's Certificate, prior to the Regular Record Date for each applicable Interest Payment Date, to that effect stating (a) the amount of such Additional Interest that is payable and (b) the date on which such interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. The Trustee shall have no obligation to calculate or determine, or verify the Company's calculations or determinations of, the amount of any Additional Interest payable by the Company under this Indenture. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 5.07 ***Compliance Certificate and Opinions of Counsel.***

(a) Except as otherwise expressly provided in this Indenture, upon any application or request by the Company to the Trustee or the Collateral Agent, as applicable, to take any action under any provision of this Indenture or the other Transaction Documents, the Company shall furnish to the Trustee or the Collateral Agent, as applicable, an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture and any applicable Transaction Documents relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture or any applicable Transaction Document shall include:

(i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

(c) All applications, requests, certificates, statements or other instruments given under this Indenture shall be without personal recourse to any individual giving the same and may include an express statement to such effect.

Section 5.08 ***Additional Interest.***

(a) With respect to any Restricted Notes, if, at any time during the six-month period beginning on, and including, the date which is six months after the Last Original Issuance Date, the Company fails to timely file any periodic report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or such Restricted Notes are not otherwise Freely Tradable, including pursuant to Rule 144 under the Securities Act, by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of such Restricted Notes then Outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or for which the restrictions on transfer are applicable; *provided* that such six-month period shall end on the date that is one year from the Last Original Issuance Date.

(b) With respect to any Notes that do not constitute Restricted Notes, if at any time such Notes are not Freely Tradable, including pursuant to Rule 144 under the Securities Act, by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of Notes then Outstanding for each day during such period for which the restrictions on transfer are applicable.

(c) Further, if, and for so long as, the Restricted Notes Legend has not been removed from any Notes, any Notes are assigned a restricted CUSIP number or any Notes are not otherwise Freely Tradable by Holders other than affiliates (within the meaning of Rule 144) of the Company or Holders that were affiliates (within the meaning of Rule 144) of the Company during the 90 days immediately preceding the date of the proposed transfer (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 375th day after the Last Original Issuance Date, the Company will pay Additional Interest on such Notes that will accrue on such Notes at the rate of 0.50% per annum of the principal amount of such Notes then Outstanding until such Restricted Notes Legend is removed, such Notes are assigned an unrestricted CUSIP number and such Notes are Freely Tradable.

(d) Such Additional Interest that is payable under this Section 5.08 shall be payable in kind in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes and will be separate and distinct from, and in addition to, any Additional Interest that may accrue pursuant to Section 6.03, subject to the limitations on the maximum annual rate of Additional Interest set forth in Section 6.03(d).

(e) In no event shall Additional Interest accruing pursuant to this Section 5.08 accrue on any day under the terms of this Indenture (taking any such Additional Interest pursuant to this Section 5.08 together with any Additional Interest pursuant to Sections 6.03(a) and 6.03(c)) at an annual rate in excess of 0.50% for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations.

(f) If Additional Interest is payable by the Company pursuant to Section 5.08, the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 5.09 ***Corporate Existence.***

Subject to Article 9, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 5.10 ***Restriction on Resales.***

The Company shall not, and shall procure that no "affiliate" (as defined under Rule 144) of the Company shall, resell any of the Notes that have been reacquired by the Company or any such "affiliate" (as defined under Rule 144).

Section 5.11 ***Further Instruments and Acts*****.**

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 5.12 ***Par Value Limitation*****.**

The Company shall not take any action that, after giving effect to any adjustment pursuant to Article 4, would result in the issuance of shares of Common Stock for less than the par value of such shares of Common Stock.

Section 5.13 ***Company to Furnish Trustee Names and Addresses of Holders*****.**

The Company will furnish or cause to be furnished to the Trustee (if not also the Registrar):

(a) semi-annually, not later than the 5th day after each Regular Record Date, a list, in such form as the Trustee may reasonably require, containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, of the names and addresses of the Holders, as of such preceding Regular Record Date, and

(b) at such other times as the Trustee may request in writing, within 15 days after the receipt by the Company of any such request, a list of similar form and content as of a date the Trustee may reasonably require.

Section 5.14 ***Negative Covenants*****.**

(a) As long as any portion of the Notes remains outstanding, unless the Holders of at least a majority in principal amount of the then outstanding Notes shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

(i) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(ii) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

(iii) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

(iv) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $100,000 for all officers and directors during the term of this Indenture;

(v) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than (A) the Senior Notes and (B) the Notes to the extent paid in accordance with the terms of the Intercreditor Agreement in effect as of the Initial Issue Date, provided that, with respect to the Notes (i) such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur and (ii) such payments shall not be permitted unless financial covenants are satisfied;

(vi) pay cash dividends or distributions on any equity securities of the Company;

(vii) dispose of assets of the Company or any Subsidiary other than (a) obsolete, worn-out and immaterial assets and (b) assets with a value in the aggregate in excess of $1,000,000in any fiscal year or $5,000,000 during the term of this Indenture provided that any such assets are disposed of at prices for such assets that not less than fair market value of such assets, at least 90% of the consideration paid to the Company for such disposition is in the form of cash, and within 180 days of such disposition, the Company will either reinvest the proceeds into the Company;

(viii) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

(ix) enter into any agreement with respect to any of the foregoing.

Section 5.15 ***Accounting Terms***.

Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements of the Company and its Subsidiaries for the fiscal year ending December 31, 2021, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Company and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470–20 on financial liabilities shall be disregarded, (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015, and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 "Financial Instruments" (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Company and its Subsidiary at "fair value", as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to (x) any election by the Company to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard) or (y) any change in accounting for leases pursuant to GAAP resulting from the implementation of Financial Accounting Standards Board ASU No. 2016–02, Leases (Topic 842), to the extent such adoption would require recognition of a lease liability where such lease (or similar arrangement) would not have required a lease liability under GAAP as in effect on December 31, 2015.

Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Transaction Document, and either the Company or the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding shall so request, the Company shall in good faith determine an amended such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Company shall provide to the Trustee financial statements and other documents required under this Indenture or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 5.16 ***Future Subsidiary Guarantors.***

The Company will cause each Person that becomes a Subsidiary of the Company after the date hereof (other than an Excluded Subsidiary) to execute and deliver to the Trustee, within 30 days of becoming such a Subsidiary, a Supplemental Indenture (in substantially the form specified in **Exhibit E** to this Indenture) and an assumption agreement to the Guarantee pursuant to which such Subsidiary will become a Subsidiary Guarantor hereunder, whereupon such Subsidiary shall be bound by all of the provisions herein applicable to Subsidiary Guarantors, subject to the limitations set forth herein, including, without limitation, Article 12 hereof.

Section 5.17 ***Financial Covenants.***

Financial Covenants.

(a) Minimum EBITDA. The Company and its Subsidiaries shall not permit the Consolidated EBITDA, (i) as of the last day of any fiscal quarter and calculated for the period of the last twelve months ending on such date, to be less than ($4.5 million) prior to July 1, 2023 and ($4.0 million) thereafter, (ii) as of the last day of any fiscal quarter and calculated for the period of such quarter ending on such date, to be less than ($2.0 million) and (iii) as of the last day of any fiscal quarter and calculated for the period commencing upon the issuance of the Notes and calculated for the period ending on such date, to be less than ($8 million).

(b) Minimum Revenue. The Company and its Subsidiaries shall not permit the Revenue of the Company and its Subsidiaries on a consolidated basis in accordance with GAAP, as of the last day of any fiscal quarter ending on the dates set forth below and calculated for the period of the last twelve months ending on such date, to be less than the amount set forth below for such date.

Fiscal Quarter ending on		Minimum Revenue
12/31/2022	$	15,385,000
3/31/2023	$	17,474,000
6/30/2023	$	20,261,000
9/30/2023	$	24,334,000
12/31/2023	$	29,662,000
3/31/2024	$	34,060,000
6/30/2024	$	39,812,000
9/30/2024	$	46,934,000
12/31/2024	$	55,306,000
3/31/2025	$	61,884,000
6/30/2025	$	70,336,000
9/30/2025	$	81,222,000
12/31/2025 and thereafter	$	94,612,000

(c) Minimum Cash. The Company shall have on hand at all times, on the first of each calendar month, not less than $5.0 million through June 30, 2023, and $4.5 million thereafter, in an account subject to an account control agreement in favor of the Trustee subject to no other Liens other than the Permitted Liens.

ARTICLE 6
REMEDIES

Section 6.01 ***Events of Default.***

Each of the following events shall be an "**Event of Default**":

(a) the Company's failure to pay the principal of or any premium or Make-Whole Amount, if any, on any Note when due and payable on the Maturity Date, upon declaration of acceleration or otherwise;

(b) the Company's failure to comply with its obligations under Article 4 to pay or deliver the Settlement Amount owing upon conversion of any Note within five calendar days;

(c) the Company's failure to pay any interest on any Note when due, and such failure continues for a period of 30 days;

(d) the Company's failure to comply with its obligations under the Purchase Agreement;

(e) the Company's failure to issue a notice of a distribution in accordance with the provisions of Section 4.01(b)(i);

(f) the Company's failure to perform any other covenant required by the Company in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically addressed in Sections 6.01(a) through (e) above) and such failure continues for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then Outstanding (a copy of which notice, if given by Holders, must also to be given to the Trustee) has been received by the Company;

(g) any indebtedness for money borrowed by, or any other payment obligation of, the Company or any of its Subsidiaries that is a Significant Subsidiary of the Company (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company), in an outstanding principal amount, individually or in the aggregate, in excess of $5.0 million (or its foreign currency equivalent at the time) (i) is not paid at final maturity, upon required repurchase, upon redemption or when otherwise due (except upon acceleration that does not result from such a failure to pay) or (ii) is accelerated or otherwise is declared due and payable, unless, in the case of this clause (ii), such indebtedness is discharged or the acceleration is cured, waived or rescinded within 30 days of the date on which such indebtedness was accelerated or was declared due and payable;

(h) the Company or any of its Subsidiaries that is a Significant Subsidiary of the Company (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company), fails to pay one or more final and non-appealable judgments entered by a court or courts of competent jurisdiction, the aggregate uninsured or unbonded portion of which is in excess of $5.0 million, *provided* that, no Event of Default will be deemed to occur under this clause (h) if such judgments are paid, discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company) (i) commences a voluntary case or other proceeding seeking the liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of the Company's or such Significant Subsidiary of the Company's property, (iii) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, (iv) makes a general assignment for the benefit of creditors, or (v) fails generally to pay its debts as they become due;

(j) an involuntary case or other proceeding is commenced against the Company or any of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary of the Company) (i) seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary of the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary of the Company or any substantial part of its property, and such involuntary case or other proceeding remains undismissed and unstayed for a period of 60 consecutive days;

(k) any Security Document or any Lien granted thereunder with respect to any portion of the Collateral (except (i) in accordance with its terms or (ii) with respect to immaterial assets), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Company or any Grantor Subsidiary party thereto, or the Company, any Grantor Subsidiary or any other Person shall contest in writing such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Indenture Document, any Lien on the Collateral (except with respect to immaterial assets) shall cease to be a perfected Lien (other than as a result of the Collateral Agent's failure to take any action within its control); or

(l) Any Event of Default under the Subordinated Security Agreement.

Section 6.02 ***Acceleration; Rescission and Annulment.***

(a) If an Event of Default (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company) occurs and is continuing, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then Outstanding may declare 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes then Outstanding to be due and payable immediately. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs, 100% of the principal of, premium, if any, and accrued and unpaid interest, if any, on all Notes shall automatically become immediately due and payable.

(b) Notwithstanding anything to the contrary in Section 6.02(a), Section 6.04 or any other provision of this Indenture, if, at any time after the principal of, and accrued and unpaid interest, if any, on, the Notes shall have been so declared due and payable in accordance with Section 6.02(a), and before any judgment or decree of a court of competent jurisdiction for the payment of the monies due shall have been obtained, and each of the conditions set forth in the immediately following clauses (i), (ii) and (iii) is satisfied:

(i) the Company delivers or deposits with the Trustee the amount of cash sufficient to pay all matured installments of principal and interest upon all the Notes, and the principal of and accrued and unpaid interest, if any, on all Notes which shall have become due otherwise than by acceleration (with interest on such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the rate or rates, if any, specified in the Notes to the date of such payment or deposit), and such amount as shall be sufficient to pay the Trustee its compensation and reimburse the Trustee for its reasonable expenses, disbursements and advances (including the fees and expenses of its agents and counsel);

(ii) rescission and annulment would not conflict with any judgment or decree of a court of competent jurisdiction; and

(iii) any and all Events of Default under this Indenture, other than the non-payment of the principal of the Notes that became due because of the acceleration, shall have been cured, waived or otherwise remedied as provided herein, then, the Holders of at least majority of the aggregate principal amount of Notes then Outstanding, by written notice to the Company and to the Trustee, may waive all Defaults and Events of Default with respect to the Notes (except for any Default or Event of Default arising from (a) the Company's failure to pay principal, or any interest on, any Notes), (b) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a) or (c) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and may rescind and annul the declaration of acceleration resulting from such Defaults or Events of Default (except for any Default or Event of Default arising from (x) the Company's failure to pay principal , or any interest on, any Notes), (y) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a) or (z) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and their consequences; *provided*, that no such rescission or annulment will extend to or will affect any subsequent Default or Event of Default or shall impair any right consequent on such Default or Event of Default.

Section 6.03 ***Additional Interest*****.**

(a) Notwithstanding Section 6.02, to the extent the Company elects, the sole remedy for an Event of Default under Section 6.01(f) relating to the Company's failure to comply with Section 5.04 (such Event of Default, a "**Reporting Event of Default**"), will, for the 180 days after the occurrence of such Reporting Event of Default, consist exclusively of the right to receive Additional Interest at an annual rate equal to (i) 0.25% per annum of the principal amount of the Notes then Outstanding commencing on the date on which such a Reporting Event of Default first occurs and ending on the earlier of the date such Reporting Event of Default is cured or waived or the 90th day following the occurrence of such Reporting Event of Default and (ii) 0.50% per annum of the principal amount of such tranche of Notes outstanding commencing on the 91st day following the occurrence of such Reporting Event of Default (if such Reporting Event of Default is continuing on such 91st day) and ending on the earlier of the date such Reporting Event of Default is cured or waived or the 180th day following the occurrence of such Reporting Event of Default, in each case payable in the same manner and on the same dates as the stated interest payable on the Notes.

(b) If the Reporting Event of Default is continuing on the 181st day after the date on which such Reporting Event of Default occurred, the Notes will be subject to acceleration as provided in Section 6.02(a).

(c) In order to elect to pay the Additional Interest as the sole remedy during the first 180 days after the occurrence of a Reporting Event of Default, the Company must notify all Holders of Notes, the Trustee and the Paying Agent in writing of such election on or before the Close of Business on the fifth Business Day prior to the date on which such Reporting Event of Default would otherwise occur. Upon the Company's failure to timely give such notice of such election or to pay the Additional Interest when due, the Notes will be immediately subject to acceleration by declaration of the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes Outstanding as provided in Section 6.02. Nothing in this Section 6.03 shall affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default.

(d) In no event shall Additional Interest accruing pursuant to Sections 6.03(a) and 6.03(c) accrue on any day under the terms of this Indenture (taking any such Additional Interest pursuant to Sections 6.03(a) and 6.03(c) together with any Additional Interest pursuant to Section 5.08) at an annual rate in excess of 0.50% for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations. Such Additional Interest will be payable in kind in the same manner and on the same dates as the stated interest payable on the Notes.

Section 6.04 ***Waiver of Past Defaults*****.**

Subject to Section 6.02(b), the Holders of at least majority of the aggregate principal amount of Notes then Outstanding, by written notice to the Company and to the Trustee, may waive any Default or Event of Default (except for any Default or Event of Default arising from (a) the Company's failure to pay principal of, or any interest on, any Notes), (b) the Company's failure to pay or deliver the Settlement Amounts due upon conversion of any Note within the applicable time period set forth under Section 4.03(a), or (c) the Company's failure to comply with any provision of this Indenture the modification of which would require the consent of the Holder of each Outstanding Note affected) and rescind any acceleration resulting from such Default or Event of Default and its consequences; *provided*, that no such waiver will extend to or will affect any subsequent Default or Event of Default or shall impair any right consequent on such Default or Event of Default.

Section 6.05 ***Control by Majority*****.**

The Trustee will not be obligated to exercise any of its rights or powers at the request of the Holders unless such Holders have offered (and if requested, provided) to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense. Subject to this Indenture, applicable law and the Trustee's indemnification, the Holders of a majority in aggregate principal amount of the Outstanding Notes may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any Holder (provided, however, that the Trustee shall not have an affirmative duty to determine whether any such direction is unduly prejudicial to any Holder).

Section 6.06 Limitation on Suits.

Subject to Section 6.07, no Holder will have any right to institute any proceeding under this Indenture, or for the appointment of a receiver or Trustee, or for any other remedy under this Indenture or with respect to the Notes unless:

(a) the Holder has previously delivered to the Trustee written notice of a continuing Event of Default;

(b) the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes deliver to the Trustee a written request that the Trustee pursue a remedy with respect to such Event of Default and have offered (and if requested, provided) indemnity satisfactory to the Trustee to institute such proceeding as Trustee;

(c) the Trustee has failed to institute a proceeding within 60 days after such notice, request and offer; and

(d) the Trustee has not received from the Holders of a majority in aggregate principal amount of the then Outstanding Notes a direction inconsistent with such written request within 60 days after such notice, request and offer.

Section 6.07 ***Rights of Holders to Receive Payment and to Convert.***

Notwithstanding anything to the contrary elsewhere in this Indenture, the above limitations set forth under Section 6.06 do not apply to a suit instituted by a Holder for the enforcement of a payment of the principal , or any accrued and unpaid interest on, any Note, on or after the applicable due date or the right to convert the Note or to receive the Settlement Amounts due upon conversion in accordance with Article 4, and such right to receive any such payment or delivery, as the case may be, on or after the applicable due dates shall not be impaired or affected without the consent of such Holder. Payments of principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate from the required payment date.

Section 6.08 ***Collection of Indebtedness; Suit for Enforcement by Trustee.***

If an Event of Default specified in Section 6.01(a), 6.01(b), 6.01(c) or 6.01(d) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium on, interest on, and the Settlement Amounts due upon the conversion of the Notes and such further amount as is sufficient to cover the costs and expenses of collection, including the compensation and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, as well as any other amounts that may be due under Section 11.06.

Section 6.09 ***Trustee May Enforce Claims Without Possession of Notes.***

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.10 ***Trustee May File Proofs of Claim*****.**

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company or any Subsidiary Guarantor, its creditors or its property and, unless prohibited by law or applicable regulations, will be entitled to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the compensation and reasonable expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 11.06 out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a lien on, and is paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to, or to accept or to adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.11 ***Restoration of Rights and Remedies*****.**

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.12 ***Rights and Remedies Cumulative*****.**

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.09, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.13 ***Delay or Omission Not a Waiver.***

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time and as often as may be deemed expedient by the Trustee (subject to the limitations contained in this Indenture) or by the Holders, as the case may be.

Section 6.14 ***Priorities*****.**

If the Trustee collects any money or property pursuant to this Article 6, it will pay out the money or property in the following order:

FIRST: to the Trustee, each Agent and the Collateral Agent, their respective agents and attorneys for amounts due under this Indenture and the Indenture Documents, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee or the Collateral Agent, as applicable, and the costs and expenses of collection

SECOND: to the Holders, for any amounts due and unpaid on the principal of, premium on, accrued and unpaid interest on, and any cash due upon conversion of, any Note, without preference or priority of any kind, according to such amounts due and payable on all of the Notes; and

THIRD: the balance, if any, to the Company or to such other party as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.14. If the Trustee so fixes a record date and a payment date, at least 15 calendar days prior to such record date, the Trustee will deliver to each Holder (at the Company's cost and expense) a written notice, which notice will state such record date, such payment date and the amount of such payment.

Section 6.15 ***Undertaking for Costs.***

All parties to this Indenture agree, and each Holder, by such Holder's acceptance of a Note, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided*, *however*, that the provisions of this Section 6.15 shall not apply to (i) any suit instituted by the Trustee, (ii) any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Notes then Outstanding, (iii) any suit instituted by any Holder for the enforcement of the payment of the principal, or any interest on, any Note on or after the applicable due date expressed or provided for in this Indenture, (iv) any suit for the enforcement of the right to convert any Note or to receive the Settlement Amounts due upon conversion of any Note in accordance with the provisions of Article 4, or (v) any suit for the enforcement of the right of a beneficial owner to exchange its beneficial interest in a Global Note for a Physical Note if an Event of Default has occurred and is continuing in accordance with Section 2.11.

Section 6.16 ***Waiver of Stay, Extension and Usury Laws*****.**

The Company covenants that, to the extent that it may lawfully do so, it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company, to the extent that it may lawfully do so, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will instead suffer and permit the execution of every such power as though no such law has been enacted.

Section 6.17 ***Notices from the Trustee.***

If a Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, the Trustee must send notice of such Default to each Holder within 90 days after such Event of Default has occurred or after a Responsible Officer obtains actual knowledge. Except in the case of a Default in the payment of the principal of, premium, if any, or interest on any Note or of a Default in the payment or delivery of the Settlement Amounts due upon conversion of any Note, the Trustee may withhold notice if and so long as the Trustee in good faith determines that withholding notice is in the interests of the Holders (it is being understood that the Trustee does not have an affirmative duty to determine whether any action is not in the interest of any Holder).

ARTICLE 7
SATISFACTION AND DISCHARGE

Section 7.01 ***Discharge of Liability on Notes.***

When (a) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether on the Maturity Date, upon conversion or otherwise) and the Company or any Subsidiary Guarantor shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, an amount of cash (and, to the extent applicable, deliver to the Holders a number of shares of Common Stock to satisfy the Company's obligations with respect to outstanding conversions), sufficient to pay all amounts due on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied, except in the event the Notes are due and payable solely in cash at the Maturity Date, by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and the Company or any Subsidiary Guarantor shall have paid or caused to be paid all other sums payable hereunder by the Company and any Subsidiary Guarantor, then this Indenture shall cease to be of further effect (except as to (i) rights hereunder of Holders to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (ii) the rights, obligations, indemnities and immunities of the Trustee and the Collateral Agent hereunder and the obligations of the Company in respect thereof), and the Trustee, on written demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute instruments acknowledging satisfaction and discharge of this Indenture. Notwithstanding the foregoing, the Company hereby agrees to reimburse the Trustee for any costs or expenses thereafter incurred by the Trustee, including the reasonable fees and expenses of its counsel, and to compensate the Trustee for any services thereafter rendered by the Trustee in connection with this Indenture or the Notes. For the avoidance of doubt, upon the satisfaction and discharge of the Indenture, the Holders of the Notes shall no longer have the right to convert their Notes and shall only be entitled to the payments of funds deposited with the Trustee, in trust.

Section 7.02 ***Deposited Monies to Be Held in Trust by Trustee.***

Subject to Section 7.04, all monies deposited with the Trustee pursuant to Section 7.01 shall be held in trust for the sole benefit of the Holders of the Notes, and such monies and shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment of all sums or amounts due and to become due thereon for principal and interest, if any.

Section 7.03 ***Paying Agent to Repay Monies Held.***

Upon the satisfaction and discharge of this Indenture, all excess monies then held by any Paying Agent (if other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such amounts.

Section 7.04 ***[Reserved.]***

Section 7.05 ***Reinstatement.***

If the Trustee or the Paying Agent is unable to apply any monies in accordance with Section 7.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 until such time as the Trustee or the Paying Agent is permitted to apply all such amounts in accordance with Section 7.02; *provided*, *however*, that if the Company makes any payment of interest on, principal of or delivery in respect of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the monies held by the Trustee or Paying Agent.

ARTICLE 8
SUPPLEMENTAL INDENTURES

Section 8.01 ***Supplemental Indentures Without Consent of Holders.***

Without the consent of any Holder, the Company (when authorized by a Board Resolution), any Subsidiary Guarantor and the Trustee and Collateral Agent, if applicable, at any time and from time to time, may enter into one or more indentures supplemental hereto or any modifications to the Indenture Documents, in form satisfactory to the Trustee and Collateral Agent, if applicable, for any of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture, the Subsidiary Guarantees or the Notes;

(b) to evidence the succession by a Successor Company and to provide for the assumption by a Successor Company of the Company's obligations under this Indenture;

(c) to add guarantees or guarantors, including additional Subsidiary Guarantors, with respect to the Notes;

(d) to provide for the issuance of PIK Interest or the increase of the principal amount of any Global Notes to make PIK Payments in accordance with the terms of this Indenture;

(e) to add to the Company's or a Subsidiary Guarantor's covenants such further covenants, restrictions or conditions for the benefit of the Holders or surrender any right or power conferred upon the Company by this Indenture or Subsidiary Guarantee;

(f) to make any change that does not adversely affect the rights of any Holder; or

(g) upon the occurrence of an event described in Section 4.07(a), solely (i) to provide that such Notes are convertible into Reference Property, subject to the provisions in Sections 4.03 and 4.07, and (ii) to effect the related changes to the terms of such Notes under Section 4.07.

Section 8.02 ***Supplemental Indentures With Consent of Holders*****.**

With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender or exchange offer for, Notes) and by Act of said Holders delivered to the Company and the Trustee, the Company, any Subsidiary Guarantor, the Trustee and the Collateral Agent, if applicable, may amend the Notes or enter into an indenture or indentures supplemental hereto or any modifications to the Indenture Documents for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any Indenture Documents or of modifying in any manner the rights of the Holders under this Indenture or any Indenture Documents, and the Holder of a majority in aggregate principal amount of the Outstanding Notes may waive the Company's compliance with any provision herein without notice to the other Holders; *provided*, *however*, that no such amendment, supplement or waiver shall, without the consent of the Holder of each Outstanding Note affected thereby:

(a) change the stated Maturity Date of the principal of or any interest on the Notes;

(b) reduce the principal amount of or interest on the Notes;

(c) reduce the amount of principal payable upon acceleration of the Maturity Date of any Note;

(d) change the place or currency of payment of principal of or interest on any Note;

(e) impair the right of any Holder to receive payment of principal of and interest on its Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on, or with respect to, such Holder's Notes;

(f) modify the provisions with respect to redemption rights of the Company as described under Article 10;

(g) modify the ranking provisions of this Indenture;

(h) modify the Subsidiary Guarantees in any manner adverse to the Holders of the Notes;

(i) make any change that impairs or adversely affects the right of Holders to convert their Notes; or

(j) make any change to the provisions of this Article 8 which require each Holder's consent or in the waiver provisions in Section 6.04 of this Indenture except to increase the percentage required for modification, amendment or waiver or to provide for consent of each affected Holder of Outstanding Notes.

It shall not be necessary for any Act or consent of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act or consent shall approve the substance thereof.

Section 8.03 ***Notice of Amendment or Supplement*****.**

After an amendment or supplement under this Article 8 becomes effective, the Company shall provide to the Holders a written notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

Section 8.04. ***Trustee and Collateral Agent to Sign Amendments, Etc*****.**

The Trustee or the Collateral Agent, as applicable, shall sign any amendment or supplement authorized pursuant to this Article 8 if the amendment or supplement does not adversely affect the rights, duties, liabilities, immunities or indemnities of the Trustee or the Collateral Agent, as applicable. If it does, the Trustee or Collateral Agent, as applicable, may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee or Collateral Agent shall receive, and shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel provided at the expense of the Company providing that such amendment or supplement is authorized or permitted by this Indenture and any applicable Indenture Documents and, with respect to such Opinion of Counsel, such amendment or supplement is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

ARTICLE 9
SUCCESSOR COMPANY

Section 9.01 ***Company May Consolidate, Etc. on Certain Terms*****.**

Subject to the provisions of Section 9.03, the Company shall not consolidate with, enter into a binding share exchange with, or merge with or into, another Person or sell, assign, convey, transfer, lease or otherwise dispose of its properties and assets substantially as an entirety to another Person, unless:

(a) the resulting, surviving transferee or successor Person (the "**Successor Company**"), if not the Company, is a corporation organized and existing under the laws of the U.S., any state of the U.S. or the District of Columbia and the Successor Company expressly assumes, by supplemental indenture, joinder, amendment or otherwise, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes, this Indenture and the other Indenture Documents;

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture with respect to the Notes;

(c) all other conditions specified in this Article 9 are met.

Upon any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person, the Successor Company (if not the Company) shall succeed to, and may exercise every right and power of the Company under this Indenture.

Section 9.02 ***Successor Corporation to Be Substituted*****.**

In case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person and upon the assumption by the Successor Company (if other than the Company), by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and accrued and unpaid interest, if any, on all of the Notes, the due and punctual payment or delivery of any Settlement Amount due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture and the other Indenture Documents to be performed by the Company under this Indenture and the other Indenture Documents, such Successor Company shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Indenture, with the same effect as if it had been named herein as the party of the first part; *provided*, *however*, that in the case of a sale, assignment, conveyance, transfer, lease or other disposition to one or more of its Subsidiaries of all or substantially all of the properties and assets of the Company, the Notes will remain convertible based on the Settlement Amount, in accordance with Section 4.03, but subject to adjustment (if any) in accordance with Section 4.06. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer or other disposition to another Person (but not in the case of a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 9 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition to another Person, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 9.03 ***Officer's Certificate and Opinion of Counsel to Be Given to Trustee*****.**

In the case of any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition pursuant to Section 9.01, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel stating that any such consolidation, merger, binding share exchange, sale, assignment, conveyance, transfer, lease or other disposition and any such assumption and, if a supplemental indenture, joinder, amendment or other documentation is required in connection with such transaction, such supplemental indenture, joinder, amendment or other documentation, complies with the provisions of this Indenture and an Opinion of Counsel stating that any such supplemental indenture, joinder, amendment or other documentation is the valid, binding and enforceable obligation of the Successor Company.

ARTICLE 10
REDEMPTIONS

Section 10.01 Optional ***Redemption at Election of Company*****.**

Subject to the provisions of this Section 10.01, at any time after the later of (I) the eighteen (18) month anniversary of the Initial Issue Date and (II) the date that the Senior Debt is no longer outstanding, if the Daily VWAP of the Common Stock of the Company for at least 20 Trading Days (whether or not consecutive) during a period of 30 consecutive Trading Days exceeds $18.00, the Company may deliver a notice to the Holders (with a copy to the Trustee) (an "**Optional Redemption Notice**" and the date such notice is deemed delivered hereunder, the "**Optional Redemption Notice Date**") of its irrevocable election to redeem some or all of the then outstanding principal amount of the Notes in an amount equal to the Optional Redemption Amount on the 30th Trading Day following the Optional Redemption Notice Date (such date, the "**Optional Redemption Date**", such 30 Trading Day period, the "**Optional Redemption Period**" and such redemption, the "**Optional Redemption**") in cash. Each Optional Redemption Notice shall be irrevocable and specify:

(a) That the Daily VWAP of the Common Stock of the Company for at least 20 Trading Days during a period of 30 consecutive Trading Days prior to such Optional Redemption Notice exceeded $18.00;

(b) the Optional Redemption Date;

(c) the Optional Redemption Amount;

(d) that, on the Optional Redemption Date, the Optional Redemption Amount will become due and payable upon each Note to be redeemed;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the Optional Redemption Amount;

(f) the place or places where such Notes are to be surrendered for payment of the Optional Redemption Amount;

(g) the paragraph or subparagraph of this Indenture pursuant to which the Notes are being called for redemption

(h) with respect to Global Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the Trading Day immediately preceding the Optional Redemption Date and, with respect to Physical Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the third Trading Date immediately preceding the Optional Redemption Date;

(i) the CUSIP, ISIN, or other similar numbers, if any, assigned to such Notes and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes; and

(j) in case any physical Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed on and after the Optional Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed potion thereof shall be issued.

The Optional Redemption Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Optional Redemption Notice by mail or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

Upon the Company's written request in an Officer's Certificate delivered to the Trustee at least 5 Business Days prior to the requested date of delivery (or such shorter period as shall be satisfactory to the Trustee), the Trustee will deliver the Optional Redemption Notice to the Holders in the name of and at the expense of the Company.

If fewer than all of the outstanding Notes are to be redeemed, in the case of a Global Note, the Notes or portions thereof to be redeemed (in principal amounts of $1.00 or multiples thereof) shall be selected according to the applicable procedures of the Depositary, or, in the case of Physical Notes, the Notes to be redeemed (in principal amounts of at least $1.00 or $1.00 multiples in excess thereof) shall, upon written request of the Company, be selected by the Trustee by lot or by any other method the Trustee in its sole discretion deems fair and appropriate. The Company shall notify the Trustee in writing of the percentage of Global Notes and Physical Notes to be redeemed. The Trustee will notify the Company promptly of the Notes or portions of the Notes to be called for redemption. If any Note selected for partial redemption is submitted for conversion after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption (and the Optional Redemption Amount due will be reduced accordingly), subject, in the case of Notes represented by a Global Note, to the Depositary's applicable procedures.

Section 10.02 [RESERVED]

Section 10.03. [RESERVED]

Section 10.04 Redemption Procedure.

If any Optional Redemption Notice has been given in respect of the Notes in accordance with Section 10.01, the Notes shall become due and payable on the Optional Redemption Date at the place or places stated in the Optional Redemption Notice at the Optional Redemption Amount. On presentation and surrender of the Notes at the place or places stated in the Optional Redemption Notice, the Notes shall be paid and redeemed by the Company at the Optional Redemption Amount.

Prior to the open of business on the Optional Redemption Date, the Company shall deposit with the Trustee (or other Paying Agent appointed by the Company) or, if the Company or a subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 5.03(b), an amount of cash (in immediately available funds if deposited on the Optional Redemption Date) sufficient to pay the Optional Redemption Amount of all the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Optional Redemption Date for such Notes. The Trustee (or other Paying Agent appointed by the Company) shall, promptly after such payment and upon written demand of the Company, return to the Company any funds in excess of the Redemption Price.

If any portion of the payment pursuant to an Optional Redemption shall not be paid by the Company in cash by the applicable due date, interest shall accrue thereon at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted by applicable law until such amount is paid in full. Notwithstanding anything to the contrary in this Section 10, the Company's determination to make an Optional Redemption under Section 10.01 shall be applied by lot among the Holders (and in the case of any Global Notes, redeemed in accordance with the Depositary's applicable procedures). The Holders may elect to convert the outstanding principal amount of the Notes pursuant to Section 4 prior to, in case of Global Notes, the Close of Business on the Trading Day immediately preceding the Optional Redemption Date , and, with respect to Physical Notes, that Holders may surrender their Notes for conversion at any time prior to the Close of Business on the third Trading Date immediately preceding the Optional Redemption Date for any redemption under this Section 10 by the delivery of a Conversion Notice to the Company and the Conversion Agent.

ARTICLE 11
THE TRUSTEE

Section 11.01 ***Duties and Responsibilities of Trustee*****.**

(a) In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care in its exercise as a prudent person would use in the conduct of his or her own affairs.

(b) Prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and applicable law, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this subsection (c) does not limit the effect of this Section 11.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in principal amount of the Notes at the time Outstanding determined as provided in Section 1.03 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture;

(d) Whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 11.01 and Section 11.02.

(e) The Trustee shall not be liable in respect of any payment (as to the correctness or calculation of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Registrar with respect to the Notes.

(f) If any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred.

(g) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 11.02 ***Rights of the Trustee*****.**

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, judgment, bond, debenture, note, coupon or other evidence of indebtedness or other paper or document (whether in its original, electronic or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution.

(c) The Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture (including upon the occurrence and during the continuance of an Event of Default), unless such Holders shall have offered (and if requested, provided) to the Trustee indemnity or security satisfactory to the Trustee against any loss, expenses and liabilities which may be incurred therein or thereby.

(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney (at the reasonable expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation).

(f) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder.

(g) The Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, consequential, incidental or punitive loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and the Indenture.

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, the Collateral Agent and each Agent, custodian and other Person employed to act hereunder.

(k) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(l) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(m) The Collateral Agent is expressly authorized to execute and deliver the Intercreditor Agreement in its capacity as such.

(n) The permissive authorizations, entitlements, powers and rights granted to the Trustee in this Indenture shall not be construed as duties.

Section 11.03 ***Trustee's Disclaimer*****.**

The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture, the Subsidiary Guarantees, the Notes or any other Transaction Document. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee under this Indenture and the Trustee shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Notes.

Under no circumstances will the Trustee be responsible for selecting or determining any substitute index if the Prime Rate will no longer be available past a designated date. In the case the Prime Rate is unavailable, the majority in interest of the Holders shall select the substitute index prior to the Determination Date for the relevant Interest Period, ensuring that the Trustee will be able to meet its obligations and requirements under this Indenture with respect to the substitute index replacing the Prime Rate. No such replacement (including any conforming changes to the Transaction Document) shall effect the Trustee's own rights, duties or immunities under the Transaction Documents or otherwise.

Section 11.04 ***Trustee or Agents May Own Notes*****.**

The Trustee or any Agent, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee or Agent.

Section 11.05 ***Monies to be Held in Trust.***

Subject to the provisions of Section 7.02, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on or the investment of any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 11.06 ***Compensation and Expenses of Trustee.***

The Company covenants and agrees to pay to the Trustee, Agent and Collateral Agent from time to time, and the Trustee, Agent and Collateral Agent shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, Agent and Collateral Agent, and the Company will pay or reimburse the Trustee, Agent and Collateral Agent upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee, Agent and Collateral Agent in accordance with any of the provisions of this Indenture or any other Transaction Document (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its own gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction.

The Company also covenants to indemnify each of the Trustee, Collateral Agent and the Agents (and their respective officers, directors and employees), in any capacity under this Indenture and their respective agents for, and to hold each of them harmless from and against, any and all loss, liability, action, suit, claim, damage, cost or expense incurred without gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction on its own part and arising out of or in connection with the acceptance or administration of this trust and the performance of its duties and/or the exercise of its rights hereunder or in any other capacity hereunder or under any Transaction Document, including the costs and expenses (including attorneys' fees) of defending itself against any claim (whether asserted by the Company, a Holder or any other Person) of liability in the premises, including those incurred with respect to enforcement of its right to indemnity hereunder. The Trustee, Collateral Agent and the Agents shall notify the Company promptly of any third party claim for which it may seek indemnity. Failure by the Trustee, Collateral Agent and the Agents to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend such claim and the Trustee, Collateral Agent and the Agents shall cooperate in the defense. The Trustee, Collateral Agent and the Agents may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent (such consent not to be unreasonably withheld).

The obligations of the Company under this Section 11.06 to compensate or indemnify the Trustee, Collateral Agent and the Agents and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a first lien prior to that of the Notes upon all property and funds held or collected by the Trustee or Collateral Agent as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Company under this Section 11.06 shall survive the payment of the Notes, the satisfaction and discharge of this Indenture and/or the resignation or removal of the Trustee, Agent and the Collateral Agent.

When the Trustee, any Agent, and any of their respective agents incur expenses or render services after an Event of Default specified in Section 6.01(i) and 6.01(j) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute administrative expenses for purposes of priority under any bankruptcy, insolvency or similar laws.

Section 11.07 ***Officer's Certificate or Opinion of Counsel as Evidence*****.**

Subject to Section 11.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate and/or Opinion of Counsel delivered to the Trustee.

Section 11.08 ***Conflicting Interests of Trustee*****.**

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, this Indenture.

Section 11.09 ***Eligibility of Trustee*****.**

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section 11.09 the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 11.10 ***Resignation or Removal of Trustee*****.**

(a) The Trustee may at any time resign by giving 30 days' prior written notice of such resignation to the Company and to the Holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment thirty (30) days after such notice of resignation is given to the Company and the Holders, the resigning Trustee may, upon ten (10) Business Days' notice to the Company and the Holders may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 6.15, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 11.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 11.09 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee by 30 days' written notice and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.15, any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided, however*, that if no successor Trustee shall have been appointed and have accepted appointment thirty (30) days after either the Company or the Holders has removed the Trustee, the Trustee so removed may petition at the Company's expense any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time Outstanding may at any time remove the Trustee upon 30 days' prior written notice and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten (10) days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, or if such Trustee so removed or any Holder fails to act, the Company, upon the terms and conditions and otherwise as in Section 11.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 11.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 11.11.

Section 11.11 ***Acceptance by Successor Trustee*****.**

Any successor trustee appointed as provided in Section 11.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 11.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 11.06.

No successor trustee shall accept appointment as provided in this Section 11.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 11.08 and be eligible under the provisions of Section 11.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 11.11, the Company (or the former trustee, at the written direction of the Company) shall give or cause to be given notice of the succession of such trustee hereunder to the Holders of Notes in accordance with Section 13.08(c). If the Company fails to give such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be given at the expense of the Company.

Section 11.12 ***Succession by Merger, Etc.***

Any corporation into which the Trustee may be merged or exchanged or with which it may be consolidated, or any corporation resulting from any sale, merger, exchange or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 11.08 and eligible under the provisions of Section 11.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, exchange or consolidation.

Section 11.13 ***Preferential Collection of Claims.***

To the extent that this Indenture has been qualified under the Trust Indenture Act, if and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor)

Section 11.14 ***Trustee's Application for Instructions from the Company.***

Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives such application, unless any such Officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 12
SUBSIDIARY GUARANTEES

Section 12.01 ***Subsidiary Guarantees.***

(a) Subject to this Article 12, each of the Subsidiary Guarantors, jointly and severally, fully and unconditionally, guarantees, on a senior unsecured basis (or, with respect to each Subsidiary Guarantor that is a Grantor Subsidiary, a senior secured basis), subject to the Intercreditor Agreement, to the Collateral Agent on behalf of each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and Collateral Agent and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that: (i) the principal of, premium, if any, and interest on the Notes will be promptly paid in full when due, whether at the stated Maturity Date, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on the Notes, if any, if lawful (subject in all cases to any applicable grace period provided herein), and all other monetary obligations of the Company to the Holders or the Trustee or Collateral Agent hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Subsidiary Guarantors shall be jointly and severally obligated to pay the same immediately. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Subsidiary Guarantors agree that, to the maximum extent permitted under applicable law, their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Subsidiary Guarantor. Subject to Section 6.06, each Subsidiary Guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Subsidiary Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder, Collateral Agent or the Trustee is required by any court or otherwise to return to the Company, the Subsidiary Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either of the Company or the Subsidiary Guarantors, any amount paid by either to the Trustee, Collateral Agent or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders, Collateral Agent and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Nine for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Subsidiary Guarantee. Each Subsidiary Guarantor that makes a payment or distribution under its Subsidiary Guarantee shall have the right to seek contribution from any non-paying Subsidiary Guarantor, in a pro rata amount based on the net assets of each Subsidiary Guarantor determined in accordance with GAAP as in effect from time to time, so long as the exercise of such right does not impair the rights of the Holders under the Subsidiary Guarantee.

(e) In respect to its obligations under its Subsidiary Guarantee, each Subsidiary Guarantor agrees to be bound to, and hereby covenants, with respect to itself, the covenant set forth in Section 6.16.

Section 12.02 ***Reserved***

Section 12.03 ***Limitation on Subsidiary Guarantor Liability*****.**

Each Subsidiary Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Subsidiary Guarantee of such Subsidiary Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar Federal or state law to the extent applicable to any Subsidiary Guarantee. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and the Subsidiary Guarantors hereby irrevocably agree that the obligations of such Subsidiary Guarantor will be limited to the maximum amount which, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor, and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Article 12, will result in the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer under Federal or state law.

Section 12.04 ***Execution and Delivery of Notation of Guarantee*****.**

(a) To evidence its Subsidiary Guarantee set forth in Section 12.01, with respect to the Notes issued on the Issue Date, a Subsidiary Guarantor shall execute a notation of such Subsidiary Guarantee substantially in the form included in Exhibit D hereto endorsed by an Officer of such Subsidiary Guarantor by manual, electronic or facsimile signature on each Note authenticated and delivered by the Trustee.

(b) Each Subsidiary Guarantor hereby agrees that its Subsidiary Guarantee set forth in Section 12.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

(c) If an Officer whose signature is on this Indenture or on the Notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Notation of Guarantee is endorsed, the Subsidiary Guarantee shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Subsidiary Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantors.

Section 12.05. ***Releases of Subsidiary Guarantors.***

A Subsidiary Guarantor will be deemed automatically and unconditionally released and discharged from all of its obligations under its Subsidiary Guarantee without any further action on the part of the Trustee or any Holder of the Notes:

(a) in the event that a Subsidiary Guarantor is sold or disposed of (whether by merger, consolidation, the sale of its Capital Stock or the sale of all or substantially all of its assets (other than by lease)), and whether or not the Subsidiary Guarantor is the surviving entity in such transaction to a Person which is not the Company or a Subsidiary of the Company, or upon its liquidation or dissolution; or

(b) upon a satisfaction and discharge of the Notes in accordance with Article 7.

Upon written request of the Company accompanied by an Officer's Certificate and Opinion of Counsel stating that all covenants and conditions precedent to such release have been complied with, the Trustee or the Collateral Agent, as applicable, shall execute an acknowledgement of such release or other documents reasonably requested by the Company in connection with such release.

ARTICLE 13
COLLATERAL AND SECURITY

Section 13.01 ***Collateral and Security.***

The Obligations will be secured by a perfected Lien on the Collateral, as provided in the Security Documents, subject to Permitted Liens and the Intercreditor Agreement. Under the terms of the Intercreditor Agreement, the proceeds of any collection, sale, disposition or other realization of Collateral received in connection with the exercise of remedies (including distributions of cash, securities or other property on account of the value of the Collateral in a bankruptcy, insolvency, reorganization or similar proceedings) will be applied in the order of priority set forth in Section 13.05.

Section 13.02 ***Security Documents.***

In order to secure the Obligations, the Company and the Grantor Subsidiaries have entered into and delivered to the Collateral Agent the Subordinated Security Agreement and the other Security Documents, in each case, to which they are a party, to create the Liens on the Collateral securing their respective Obligations. In the event of a conflict between the terms of this Indenture and the Security Documents in regards to the Collateral, the Security Documents shall control. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Security Documents as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs each of the Collateral Agent and the Trustee to (i) enter into the Intercreditor Agreement and the Security Documents to which it is a party and to perform its obligations and exercise its rights thereunder in accordance therewith (ii) to make the representations of the Holders as set forth in the Intercreditor Agreement and the Security Documents and (iii) to bind the Holders on the terms set forth in the Intercreditor Agreement and the Security Documents. On or before the date that is sixty (60) days after the Initial Issue Date, the Company shall deliver or cause to be delivered to the Collateral Agent duly executed mortgage documents with respect to the Company-owned facility in New Jersey.

Section 13.03 ***Authorization of Actions to Be Taken.***

(a) Each Holder of Notes, by its acceptance thereof, hereby designates and appoints the Collateral Agent as its agent under this Indenture, the Intercreditor Agreement and the Security Documents and each Holder by acceptance of the Notes consents and agrees to the terms of this Indenture, the Intercreditor Agreement, each Security Document, as originally in effect and as amended, supplemented or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Collateral Agent to enter into the Intercreditor Agreement, the Security Documents to which it is a party, and irrevocably authorizes and empowers the Collateral Agent to perform its obligations and duties, exercise its rights and powers and take any action permitted or required thereunder that are expressly delegated to the Collateral Agent by the terms of this Indenture, the Intercreditor Agreement and the Security Documents. The Collateral Agent shall hold (directly or through any agent) and is directed by each Holder to so hold, and shall be entitled to enforce on behalf of the Holders all Liens on the Collateral created or perfected by the Security Documents for their benefit.

(b) Subject to the provisions of the applicable Security Documents and the Intercreditor Agreement and to the last sentence of this Section 13.03(b), the Trustee and each Holder, by acceptance of any Notes, agrees that (x) the Collateral Agent may, in its sole discretion and without the consent of the Trustee or the Holders, take all actions it deems necessary or appropriate in order to preserve its interest and the interest of the Holders in the Collateral or the Secured Parties' rights under the Security Documents and (y) the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient to protect or enforce the Liens securing the Obligations and/or to prevent any impairment of the Collateral by any act that may be unlawful or in violation of the Indenture Documents, and such suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest thereunder or be prejudicial to the interests of the Collateral Agent, the Holders or the Trustee). Notwithstanding the foregoing, the Collateral Agent may, at the expense of the Company, request the direction of the Holders with respect to any such actions and upon receipt of the written consent of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding, shall take such actions; provided that all actions so taken shall, at all times, be in conformity with the requirements of the Intercreditor Agreement, if applicable. In the absence of such written consent from the Holders of at least a majority of the aggregate principal amount of the Notes then Outstanding, the Collateral Agent shall not be required to take any such actions and shall have no liability for refraining from taking any such action. Until the Notes and the other Obligations are discharged in full or are otherwise no longer outstanding (other than Contingent Liabilities), all remedies and Enforcement Actions in respect of the Collateral and any foreclosure actions in respect of any Liens on the Collateral, and all actions, undertakings or consents by the Collateral Agent in respect of the Collateral, in each case, shall be undertaken solely at the instruction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding and subject to the Intercreditor Agreement.

Section 13.04 ***Release of Collateral.***

(a) The Liens securing the Obligations on the applicable Collateral shall be automatically terminated and released without further action by any party (other than satisfaction of any requirements in the Security Documents, if any), in whole or in part: (i) upon any disposition of all or any portion of Collateral (other than a disposition to the Company or any Grantor Subsidiary) in accordance with the terms of this Indenture; (ii) upon discharge of this Indenture and the other Indenture Documents in accordance with Article 7; (iii) at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding; or (iv) if the Collateral is owned by a Grantor Subsidiary, upon release of such Grantor Subsidiary in its capacity as a Subsidiary Guarantor from the Obligations in accordance with the provisions hereof.

(b) Without the necessity of any consent of or notice to the Trustee or any Holder of the Notes, the Company or any Grantor Subsidiary may request and instruct the Collateral Agent to, on behalf of each Holder of Notes, (i) execute and deliver to the Company or any Officer of the Company, as the case may be, for the benefit of any Person, such release documents as may be reasonably requested in writing, of all Liens held by the Collateral Agent in any Collateral securing the Obligations, and (ii) deliver any such assets in the possession of the Collateral Agent to any Company Indenture Party, as the case may be; and Collateral Agent shall promptly take such actions provided that any such release complies with and is expressly permitted in accordance with the terms of this Indenture, the Intercreditor Agreement and the Security Documents and is accompanied by an Officer's Certificate and Opinion of Counsel to such effect, which Officer's Certificate and Opinion of Counsel shall also state that all covenants and conditions precedent to such actions have been complied with, on which Officer's Certificate and Opinion of Counsel the Collateral Agent shall be permitted to conclusively rely.

(c) The release of any Collateral from the Liens securing the Obligations or the release of, in whole or in part, the Liens securing the Obligations created by any of the Security Document will not be deemed to impair the Liens securing the Obligations in contravention of the provisions hereof if and to the extent the Collateral or the Liens securing the Obligations are released pursuant to the terms of this Indenture and the applicable Security Documents. Each of the Holders of the Notes acknowledges that a release of Collateral or Liens securing the Obligations strictly in accordance with the terms of this Indenture, the Intercreditor Agreement and the Security Documents will not be deemed for any purpose to be an impairment of the Security Documents or otherwise contrary to the terms of this Indenture.

Section 13.05 ***Application of Proceeds of Collateral.***

(a) Upon any realization upon the Collateral from the exercise of any rights or remedies under any Security Document or any other agreement with the Company or any Grantor Subsidiary which secures any of the Obligations, the proceeds thereof shall be applied in accordance with Section 6.14 of this Indenture.

(b) Each of the Collateral Agent and the Trustee is authorized and empowered to receive any funds collected or distributed under the Intercreditor Agreement and the Security Documents and to apply according to the provisions of this Indenture, subject to the Intercreditor Agreement.

Section 13.06 ***Collateral Agent.***

(a) The Company hereby appoints Wilmington Trust, National Association to act as Collateral Act and each Holder, by its acceptance of the Notes irrevocably consents and agrees to such appointment.

(b) Subject to the provisions of Section 11.01 as to the Trustee only, neither the Trustee, nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents shall be responsible or liable (i) for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency, maintenance, renewal or protection of any Lien, or for any defect or deficiency as to any such matters, or (ii) for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so; except, in the case of the Collateral Agent, to the extent such action or omission constitutes gross negligence or willful misconduct (as determined by a final order of a court of competent jurisdiction that is not subject to appeal) on the part of the Collateral Agent, (iii) for the validity, sufficiency, value, genuineness, ownership or transferability of the Collateral, written instructions or any agreement or assignment contained therein and will not be regarded as making nor be required to make, any representations thereto, or for the validity of the title, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral or (iv) for the legality, enforceability, effectiveness or sufficiency of the Intercreditor Agreement, or any subordination agreement or other similar agreement entered into in connection with this Indenture. Neither the Trustee nor the Collateral Agent shall have any obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Company or any Guarantor or is cared for, protected, or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the property constituting Collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the value, genuineness, validity, ownership, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Collateral Agent pursuant to this Indenture, any Security Document or the Intercreditor Agreement other than pursuant to the instructions of the Trustee or the Holders of a majority in aggregate principal amount of the then outstanding Notes or as otherwise provided in the Security Documents.

(c) The rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture, including, without limitation, its right to be indemnified, reimbursed and compensated and all other rights, privileges, protections, immunities and benefits set forth in Article 11, are extended to the Collateral Agent, and its agents, receivers and attorneys, and shall be enforceable by, the Collateral Agent, as if fully set forth in this Section 13.06 with respect to the Collateral Agent, except that the Collateral Agent shall only be liable for (and shall be indemnified and held harmless to the extent such Losses do not constitute) its gross negligence or willful misconduct (as determined by a final order of a court of competent jurisdiction that is not subject to appeal). In acting under any Security Document or the Intercreditor Agreement and any other Transaction Document, the Collateral Agent or the Trustee, as applicable, shall enjoy the rights, privileges, protections, immunities, indemnities and benefits that are extended to the Collateral Agent or the Trustee, as applicable, hereunder.

(d) Notwithstanding anything herein to the contrary, the duties of the Collateral Agent shall be ministerial and administrative in nature and the Collateral Agent will not have any duties nor will it have responsibilities or obligations other than those expressly assumed by it in this Indenture, the other Security Documents to which the Collateral Agent is a party and the Intercreditor Agreement. The use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Company hereby agrees that the Collateral Agent shall hold the Collateral on behalf of and for the benefit of the Secured Parties, in each case pursuant to the Security Documents. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or any Security Document at the request, order or direction of the Holders pursuant to the provisions of this Indenture or any Security Document, unless such representative or other party shall have furnished to the Collateral Agent security or indemnity satisfactory to the Collateral Agent against the fees, costs, expenses and liabilities including attorneys' fees and expenses which may be incurred therein or thereby. The Collateral Agent shall have no responsibility or liability for any loss or damages of any nature that may arise from any action taken or not taken by the Collateral Agent in accordance with the written consent of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding. The permissive authorizations, entitlements, powers and rights granted to the Collateral Agent in this Indenture and the Security Documents shall not be construed as duties. The Collateral Agent shall have no duty to review or analyze reports delivered to it. Delivery of reports, documents and other information to the Collateral Agent is for informational purposes only and the Collateral Agent's receipt of the foregoing shall not constitute actual or constructive notice or knowledge of any event or circumstance or any information contained therein or determinable from information contained therein.

(e) Beyond the exercise of reasonable care in the custody of Collateral in its possession, the Collateral Agent will have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. In addition, neither the Collateral Agent nor the Trustee will be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral. If, at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding, the Trustee or Collateral Agent files or records any Security Documents or any related UCC financing statement or other similar documents, such filing or recording by the Trustee or Collateral Agent at the direction of the Holders of at least a majority of the aggregate principal amount of Notes then Outstanding shall be deemed done by Trustee or Collateral Agent without recourse, representation or warranty by the Trustee or the Collateral Agent (and the Trustee and the Collateral Agent disclaim any representation or warranty as to the validity, effectiveness, priority, perfection or otherwise). The Collateral Agent will be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords property held by it as a collateral agent or any similar arrangement, and the Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith. The Collateral Agent shall be permitted to use overnight carriers to transmit possessory collateral and shall be not liable for any items lost or damages in transmit.

(f) The Collateral Agent shall not have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or any Indenture Document by the Company or any Company Indenture Party or any other Person that is a party thereto or bound thereby.

(g) The Collateral Agent shall not be required to acquire title to an asset for any reason and shall not be required to carry out any fiduciary or trust obligation for the benefit of another. The Collateral Agent is not a fiduciary and shall not be deemed to have assumed any fiduciary obligation. If the Collateral Agent or the Trustee in its sole discretion believes that any obligation to take or omit to take any action may cause the Collateral Agent or the Trustee, as applicable to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Agent or the Collateral Agent, as applicable, to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent and the Trustee reserve the right, instead of taking such action, either to resign as Collateral Agent or Trustee or to arrange for the transfer of the title or control of the asset to a court appointed receiver. Neither the Collateral Agent nor the Trustee will be liable to any Person for any liability, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's or the Trustee's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

(h) The Collateral Agent may resign or be replaced in accordance with the procedures set forth in Section 11.10 hereof, except that references to the Trustee in such section shall be deemed to be references to the Collateral Agent for this purpose. If the Collateral Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Collateral Agent.

(i) At all times when the Person serving as Trustee is not itself also serving as the Collateral Agent, the Company shall deliver to the Trustee copies of all Security Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Security Documents.

(j) Notwithstanding anything to the contrary contained in this Indenture, the Intercreditor Agreement or the Security Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under the mortgages or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(k) Upon the receipt by the Collateral Agent of a written request of the Company signed by an Officer (a "Security Document Order"), the Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Initial Issue Date. Such Security Document Order shall (i) state that it is being delivered to the Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 13.06(k), and (ii) instruct the Collateral Agent to execute and enter into such Security Document; provided that in no event shall the Collateral Agent be required to enter into a Security Document that it determines adversely affects the Collateral Agent in a commercially unreasonable manner (taking into account other security documents it has recently agreed to in similar secured notes transactions). Any such execution of a Security Document shall be at the direction and reasonable expense of the Company, upon delivery to the Collateral Agent of an Officers' Certificate and Opinion of Counsel stating that all conditions precedent to the execution and delivery of the Security Document have been satisfied. The Holders, by their acceptance of the Notes, hereby authorize and direct the Collateral Agent to execute such Security Documents.

(l) Without limiting the foregoing, with respect to any Collateral located outside of the United States ("Foreign Collateral"), the Collateral Agent shall have no obligation to directly enforce, or exercise rights and remedies in respect of, or otherwise exercise any judicial action or appear before any court in any jurisdiction outside of the United States. To the extent the Holders of a majority in aggregate outstanding amount of Notes outstanding determine that it is necessary or advisable in connection with any enforcement or exercise of rights with respect to Foreign Collateral to exercise any judicial action or appear before any such court, the Holders of a majority in aggregate outstanding amount of Notes outstanding shall be entitled to direct the Collateral Agent to appoint a local agent for such purpose (subject to the receipt of such protections, security and indemnities as the Collateral Agent shall determine in its sole discretion to protect the Collateral Agent from liability).

(m) In no event shall the Collateral Agent be required to execute and deliver any landlord lien waiver, estoppel or collateral access letter, or any account control agreement or any instruction or direction letter delivered in connection with such document that the Collateral Agent determines adversely affects it or otherwise subjects it to personal liability, including without limitation agreements to indemnify any contractual counterparty; provided that nothing in this clause (m) shall be implied as imposing any such obligation on the Company or any Guarantor to obtain any such landlord lien waiver, estoppel or collateral access letter, or any account control agreement.

(n) Neither the Trustee nor the Collateral Agent shall be under any obligation to effect or maintain insurance or to renew any policies of insurance or to make any determination or inquire as to the sufficiency of any policies of insurance carried by the Company or any Guarantor, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made.

(o) Nothing in this Indenture shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder. The Collateral Agent shall not be liable for any indirect, special, incidental, punitive or consequential damages (included but not limited to lost profits) whatsoever, even if it has been informed of the likelihood thereof and regardless of the form of action.

(p) The Collateral Agent (i) shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers, or for any error of judgment made in good faith by the Collateral Agent, unless it is proved that the Collateral Agent was grossly negligent in ascertaining the pertinent facts, (ii) shall not be liable for interest on any money received by it except as the Collateral Agent may agree in writing with the Company (and money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law), (iii) the Collateral Agent may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel.

(q) The Collateral Agent may act through attorneys or agents and shall not be responsible for the acts or omissions of any such attorney or agent appointed with due care. The Collateral Agent shall not be charged with knowledge of (A) any events or other information, or (B) any default under this Indenture or any other agreement unless the Collateral Agent shall have actual knowledge thereof.

Section 13.07 ***Trust Indenture Act; Opinion of Counsel; Certificates of the Company.***

The Company and the Grantor Subsidiaries shall furnish to the Collateral Trustee and the Trustee at least thirty (30) days prior to each anniversary of the Initial Issue Date, an Opinion of Counsel, dated as of such date, stating that, in the opinion of such counsel, (A) action has been taken with respect to the filing of record by each applicable Company Indenture Party of all UCC financing statements, continuation statements or amendments as is necessary to maintain the Liens on the portion of the Collateral securing the Obligations for which perfection of such Lien may be accomplished under the Code by filing a UCC financing statement, continuation statement or financing statement amendment in the office of the Secretary of State of the State of Delaware (or such other applicable filing office) and the payment of all applicable filing fees and (B) based on relevant laws as in effect on the date of such Opinion of Counsel, continuation statements and financing statement amendments have been filed of record that are necessary as of such date and during the succeeding 18 months fully to preserve and perfect the Liens on the portion of the Collateral securing the Obligations for which perfection of such Lien may be accomplished under the Code by filing a UCC financing statement, continuation statement or financing statement amendment in the office of the Secretary of State of the State of Delaware (or such other applicable filing office) and the payment of all applicable filing fees and such Opinion of Counsel may contain customary qualifications and exceptions and may rely on an Officer's Certificate (as to factual matters only); provided that if there is a required filing of a continuation statement or other instrument within such 18 month period and such continuation statement or amendment is not effective if filed at the time of the Opinion of Counsel, such Opinion of Counsel may so state that and in that case the Company Indenture Parties shall cause a continuation statement or amendment to be timely filed so as to maintain such Liens and security interests securing the Obligations.

ARTICLE 14
MISCELLANEOUS

Section 14.01 ***Effect on Successors and Assigns*****.**

All agreements of the Company, the Trustee, the Collateral Agent, the Registrar, the Paying Agent and the Conversion Agent in this Indenture and the Notes will bind their respective successors.

Section 14.02 ***Governing Law*****.**

This Indenture and the Notes, and any claim, controversy or dispute arising under or related to this Indenture or the Notes, will be governed by, and construed in accordance with, the laws of the State of New York, (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).

Section 14.03 ***Trust Indenture Act.***

To the extent this Indenture has been qualified under the Trust Indenture Act, if any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 14.04 ***Benefits of Indenture*****.**

Nothing in this Indenture or in the Notes, expressed or implied, will give to any Person, other than the parties hereto, any Agent or their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 14.05 ***Calculations*****.**

Neither the Trustee nor any Agent shall be responsible for making any calculation with respect to any matter under this Indenture or the Notes. The Company and its designated agents shall be responsible for making all calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, the Closing Sale Prices of the Common Stock, accrued interest payable on the Notes, and Additional Interest payable on the Notes, the Conversion Rate, the Settlement Amount and the amount of Additional Interest that may be payable by Company from time to time. The Company shall make all these calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent and all other agents appointed by the Company herein are entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Company shall forward the Company's calculations to any Holders upon the written request of that Holder.

Whenever the Company is required to calculate or make adjustments to the Conversion Rate, the Company will do so to the 1/10,000th of a share of Common Stock, rounding any additional decimal places up or down in a commercially reasonable manner.

For the avoidance of doubt, unless the context requires otherwise, all references in this Indenture to an amount calculated per $1,000 of principal amount of Notes shall be appropriately and proportionately adjusted with respect to any Notes with a principal amount that is not an integral multiple of $1,000 (and is instead an integral multiple of $1.00).

Section 14.06 ***Execution in Counterparts*****.**

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words "execution," "signed," "signature," and words of similar import in this Indenture and the Notes shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity, and enforceability as manually executed signatures or a paper based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 U.S.C. §§ 7001-7006), the Electronic Signatures and Records Act of 1999 (N.Y. State Tech. §§ 301-309), or any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything herein to the contrary, neither the Trustee nor the Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee or the Collateral Agent, as applicable, pursuant to procedures approved by the Trustee or the Collateral Agent, as applicable

Section 14.07 ***Notices*****.**

(a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Company, the Trustee or the Collateral Agent shall be in writing and delivered in person or mailed by first class mail, postage prepaid, overnight courier or transmitted by facsimile transmission, email or electronic transmission in PDF format as follows:

(r) if to the Trustee or the Collateral Agent by any Holder or by the Company, at the Corporate Trust Office;

(ii) if to the Company or any Subsidiary Guarantor by the Trustee, the Collateral Agent or by any Holder, at the address of its principal office at ProSomnus, Inc.:

If to ProSomnus, Inc.
ProSomnus, Inc.
5860 W Las Positas Blvd., Suite 25
Pleasanton, CA 94588
Attn: Len Liptak
Telephone No.: (925) 353-7904
E-mail: lliptak@prosomnus.com

with a copy (which will not constitute notice) to:
Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave, NW, Ste 900
Attn: E. Peter Strand, Esq.
Telephone No.: (202) 689-2983
Email: peter.strand@nelsonmullins.com

(b) The Company, the Subsidiary Guarantors, the Trustee or the Collateral Agent by notice given to the other in the manner provided in this Section 14.07, may designate additional or different addresses for subsequent notices or communications.

(c) Notices to Holders will be sent to the address of each Holder as it appears in the Register. Notices will be deemed to have been given on the date of mailing or electronic transmission to such Holder. Whenever a notice is required to be given by the Company, such notice may be given by the Trustee at the Company's request on the Company's behalf. With respect to Global Notes, notice shall be sufficiently given if given to the Depositary for the Notes (or its designee), pursuant to Applicable Procedures of such Depositary (and the Company will make any notices the Company is required to give to Holders available on the Company's website).

(d) Whenever the Company is required to deliver notice to the Holders, the Company will, by the date it is required to deliver such notice to the Holders, deliver a copy of such notice to the Trustee and the Agents. Notices to the Trustee shall be deemed given upon actual receipt thereof.

In respect of this Indenture, the Collateral Agent and the Trustee, in each of its capacities, including without limitation as the Trustee, Registrar, Paying Agent and Conversion Agent, shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and neither the Trustee nor the Collateral Agent shall have any liability for losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information. Each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee or the Collateral Agent, as applicable, including, without limitation the risk of the Trustee or the Collateral Agent, as applicable, acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties.

Section 14.08 ***No Recourse Against Others*****.**

No director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor shall have any liability for any obligations of the Company or Subsidiary Guarantors under the Notes, the Indenture, or the Subsidiary Guarantees or any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Note, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 14.09 ***Tax Withholding*****.**

Nothing herein shall preclude any tax withholding required by law or regulation. Each Holder agrees, and each beneficial owner of an interest in a Note by its acquisition of such interest is deemed to agree, that if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, set off such payments against payments of cash and shares of Common Stock on the Note (or, in certain circumstances, against any payments on the Common Stock).

Each Holder agrees to provide the Company and its agents with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and such other forms and documents that the Company or its agents may request. Each Holder understands that if such tax reporting documentation is not provided and certified to the Company or agents, the Company or its agents may be required by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the Notes. The Company shall provide to the Paying Agent any information that the Paying Agent needs to comply to with any tax reporting obligations that it may have under any applicable law.

Section 14.10 ***Waiver of Jury Trial*****.**

EACH OF THE COMPANY, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY (AND THE HOLDERS, BY THEIR ACCEPTANCE OF THE NOTES THEREBY) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 14.11 ***U.S.A. Patriot Act*****.**

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee and the Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee or the Collateral Agent. The parties to this Indenture agree that they will provide the Trustee and the Collateral Agent with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 14.12 ***Force Majeure*****.**

In no event shall the Collateral Agent, the Trustee or any Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, any act or provision of any present or future law or regulation or governmental authority, earthquakes, fires, floods, strikes, work stoppages or other labor disputes, accidents, acts of war or terrorism, civil or military disturbances, riots, disasters, epidemics, pandemics or similar public health emergencies, nuclear or natural catastrophes or acts of God, malware or ransomware attack and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, including the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Collateral Agent, the Trustee or other Agent, as applicable, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 14.13 ***Submission to Jurisdiction*****.**

The Company hereby irrevocably consents to then non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America located in the City of New York and the County of New York, over any suit, action or proceeding with respect to this Indenture or the Notes or the transactions contemplated hereby. The Company waives any objection that it may have to the venue of any suit, action or proceeding with respect to this Indenture or the Notes or the transactions contemplated hereby in the courts of the State of New York or the courts of the United States of America, in each case, located in the City of New York and County of New York, or that such suit, action or proceeding brought in the courts of the State of New York or the United States of America, in each case, located in the City of New York and County of New York was brought in an inconvenient court and agrees not to plead or claim the same. The Company hereby irrevocably appoints Corporation Service Company, 1180 Avenue of the Americas, Suite 210, New York, NY 10036, as its authorized agent in the State of New York upon which process may be served in any such suit or proceedings, and agrees that service of process upon such agent shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for the term of this Indenture. Nothing in this Indenture shall in any way be deemed to limit the ability to serve any such writs, process or summonses in any other manner permitted by applicable law.

Section 14.14 ***Severability*****.**

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 14.15. ***Legal Holidays.***

In any case where any Redemption Date, Conversion Date, Maturity Date or any other date on which the principal and accrued but unpaid interest, if any, on the Notes is due and payable, is not a Business Day or is a day on which the banking institutions in the city of the office of the Paying Agent are authorized or obligated by law to close or be closed, then any payment to be made on such date may be made on the next succeeding day that is a Business Day and is not a day on which the banking institutions in the city of the office of the Paying Agent are authorized or obligated by law to close or be closed with the same force and effect as if made on such Redemption Date, Conversion Date, Maturity Date or such other date, as the case may be, and no interest shall accrue in respect of the delay.

Section 14.16. ***Original Issue Discount***.

The Notes have been issued with "Original Issue Discount" ("OID") for U.S. federal income tax purposes. Holders may obtain the issue price, total amount of OID, issue date and yield to maturity by contacting the Company.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

ProSomnus, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

ProSomnus Holdings, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

ProSomnus Sleep Technologies, Inc.

By: /s/ Len Liptak
Name: Len Liptak
Title: Chief Executive Officer

Wilmington Trust, National Association, as Trustee

By: /s/ Sarah Vilhauer
Name: Sarah Vilhauer
Title: Assistant Vice President

Wilmington Trust, National Association, as Collateral Agent

By: /s/ Sarah Vilhauer
Name: Sarah Vilhauer
Title: Assistant Vice President

[Indenture]

EXHIBIT A

[FORM OF FACE OF NOTE]

[For all Notes, include the following legend (the "**Non-Affiliate Legend**"):]

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS NOTE OR A BENEFICIAL INTEREST HEREIN.

[For Global Notes, include the following legend (the "**Global Notes Legend**"):]

THIS SECURITY IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

[THIS SECURITY AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF PROSOMNUS, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.][1]

[For all Notes, include the following legend:]

[ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, THE LIENS AND SECURITY INTERESTS SECURING THE OBLIGATIONS EVIDENCED BY THIS NOTE, THE EXERCISE OF ANY RIGHT OR REMEDY WITH RESPECT THERETO, AND CERTAIN OF THE RIGHTS OF THE HOLDER HEREOF ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT DATED AS OF DECEMBER 6, 2022 (AS AMENDED, RESTATED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "INTERCREDITOR AGREEMENT"), BY AND AMONG THE COMPANY, THE SUBSIDIARY GUARANTORS, WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SECOND LIEN COLLATERAL AGENT FOR THE SUBORDINATED DEBT AND WILMINGTON TRUST, NATIONAL ASSOCIATION, AS FIRST LIEN COLLATERAL AGENT FOR THE SENIOR DEBT. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS NOTE, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.]

[1] This Restricted Notes Legend shall be deemed removed from the Note when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depositary.

ProSomnus, Inc.
Subordinated Secured Convertible Notes due 2026

No.: [ ]
CUSIP: [_____][2]

Principal
Amount $ [ ]

[*For Global Notes, include the following:* as revised by the Schedule of Increases and Decreases in the Global Note attached hereto]

ProSomnus, Inc., a Delaware corporation (the "**Company**"), promises to pay to [ ] [include "*Cede & Co." for Global Note*] or registered assigns, the principal amount of [*add principal amount in words*] $[ ] [*For Global Notes, include the following*: as revised by the Schedule of Increases and Decreases in the Global Note attached hereto,] on April 6, 2026 (the "**Maturity Date**").

Interest Payment Dates: January 1, April 1, July 1 and October 1 of each year (or, if such day is not a Business Day, the next succeeding Business Day), beginning on the first such date that is at least 30 calendar days after the Initial Issue Date, on each Conversion Date (as to that principal amount then being converted), on each Optional Redemption Date (as to that principal amount then being redeemed)and on the Maturity Date.

Regular Record Dates: December 15, March 15, June 15 and September 15.

Additional provisions of this Security are set forth on the other side of this Note.

IN WITNESS WHEREOF, ProSomnus, Inc. has caused this instrument to be signed manually or by facsimile or by another electronic method by one of its duly authorized Officers.

ProSomnus, Inc.

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture.

Dated:

Wilmington Trust, National Association, as Trustee

By: _____
Authorized
Signatory:
Title:

[2] This Note will be deemed to be identified by CUSIP No. [ ] from and after such time when (i) the Company delivers, pursuant to Section 2.08(b) of the within-mentioned Indenture, the Free Transferability Certificate and (ii) this Note is identified by such CUSIP number in accordance with the applicable procedures of the Depositary.

[FORM OF REVERSE OF NOTE]

ProSomnus, Inc.

Subordinated Secured Convertible Notes due 2026_

This Note is one of a duly authorized issue of securities of the Company (herein called the "**Notes**"), issued under the Indenture dated as of December 6, 2022 by and among the Company, the Subsidiary Guarantors, Wilmington Trust, National Association, as trustee, herein called the "**Trustee**," and as Collateral Agent herein referred to as the "**Collateral Agent**", reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the Collateral Agent and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered.

The Company shall pay all interest due on this Note as set forth in the Indenture on the then outstanding principal amount of this Note by [*For Global Notes, include the following*: increasing the principal amount of this Note, rounded up to the nearest whole dollar][*For Physical Notes, include the following*: issuing to the Holder an additional Physical Note, the principal amount of which shall be rounded up to the nearest whole dollar].

This Note does not benefit from a sinking fund. This Note is subject to redemption.

The Notes are secured, on a subordinated secured basis, by the Collateral pursuant to the Security Documents referred to in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert this Note or a portion of this Note such that the principal amount of this Note converted equals $1.00 or an integral multiple of $1.00 into cash, a number of shares of Common Stock or a combination thereof determined in accordance with Article 4 of the Indenture and subject to adjustment as set forth therein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company, the Trustee and the Collateral Agent with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time Outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Note, the Holders of not less than 25% in principal amount of the Notes at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered (and if requested, provided) the Trustee indemnity satisfactory to the Trustee, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity, and shall not have received from the Holders of a majority in principal amount of Notes at the time Outstanding a direction inconsistent with such request. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of the principal hereof, premium, if any, or interest hereon, with respect to and the amount of cash, the number of shares of Common Stock or the combination thereof, as the case may be, due upon conversion of this Note or after the respective due dates expressed in the Indenture.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal of, premium, interest on and the amount of cash, a number of shares of Common Stock or a combination of cash and shares of Common Stock, if any, as the case may be, due upon conversion of, this Note at the time, place and rate, and in the coin and currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer to the Trustee, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon a new Note of this series and of like tenor for the same aggregate principal amount will be issued to the designated transferee.

The Notes are issuable only in registered form without coupons in minimum denominations of $1.00 and integral multiples of $1.00. As provided in the Indenture and subject to certain limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

Subject to the rights of the Holders as of the Regular Record Date to receive interest on the related Interest Payment Date, prior to due presentment of this Note for registration of transfer, the Company, the Trustee, the Agents and any of their respective agents may treat the Person in whose name the Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee, the Agents nor any agents shall be affected by notice to the contrary.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (= custodian) and U/G/M/A (= Uniform Gift to Minors Act).

Upon the issuance of any new Note, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including fees and expenses of the Trustee) connected therewith.

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture. If any provision of this Note limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

[FORM OF NOTICE OF CONVERSION][3]

To: ProSomnus, Inc.

Cc: Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: ProSomnus, Inc., Administrator

Re: SUBORDINATED SECURED CONVERTIBLE NOTES DUE 2026

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (which is such that the principal amount of the portion of this Note that will not be converted equals $1.00 or an integral multiple of $1.00 in excess thereof) below designated, into cash, a number of shares of Common Stock or a combination thereof in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon conversion, together with any Notes representing any unconverted principal amount hereof, be paid and/or issued and/or delivered, as the case may be, to the registered Holder hereof unless a different name is indicated below.

Subject to certain exceptions set forth in the Indenture, if this notice is being delivered on a date after the Close of Business on a Regular Record Date and prior to the Open of Business on the Interest Payment Date corresponding to such Regular Record Date, this notice must be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Note to be converted which such payment shall, in the case of Physical Notes, be made payable to the Company.. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect to such issuance and transfer as set forth in the Indenture.

The Holder acknowledges that this Conversion Notice is subject to the restrictions set forth in paragraph 4.01(c)(ii) of the Indenture.

Principal amount to be converted (if less than all) which must be $1.00 or an integral multiple in excess thereof:
$

Your contact information:
Participant Name: _____
Participant Number: _____
Contact Name: _____
Contact Email: _____
Contact Telephone: _____

[3] Note to Form: The Conversion Agent and Company reserve the right to include such additional information in the Form of Conversion Notice in order to facilitate any conversion process

STOCK CERTIFICATE INFORMATION

The undersigned hereby requests that the stock certificate or certificates issued upon conversion be registered in the name(s) of the persons set forth below.

The undersigned acknowledges that the Company is not required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the converting holder, and the converting holder is solely responsible for the payment of any such taxes. The undersigned acknowledges that if shares are to be issued in the name of a person other than the converting holder, the converting holder shall pay all transfer taxes payable with respect thereto.

You must check one, and only one, of the following two boxes:

☐ The undersigned is requesting registration in a name other than that of the converting holder. The converting holder acknowledges sole responsibility for the payment of any taxes that may be owing by reason thereof. If any taxes are payable upon transfer, they have already been paid.

☐ No transfer of beneficial ownership is occurring in connection with the conversion.

Registered Holder Information:

Name: _____
SSN or Tax ID No.: _____
Street Address: _____
City, State and Zip Code: _____

Delivery Instructions:

Unless you direct otherwise below, the above-referenced stock certificate(s) will be delivered to the registered holder at the address specified above. If you wish to provide separate delivery instructions, check the box and complete the information set forth below.

☐ The undersigned requests that the above-referenced stock certificate(s) be delivered to the person and address set forth below:

Name: _____
Street Address: _____
City, State and Zip Code: _____
Phone Number: _____

CASH PAYMENT INSTRUCTIONS

The undersigned directs that any cash payment owed for fractional shares (and, if applicable, for any accrued but unpaid interest which may be payable under certain limited circumstances) be wired in accordance with the wire instructions set forth below:

Bank: _____
Address: _____
Name of Account: _____
ABA No.: _____
Account No.: _____

To avoid the application of "backup withholding" under U.S. federal income tax law, each converting holder (or other payee) should complete, sign, and deliver an Internal Revenue Service ("IRS") Form W-9 (in the case of a U.S. person or a resident alien) or an IRS Form W-8BEN or other appropriate IRS Form W-8 (in the case of a foreign holder). IRS Forms W-9 and W-8 are available on the IRS's website at http://www.irs.gov/. Failure to include a properly completed IRS Form W-9 or applicable IRS Form W-8 may result in the application of U.S. backup withholding.

Capitalized terms used but not defined herein shall have the meanings set forth in the Indenture.

Dated: _____

Signature(s)
(Sign exactly as your name appears on the other side of this Note)
Name:
Title:
Signature Guarantee
(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:
(i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) another guarantee program acceptable to the Trustee.)

ATTACHMENT 2

[FORM OF ASSIGNMENT AND TRANSFER]

For value received, hereby sell(s), assign(s) and transfer(s) unto_____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date for such Note, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To ProSomnus, Inc. or a subsidiary thereof; or

☐ Pursuant to a registration statement which has become effective under the Securities Act of 1933, as amended; or

☐ To a qualified institutional buyer in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to an exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

[TO BE SIGNED BY PURCHASER IF THE SECOND, THIRD OR FOURTH BOX ABOVE IS CHECKED]

[*Include if the second, third or fourth box above is checked*] [The undersigned (on the immediately following signature line) represents and warrants that it is not, and has not been for the immediately preceding three months, an "affiliate" (as defined in Rule 144 under the Securities Act of 1933, as amended) of ProSomnus, Inc.]

[*Include if the third box above is checked*] [The undersigned (on the immediately following signature line) represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.]

[Date: _____ Signed: _____]

Unless one of the above boxes is checked, the Trustee and Registrar will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof; provided that, if the fourth box is checked, the Company may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.11 of the Indenture shall have been satisfied.

Dated:

_____

Signature(s)
(Sign exactly as your name appears on the other side of this Note)

_____

Signature Guarantee
(Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs: (i) The Notes Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP) or (iv) another guarantee program acceptable to the Trustee)

[*Insert for Global Note*]

SCHEDULE OF INCREASES AND DECREASES IN THE GLOBAL NOTE
Initial Principal Amount of Global Note: [$0]

Date	Amount of Increase in Principal Amount of Global Note	Amount of Decrease in Principal Amount of Global Note	Principal Amount of Global Note After Increase or Decrease	Notation by Registrar, Note Custodian or authorized signatory of Trustee

EXHIBIT B

[FORM OF FREE TRANSFERABILITY CERTIFICATE]
Officer's Certificate
[date]

[NAME OF OFFICER], the [TITLE] of ProSomnus, Inc., a Delaware corporation (the "**Company**") does hereby certify, in connection with the occurrence of the Free Trade Date on [date] in respect of $[add principal amount] of the Company's Subordinated Secured Convertible Notes due 2026 (CUSIP: [_____]) (the "**Notes**") pursuant to the terms of the Indenture, dated as of December 6, 2022 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company, the Subsidiary Guarantors named therein, and Wilmington Trust, National Association, as trustee (the "**Trustee**") and as collateral agent, that:

1. The undersigned is permitted to sign this "Officer's Certificate" on behalf of the Company, as the term "Officer's Certificate" is defined in the Indenture.

2. The undersigned has read, and thoroughly examined, the Indenture and the definitions therein relating thereto.

3. In the opinion of the undersigned, the undersigned has made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the removal of the Restricted Notes Legend described herein from the Notes as provided for in the Indenture have been complied with.

4. All conditions precedent described herein as provided for in the Indenture and, in the case of Global Notes, the Applicable Procedures have been complied with.

5. The Resale Restriction Termination Date for the Notes is the date of this Officer's Certificate. The Company is satisfied that the Notes are not subject to the restrictions set forth in the Restricted Notes Legend and Section 2.07 of the Indenture.

In accordance with Section 2.08 of the Indenture, the Company hereby advises you as follows:

1. The Restricted Notes Legend set forth on the Notes shall be deemed removed from the Notes in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

2. The restricted CUSIP number for the Notes shall be deemed removed from the Notes and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be [_____], in accordance with the terms and conditions of the Notes and as provided in the Indenture, without further action on the part of the Holders.

Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Indenture.

IN WITNESS WHEREOF, the undersigned signed this Officer's Certificate as of the date written above.

ProSomnus, Inc.

By: _____
Name:
Title:

EXHIBIT C

[FORM OF RESTRICTED STOCK LEGEND]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF PROSOMNUS, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") (X) THAT IS AT LEAST ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE COMPANY'S SUBORDINATED] SECURED CONVERTIBLE NOTES DUE 2026 OR SUCH OTHER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO, AND (Y) ON WHICH THE COMPANY HAS INSTRUCTED THE TRUSTEE FOR THE COMPANY'S SUBORDINATED SECURED CONVERTIBLE NOTES DUE 2026 THAT THE RESTRICTIONS DESCRIBED IN THE LEGEND WILL NO LONGER APPLY IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THE INDENTURE GOVERNING THE COMPANY'S SENIOR SECURED CONVERTIBLE NOTES DUE 2026, EXCEPT:

(A) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED (OR HAS BECOME) EFFECTIVE UNDER THE SECURITIES ACT THAT COVERS RESALE OF THE SHARES OF COMMON STOCK UNDERLYING THE COMPANY'S [SENIOR/SUBORDINATED] SECURED CONVERTIBLE NOTES DUE 2026, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, AND THE TRANSFER AGENT WILL NOT BE REQUIRED TO ACCEPT FOR REGISTRATION OF TRANSFER ANY SECURITIES ACQUIRED BY A PURCHASER EXCEPT UPON PRESENTATION OF EVIDENCE SATISFACTORY TO THE TRANSFER AGENT THAT THE RESTRICTIONS SET FORTH HEREIN HAVE BEEN COMPLIED WITH. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

EXHIBIT D

FORM OF NOTATION OF GUARANTEE

For value received, each Subsidiary Guarantor has, jointly and severally, fully and unconditionally and irrevocably guaranteed, to the extent set forth in the Indenture, dated as of December 6, 2022 (as supplemented or amended, the "**Indenture**"), among ProSomnus, Inc., a Delaware corporation (the "**Company**"), the Subsidiary Guarantors named therein and Wilmington Trust, National Association, as trustee (the "**Trustee**") and collateral agent, and subject to the provisions in the Indenture, (a) the due and punctual payment of the principal of, premium, if any, and interest on the Notes (as defined in the Indenture), whether at the stated Maturity Date, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal, premium, and interest, to the extent permitted by law, and the due and punctual performance of all other obligations of the Company to the Holders, the Trustee or the Collateral Agent all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at the stated Maturity Date, by acceleration or otherwise. The obligations of the Subsidiary Guarantors to the Holders of Notes, to the Trustee and the Collateral Agent pursuant to the Guarantee and the Indenture are expressly set forth in Article 12 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee. This Guarantee shall be governed by and construed in accordance with the laws of the State of New York.

[_____]

By: _____
Name:
Title:

Dated:

EXHIBIT E

FORM OF GUARANTOR SUPPLEMENTAL INDENTURE TO BE DELIVERED BY GUARANTORS

GUARANTOR SUPPLEMENTAL INDENTURE (this "**Guarantor Supplemental Indenture**"), dated as of [*date*], by and among ProSomnus, Inc. (the "**Company**"), the Company's Subsidiaries listed on Schedule A hereto (each, a "**New Guarantor**"), the Company's Subsidiaries listed on Schedule B hereto (each, an "**Existing Guarantor**") and Wilmington Trust, National Association, as trustee under the Indenture referred to below (the "**Trustee**").

WITNESSETH

WHEREAS, the Company, the Existing Guarantors, the Trustee and Collateral Agent are parties to an indenture (as supplemented or amended, the "Indenture"), dated as of December 6, 2022, providing for the issuance of the Company's Subordinated Secured Convertible Notes due 2026 (the "**Notes**");

WHEREAS, Section 8.01 of the Indenture provides that, without the consent of any Holders, the Company, the Existing Guarantors and the Trustee, at any time and from time to time, may modify, supplement or amend the Indenture to add a Guarantor under the Indenture;

WHEREAS, each New Guarantor wishes to guarantee the Notes pursuant to the Indenture;

WHEREAS, pursuant to the Indenture, the Company, the Existing Guarantors, the New Guarantors and the Trustee have agreed to enter into this Guarantor Supplemental Indenture for the purposes stated herein; and

WHEREAS, all things necessary have been done to make this Guarantor Supplemental Indenture, when executed and delivered by the Company, the Existing Guarantors and each New Guarantor, the legal, valid and binding agreement of the Company, the Existing Guarantors and each New Guarantor, in accordance with its terms.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company, each New Guarantor, the Existing Guarantors and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

(1) **Capitalized Terms**. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) **Guarantee**. Each New Guarantor hereby guarantees the obligations of the Company under the Indenture and the Notes related thereto pursuant to the terms and conditions of Article 12 of the Indenture, such Article 12 being incorporated by reference herein as if set forth at length herein and such New Guarantor agrees to be bound as a Subsidiary Guarantor under the Indenture as if it had been an initial signatory thereto; *provided*, *however* that the New Guarantor can be released from its Guarantee to the same extent as any other Subsidiary Guarantor under the Indenture.

(3) **Governing Law**. This Guarantor Supplemental Indenture, and any claim, controversy or dispute arising under or related to this Guarantor Supplemental Indenture, will be governed by, and construed in accordance with, the laws of the State of New York, (without regard to the conflicts of laws provisions thereof other than Section 5-1401 of the General Obligations Law).

(4) **Counterparts**. The parties may sign any number of copies of this Guarantor Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

(5) **Effect of Headings**. The section headings herein are for convenience only and shall not affect the construction hereof.

(6) **The Trustee**. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Guarantor Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company, Existing Guarantors and the New Guarantors.

IN WITNESS WHEREOF, the parties hereto have caused this Guarantor Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated:

ProSomnus, Inc.

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON SCHEDULE A HERETO

By: _____
Name:
Title:

EACH GUARANTOR LISTED ON SCHEDULE B HERETO

By: _____
Name:
Title:

Wilmington Trust, National Association, as Trustee

By: _____
Name:
Title:

SCHEDULE A
SCHEDULE B

EXHIBIT F

[COMPANY LETTERHEAD]

[ ], 20[ ]

[Holders]

Wilmington Trust, National Association,
as Trustee
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Attention: ProSomnus Administrator

Re: Interest Election for ProSomnus, Inc. Subordinated Secured Convertible Notes Due 2026

Ladies and Gentlemen:

Reference herby is made to that certain indenture dated as of December 6, 2022 (the "**Indenture**"), by and among ProSomnus, Inc. a Delaware corporation (the "**Company**"), the subsidiary guarantors party thereto and Wilmington Trust, National Association, as trustee (in such capacity, the "**Trustee**") and collateral agent relating to the issuance of $[_] aggregate principal amount of the Company's Subordinated Secured Convertible Notes due 2026 (the "**Notes**"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Indenture.

Pursuant to Section 2.15 of the Indenture, the Company hereby notifies you it has elected [cash/PIK/combination] Interest for the [insert applicable interest payment date] Interest Payment Date. [If combination, insert applicable % proportion to be paid in cash and % proportion to be paid PIK]

The Interest accrued for the Interest Period from the most recent Interest Payment Date (for the avoidance of doubt, [insert date [month day, year]) through, but excluding, [month day, year] at an aggregate rate of [%].

The Interest accrued for the Interest Period from the [insert date [month day, year]) through, but excluding, [month day, year] at an aggregate rate of [%].

The Interest accrued for the Interest Period from the [insert date [month day, year]) through, but excluding, [month day, year] at an aggregate rate of [%].

The Company hereby provides notice that the amount of such cash Interest on [insert interest payment date] shall be [$ insert aggregate cash amount if all cash or combination].

The Company hereby provides notice that the amount of such PIK Interest on [insert interest payment date] shall be [$ insert aggregate PIK amount [rounded to the nearest dollar] if all PIK or combination].

IN WITNESS WHEREOF, the undersigned has caused this notice to be duly executed and delivered by its proper and duly authorized officer as of the day and year first written above.

ProSomnus, Inc.

By: _____
Name:
Title:

Exhibit 10.11

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is entered as of May 5, 2022, by and between **ProSomnus Sleep Technologies, Inc.**, a Delaware corporation (the "***Company***"), and Len Liptak ("***Executive***"). The Company and Executive are hereinafter collectively referred to as the "Parties," and individually a "Party." This Agreement will become effective (the "***Effective Date***") upon the closing of the currently contemplated de-SPAC transaction with Lakeshore Acquisition I Corp. ("Purchaser" or "Parent"), whereby the Company will become an indirect wholly-owned subsidiary of Purchaser. Upon the closing of such transaction, this Agreement will supersede in entirety any prior employment agreement between Executive and the Company.

AGREEMENT

1. At-Will Employment. Executive shall be employed commencing on the Effective Date on an "at-will" basis, subject to the conditions of termination consistent with this Agreement.

2. Position, Duties, Responsibilities.

(a) Position and Location. Executive shall render services to the Company in the position of President and Chief Executive Officer (the "***CEO***") reporting to the Board of Directors (the "***Board***") of the Company, and shall perform all services appropriate to that position for an organization the size of the Company that is engaged in the type of business engaged by the Company, as well as such other services of a nature customary to the position of CEO, as may be assigned by the Board. Executive shall devote the Executive's best efforts to the performance of the Executive's duties and must at all times act in good faith towards the Company and any company with the same ultimate beneficial ownership as the Company (the "***Group Companies***"). Executive's office will be in Pleasanton, California but Executive shall travel, from time to time, as Company business dictates without additional remuneration but subject to the reimbursement of business expenses, as set forth in Section 3(e) below.

(b) Other Activities. Except upon the prior written consent of the Board, Executive will not (i) accept any other full-time or part-time employment or engagement, (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be in conflict with, or that might place Executive in a conflicting position to that of the Company, or prevent Executive from devoting such time as necessary to fulfill the Executive's responsibilities under this Agreement, (iii) sell, market or represent any product or service other than the Company's products or services, or (iv) serve on any other board of directors for any other company (other than the Company) except with the prior written consent of the Board, which consent will not be unreasonably withheld.

(c) Devotion of Time and Energies. Except as set forth in Section 2(b), Executive will devote all of the Executive's working time and attention to the performance of the Executive's duties under this Agreement.

(d) Duties and Authority. Executive shall have responsibility for managing the operations of the Company as directed by the Board from time to time, consistent with the Executive's position as CEO.

3. Compensation. In consideration of the services to be rendered under this Agreement, Executive shall be entitled to the following:

(a) Base Salary. The Company shall pay to Executive an annual salary of Five Hundred Thousand ($500,000), less all applicable withholdings, which shall be payable in accordance with the Company's payroll practices (the "***Base Salary***").

(b) Annual Performance Bonus. Effective January 1, 2022, Executive shall be eligible to receive an annual bonus, target of 75% of the Executive's Base Salary (the "***Annual Performance Bonus***"). The Company shall pay the Annual Performance Bonus, if any, no later than the thirtieth day following the date the Company's auditors confirm the Company's financial statements for the applicable fiscal year, but in no event shall such Annual Performance Bonus be paid later than June 30 of the year following the year to which the Annual Performance Bonus relates. In order to be eligible to receive the Annual Performance Bonus, Executive must be a full-time employee of the Company on the date(s) the Annual Performance Bonus is calculated and paid. The Annual Performance Bonus shall be based on and subject to the additional terms and conditions as set forth in a separate writing between the Company and the Executive ("the ***CEO Bonus Plan***"). The Annual Performance Bonus shall be subject to annual review and adjustment subject to the Board's discretion. At the discretion of the Board, the Annual Performance Bonus may be paid out in either cash or Company stock.

(c) Equity. As soon as reasonably practicable following the Effective Date, the Company will recommend to the board of directors of Parent the issuance to Executive of an initial grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee, which number of shares shall represent 1.7% of the Company's common stock. (the "***Initial Grant***"). Additionally, on the first annual anniversary of the Effective Date of this Agreement, the Company shall recommend that the board of directors of Parent approve the issuance to Executive of an additional grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee (the "***Annual Grant***"). Both the Initial Grant and Annual Grant are subject to the approval of the board of directors of Parent (including without limitation the vesting provisions of the award) and the terms and conditions of the Parent's Equity Incentive Plan and forms of award agreement.

(d) Employee Benefits and Vacation. While Executive is employed by the Company hereunder, Executive shall be entitled to participate in all employee benefit plans to the extent that Executive meets the eligibility requirements for each individual plan or program, including but not limited to participation in the Company's health, dental, and vision insurance plans for Executives, which shall be paid for by the Company. Executive shall be entitled to be paid for state and federal holidays recognized by the Company, and shall accrue paid time off ("***PTO***") in accordance with Company policy.

(e) Reimbursement of Expenses. Executive shall be reimbursed for such reasonable and necessary business expenses incurred by Executive while the Executive is employed by the Company, which are directly related to the furtherance of the Company's business, upon presentation of documentation regarding such expenses. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code ("***Section 409A***"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which Executive incurs such business expense.

4. Termination.

(a) Termination By the Company. The Company may terminate Executive's employment with the Company under the following conditions:

(1) Death or Disability. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability (as defined below).

(2) For Cause. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of written notice to the Executive specifying the Cause or Causes (as defined below) relied upon for such termination. Any notice of termination given pursuant to this Section 4(a)(2) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(3) Without Cause. The Company may terminate the Executive's employment under this Agreement at any time and for any reason by delivery of written notice of such termination to the Executive. Any notice of termination given pursuant to this Section 4(a)(3) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(b) Termination by the Executive. Executive may terminate Executive's employment with the Company under the following conditions:

(1) Termination by Executive without Good Reason. The Executive may terminate his employment hereunder without Good Reason (as defined below) upon thirty (30) days written notice to the Company.

(2) Termination by Executive for Good Reason. The Executive may terminate his employment for Good Reason. For purposes of this Agreement, "***Good Reason***" means the existence of any one or more of the following conditions without the Executive's consent, provided Executive submits written notice to the Company within 45 days of when such condition(s) first arose specifying the condition(s): (i) a material adverse change in his title or reporting relationships; (ii) change in his position with the Company which materially reduces his authority, duties or responsibilities, or the assignment to the Executive of duties materially inconsistent with the Executive's position with the Company; (iii) a material reduction in the Executive's then current Base Salary; (iv) a relocation of Executive's place of employment by more than 35 miles from Pleasanton, California, unless the new place of employment is closer to Executive's primary residence; and (v) a material breach by the Company of this Agreement; provided that the Company fails to correct the act or omission within 30 days after receiving the Executive's written notice and the Executive actually terminates his employment within 60 days after the date the Company receives the Executive's notice.

(c) Termination by Mutual Agreement of the Parties. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in this Agreement.

(d) Compensation Upon Termination.

(1) Death or Complete Disability. If the Executive's employment is terminated by death or Complete Disability as provided in Section 4(e)(1), the Company shall pay the Executive's accrued Base Salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination (the "***Accrued Obligations***") to Executive and/or Executive's heirs, as applicable, and the Company shall thereafter have no further obligations to the Executive and/or Executive's heirs under this Agreement.

(2) Cause, Resignation, Mutual Agreement. If the Executive's employment is terminated by the Company for Cause, by Executive's termination without Good Reason or by mutual agreement of the Parties, the Company shall pay the Accrued Obligations at the time Executive or the Company provides notice of termination, or at the time the Parties mutually agree to terminate Executive's employment, as applicable, and the Company shall thereafter have no further obligations to Executive under this Agreement.

(3) Without Cause or by Executive for Good Reason. If the Company terminates the Executive's employment without Cause or if the Executive terminates employment for Good Reason, then upon the Executive's furnishing to the Company and not revoking a waiver of claims in a form satisfactory to the Company (the "***Release***") within 60 days following the date of termination, (provided, that if the 60th day falls in the calendar year following the year during which the termination or separation from service occurred, then the payments will commence in such subsequent calendar year; provided further that if such payments commence in such subsequent year, the first such payment shall be a lump sum in an amount equal to the payments that would have come due since Executive's separation from service) the Executive shall be entitled to the following:

(i) the Accrued Obligations;

(ii) payment of the Executive's then-existing Base Salary over a period of twelve (12) months following the termination date, subject to ordinary withholdings in accordance with the Company's standard payroll practices; and

(iii) until the earliest to occur of (x) the expiration of twelve (12) months following the Termination Date, and (y) the date Executive receives health, dental and vision coverage through another policy of insurance, and subject to Executive's valid COBRA election, the Company shall make payment of the Executive's premiums on the same terms that existed prior to Executive's termination; provided that if such payment of premiums would otherwise violate the nondiscrimination rules or cause the coverage to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the "***Act***") or Section 105(h) of the Internal Revenue Code of 1986, as amended (the "***Code***"), these payments shall be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 105(h). Notwithstanding the foregoing, the benefits described in subsections (ii) and (iii) shall commence on the first payroll period following the date the Release becomes effective and irrevocable; provided, however, that if the 60th day following the date of termination occurs in the calendar year following the year of termination, then such payments shall commence no earlier than January 1 of such subsequent calendar year. The first payment shall be in an amount equal to the total amount to which Executive would otherwise have been entitled during the period following the Executive's last day of employment if such deferral had not been required.

(4) Condition on Obligations. Notwithstanding any provisions in this Agreement to the contrary, including any provisions contained in this Section 4(d)(4), the Company's obligations, and the Executive's rights, pursuant to Section 4(d)(3) shall cease and be rendered a nullity immediately should the Executive violate the provision of Section 5, or should the Executive violate the terms and conditions of the Executive's previously executed Proprietary Information and Inventions Agreement, which shall continue to apply to Executive's employment. Further, Executive covenants and agrees to notify the Company within five (5) business days of Executive's acceptance of employment or consulting or receipt of benefits as set forth above respectively in Section 4(d)(3)(iii).

(e) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(1) Complete Disability. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance covering employees of the Company then in force. In the event the Company has no policy of disability income insurance covering employees of the Company in force when the Executive becomes disabled, the term Complete Disability shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board, determines to have incapacitated the Executive from satisfactorily performing all of the Executive's usual services for the Company for a period of at least one hundred twenty (120) consecutive days during any twelve (12) month period. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

(2) For Cause. "***Cause***" for the Company to terminate Executive's employment hereunder shall mean the occurrence of any of the following events:

(i) The Executive's willful failure to perform the Executive's job duties under this Agreement, provided, however, Executive has received written notice from the Company identifying such performance failure(s) and has failed to cure the same within 30 days of the Executive's receipt of such notice;

(ii) The willful failure by the Executive to comply with all material applicable laws in performing the Executive's job duties or in directing the conduct of the Company's business;

(iii) The willful failure by the Executive to follow the Company's policies and procedures, including, but not limited to, those contained in the Company's Code of Conduct;

(iv) The commission by the Executive of any felony or intentionally fraudulent or other act against the Company, or its affiliates, subsidiaries, employees, agents, representatives or clients which demonstrates the Executive's untrustworthiness or lack of integrity;

(v) the Executive's engaging or in any manner participating in any activity which is competitive with or intentionally injurious to the Company or its Parents, or any of their affiliates or subsidiaries or which violates any material provisions of Section 5 hereof; or

(vi) the Executive's commission of any fraud against the Company, or any of its affiliates or subsidiaries, or use or intentional appropriation for Executive's personal use or benefit of any funds or properties of the Company not authorized by the Board or the Company's Chairman, as applicable, to be so used or appropriated.

(3) Termination Date. The "***Termination Date***" is the date on which Executive is no longer employed with the Company.

5. Miscellaneous.

(a) Arbitration. Executive shall execute and deliver a Mutual Arbitration Agreement with the Company, a form of which is attached hereto as Exhibit A.

(b) Clawback. Any amounts paid pursuant to this Agreement will be subject to recoupment in accordance with any claw back policy that the Company has adopted or is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law.

(c) Entire Agreement. This Agreement and Exhibits attached hereto, are intended to be the final, complete, and exclusive statement of the terms of Executive's employment by the Company. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Executive and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Executive acknowledges that he does not rely upon any representations, oral or written, concerning the terms of his employment by the Company. To the extent that the practices, policies, or procedures of the Company, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

(d) Amendments, Waivers. This Agreement may only be modified by an instrument in writing, signed by Executive and by a duly authorized representative of the Company other than Executive. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(e) Assignment; Successors and Assigns. Executive agrees that the Executive will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights, or obligations under this Agreement, nor shall Executive's rights be subject to encumbrance or the claims of creditors. Any purported assignment, transfer, or delegation by Executive shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation or entity, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder to any successor in interest, provided specifically that the Company may at any time (upon written notice to Executive) assign all of its rights and obligations hereunder (including but not limited to the right to receive Executive's services as provided hereunder) to a third party purchaser. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

(f) Section 409A Compliance.

(1) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement will be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements will be paid as soon as administratively practicable, but in no event will any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year will not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(2) To the extent that any of the payments or benefits provided for in Section 4(d) are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the United States Internal Revenue Code (the "Code"), the following interpretations apply to Section 4:

(3) Any termination of Executive's employment triggering payment of benefits under Section 4(d) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Executive's employment does not constitute a separation of service, any benefits payable under Section 4(d) that constitute deferred compensation under Section 409A of the Code will be delayed until after the date of a subsequent event constituting a separation of service.

(4) If Executive is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Section 4(d) that constitute non-qualified deferred compensation under Section 409A of the Code will be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Executive's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) Executive's death, the Company will pay Executive in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid Executive prior to that date under Section 4(d) of this Agreement.

(5) It is intended that each installment of the payments and benefits provided under Section 4(d) of this Agreement will be treated as a separate "payment" for purposes of Section 409A of the Code.

(6) Neither the Company nor Executive will have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

(g) Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered personally or via courier, (ii) upon confirmation of receipt, if given by electronic mail, and (iii) on the third business day following mailing, if mailed first class, postage prepaid, registered, or certified mail from a United States address as follows or at such other address as each party hereafter designates:

to the Company at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

and to Executive at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

(h) Severability; Enforcement. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator to be invalid, unenforceable, or void, such provision shall be enforced (by blue penciling or otherwise) to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

(i) Governing Law. This agreement and the rights and obligations of the company and executive hereunder shall be determined under, governed by, and construed in accordance with the laws of the state of California as applied to agreements among California residents entered into and to be performed entirely within California.

(j) Executive Acknowledgment. Executive acknowledges (i) that the Executive has consulted with independent counsel of the Executive's own choice concerning this Agreement and (ii) that the Executive has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on the Executive's own judgment.

(k) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that any party so delivering an executed counterpart by facsimile shall thereafter promptly deliver a manually executed counterpart of this Agreement to the other parties, but failure to deliver such manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

ProSomnus Sleep Technologies, Inc.

/s/ Mindy Hungerman
By: Mindy Hungerman
Its: CFO

Executive

/s/ Len Liptak
Len Liptak

EXHIBIT A

MUTUAL ARBITRATION AGREEMENT

Please Read Carefully – By Signing This Document You Give Up Certain Legal Rights

1. ProSomnus Sleep Technologies, Inc., (the "Company") and the undersigned employee ("Employee") have entered into this Mutual Agreement to Arbitrate Claims ("Agreement") in order to establish and gain the benefits of a timely, impartial, and cost-effective dispute resolution procedure. Employee understands that any reference in this Agreement to the Company will also be a reference to any and all benefit plans, the benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them.

2. Claims Covered by the Agreement: The Company and Employee mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") arising out of Employee's employment (or termination) that the Company may have against Employee or that Employee may have against the Company or its officers, directors, employees, or agents. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all such claims. The claims covered by this Agreement include, but are not limited to: (i) claims for discrimination or harassment on the basis of ancestry, age, color, marital status, medical condition, physical or mental disability, national origin, race, religion, pregnancy, sexual orientation, or any other characteristic protected by applicable law; (ii) claims for retaliation; (iii) claims for breach of any contract or covenant (express or implied); (iv) claims for wages or other compensation due; (v) claims for benefits (except where an employee benefit or pension plan specifies that its claim procedure shall culminate in a resolution procedure different from this one); (vi) claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance now in existence, or hereinafter enacted, and amended from time to time; and (vii) any tort claims (including, but not limited to, negligent or intentional injury, defamation, and termination of employment in violation of public policy).

3. Waiver of Right to Court or Jury Trial and for Class Action Relief: The Company and Employee agree to give up their respective rights to have the above-mentioned claims decided in a court of law before a judge or jury or by administrative proceeding, and instead are accepting and agreeing to the use of final and binding arbitration. The sole exception to the foregoing is a hearing before the California Labor Commissioner on a claim for unpaid wages; however, any subsequent proceeding resulting from such a hearing that would otherwise be heard in a court of law, including any challenge or appeal of a decision rendered in such hearing, is subject to this Agreement and must be arbitrated. Employee also agrees and understands that Employee waives any right to bring claims as a class representative, or as a member of a collective action, and that any claims that Employee may bring must be brought solely in the Employee's individual capacity.

4. Claims Not Covered by the Agreement: This Agreement does not cover: (i) claims by Employee for workers' compensation or unemployment insurance (an exclusive government-created remedy exists for these claims); (ii) claims for unpaid compensation or benefits within the jurisdiction of the California Department of Labor Standards Enforcement; (iii) claims for relief under the California Private Attorneys General Act (except to the extent such claims are permitted to be arbitrated, in which case such claims will be subject to arbitration); and (iv) claims which even in the absence of the Agreement could not have been litigated in court or before any administrative proceeding under applicable federal, state or local law. Nothing in this Agreement precludes either party from filing a charge or complaint with any state or federal administrative agency that prosecutes a claim on behalf of the government, for purposes of assisting or cooperating with such agency in its investigation or prosecution of charges or complaints. However, the parties waive their right to any personal remedy or relief as a result of such charges or complaints brought by such prosecuting agencies, to the extent that is permissible under law.

5. Notice of Claims and Statute of Limitations: All disputes between Employee and the Company (and its affiliates, shareholders, directors, officers, employees, agents, successors, attorneys, and assigns) relating to Employee's services with the Company or this Agreement, will be resolved by final and binding arbitration to the fullest extent permitted by law. Except as otherwise provided in this Agreement, the arbitration provisions are to apply to the resolution of disputes that otherwise would not be resolved in a court of law. All disputes must be brought within the applicable statute of limitations established by law and all claims must be sent via registered or certified mail, and shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. Failure to comply with the requirements of this Section 4 may constitute a waiver of all rights that the party seeking arbitration may have against the other party.

6. Arbitration Procedures: The arbitration will be conducted in accordance with the then-existing JAMS Employment Arbitration Rules & Procedures, and as augmented in this Agreement. Arbitration will be initiated as provided by the JAMS Employment Rules. JAMS Employment Rules can be found at jamsadr.com/rules-employment-arbitration. Either Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither Party will initiate or prosecute any lawsuit or administrative action in any way related to any applicable dispute or claim, except as set forth in this Agreement. All disputes or claims subject to arbitration will be decided by a single arbitrator. The arbitrator will be selected by mutual agreement of the Parties within 30 days of the effective date of the notice initiating the arbitration. If the Parties cannot agree on an arbitrator, then the complaining Party will notify JAMS and request selection of an arbitrator in accordance with the JAMS Employment Rules or other applicable JAMS rules. The arbitrator will only have authority to award equitable relief, damages, costs, and fees as a court would have for the particular claims asserted, and any action of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved Party. All other aspects of the arbitrator's ruling will be final.

7. Arbitration Decision: The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, all proceedings and all documents prepared in connection with any arbitration will be confidential and the arbitration subject matter will not be disclosed to any person other than the Parties to the proceedings, their counsel, witnesses and experts, the arbitrator, and, if involved, the court and court staff. The Parties will stipulate to all arbitration and court orders necessary to effectuate these confidentiality provisions. A court of competent jurisdiction will have the authority to enter a judgment upon the award made pursuant to the arbitration or applicable arbitration appeal.

8. Place of Arbitration: All arbitration proceedings will be conducted at a JAMS office located nearest to the location where the Employee was performing services for the Company.

9. Representation / Attorneys' Fees: Each party may be represented in the arbitration by an attorney or other representative selected by the party. Each party shall be responsible for its own attorneys' or representatives' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable attorneys' fees to the prevailing party in accordance with applicable law.

10. Discovery and Information Exchange: The arbitrator shall have discretion to order the scope of discovery and the pre-hearing exchange of information, consistent with the JAMS rules. The parties may engage in any method of discovery as outlined in the Federal Rules of Civil Procedure (exclusive of Rule 26(a)). Such discovery includes discovery sufficient to arbitrate adequately a claim, including access to essential and relevant documents and witnesses and the parties expressly empower the arbitrator to issue third-party document and deposition subpoenas. Discovery disputes are subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

11. Subpoenas: Each party shall have the right to subpoena witnesses and documents for the arbitration (including subpoenas to third parties for documents and depositions) and to issue document and testimonial subpoenas to third parties.

12. Injunctive Relief: The provisions of California Code of Civil Procedure §1281.8 regarding injunctive relief and other provisional remedies shall apply to any dispute between the parties to this agreement.

13. Arbitrator Fees and Costs: If Employee initiates the arbitration, the Company will bear the cost of the arbitrator and the administrative fees associated with the arbitration proceeding. However, the Employee will be responsible for the portion of the initial filing fee equivalent to the cost of a filing fee in a California Superior Court to initiate an action.

14. Federal Arbitration Act. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Section 1-14) and will be construed and governed accordingly. Questions of arbitrability (that is whether an issue is subject to arbitration under this Agreement) shall be decided by the arbitrator.

15. Consideration: The Company's offer of employment to Employee, or continued employment of Employee, and the mutual promises of the Company and Employee to arbitrate claims covered by this Agreement rather than to litigate them, provide good and sufficient consideration for this Agreement.

16. Construction: Should any part of this Agreement be found to be unenforceable, such portion shall be severed from the Agreement, and the remaining portions shall continue to be enforceable.

17. Sole and Entire Agreement: This Agreement expresses the entire Agreement of the parties concerning the subject matter hereof and there are no other agreements, oral or written, concerning arbitration, except as provided herein. This Agreement is not, and shall not be construed to create any contract of employment, express or implied.

18. Requirements for Modification or Revocation: This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the Chief Executive Officer of the Company and Employee, which specifically states an intent to revoke or modify this Agreement.

Feedback. The Company desires this Agreement to be as clear and as straightforward as possible given the important subject matter. If you have any questions about this Agreement or have any suggestions on how the Company can modify it to improve your or your colleagues' understanding of its terms, please feel free to contact your supervisor or any manager or authorized Company officer at any time.

You are not obligated to enter into this Agreement. You also have the opportunity to request changes to this Agreement before you sign it. Please bring any such requested changes to the attention of the Company before you sign it.

By signing below, you represent:

- You have carefully read this agreement, you understand its terms and you agree that all changes you have requested (if any) have been made to this Agreement.
- You have been given the opportunity to consult with legal counsel about this Agreement.
- You have been given sufficient time to read and understand this Agreement before signing it.

Len Liptak — Date

ProSomnus Sleep Technologies, Inc.

By: — Date
Its:

Exhibit 10.12

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is entered as of May 4, 2022, by and between **ProSomnus Sleep Technologies, Inc.**, a Delaware corporation (the "***Company***"), and Laing Rikkers ("***Executive***"). The Company and Executive are hereinafter collectively referred to as the "Parties," and individually a "Party." This Agreement will become effective (the "***Effective Date***") upon the closing of the currently contemplated de-SPAC transaction with Lakeshore Acquisition I Corp. ("Purchaser" or "Parent"), whereby the Company will become an indirect wholly-owned subsidiary of Purchaser. Upon the closing of such transaction, this Agreement will supersede in entirety any prior employment agreement between Executive and the Company.

AGREEMENT

1. At-Will Employment. Executive shall be employed commencing on the Effective Date on an "at-will" basis, subject to the conditions of termination consistent with this Agreement.

2. Position, Duties, Responsibilities.

(a) Position and Location. Executive shall render services to the Company in the position of President and Executive Chairman (the "***EC***") reporting to the Chief Executive Officer (the "***CEO***") of the Company, and shall perform all services appropriate to that position for an organization the size of the Company that is engaged in the type of business engaged by the Company, as well as such other services of a nature customary to the position of EC, as may be assigned by the CEO. Executive shall devote the Executive's best efforts to the performance of the Executive's duties and must at all times act in good faith towards the Company and any company with the same ultimate beneficial ownership as the Company (the "***Group Companies***"). Executive's office will be in Pleasanton, California but Executive shall travel, from time to time, as Company business dictates without additional remuneration but subject to the reimbursement of business expenses, as set forth in Section 3(e) below.

(b) Other Activities. Except upon the prior written consent of the Board, Executive will not (i) accept any other full-time or part-time employment or engagement, (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be in conflict with, or that might place Executive in a conflicting position to that of the Company, or prevent Executive from devoting such time as necessary to fulfill the Executive's responsibilities under this Agreement, (iii) sell, market or represent any product or service other than the Company's products or services, or (iv) serve on any other board of directors for any other company (other than the Company) except with the prior written consent of the Board, which consent will not be unreasonably withheld.

(c) Devotion of Time and Energies. Except as set forth in Section 2(b), Executive will devote all of the Executive's working time and attention to the performance of the Executive's duties under this Agreement.

(d) Duties and Authority. Executive shall have responsibility for managing the operations of the Company as directed by the CEO from time to time, consistent with the Executive's position as EC.

3. Compensation. In consideration of the services to be rendered under this Agreement, Executive shall be entitled to the following:

(a) Base Salary. The Company shall pay to Executive an annual salary of Two Hundred and Fifty Thousand ($250,000), less all applicable withholdings, which shall be payable in accordance with the Company's payroll practices (the "***Base Salary***").

(b) Annual Performance Bonus. Effective January 1, 2022, Executive shall be eligible to receive an annual bonus, target of 75% of the Executive's Base Salary (the "***Annual Performance Bonus***"). The Company shall pay the Annual Performance Bonus, if any, no later than the thirtieth day following the date the Company's auditors confirm the Company's financial statements for the applicable fiscal year, but in no event shall such Annual Performance Bonus be paid later than June 30 of the year following the year to which the Annual Performance Bonus relates. In order to be eligible to receive the Annual Performance Bonus, Executive must be a full-time employee of the Company on the date(s) the Annual Performance Bonus is calculated and paid. The Annual Performance Bonus shall be based on and subject to the additional terms and conditions as set forth in a separate writing between the Company and the Executive ("the ***EC Bonus Plan***"). The Annual Performance Bonus shall be subject to annual review and adjustment subject to the Board's discretion. At the discretion of the Board, the Annual Performance Bonus may be paid out in either cash or Company stock.

(c) Equity. As soon as reasonably practicable following the Effective Date, the Company will recommend to the board of directors of Parent the issuance to Executive of an initial grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee, which number of shares shall represent 1.7% of the Company's common stock. (the "***Initial Grant***"). Additionally, on the first annual anniversary of the Effective Date of this Agreement, the Company shall recommend that the board of directors of Parent approve the issuance to Executive of an additional grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee (the "***Annual Grant***"). Both the Initial Grant and Annual Grant are subject to the approval of the board of directors of Parent (including without limitation the vesting provisions of the award) and the terms and conditions of the Parent's Equity Incentive Plan and forms of award agreement.

(d) Employee Benefits and Vacation. While Executive is employed by the Company hereunder, Executive shall be entitled to participate in all employee benefit plans to the extent that Executive meets the eligibility requirements for each individual plan or program, including but not limited to participation in the Company's health, dental, and vision insurance plans for Executives, which shall be paid for by the Company. Executive shall be entitled to be paid for state and federal holidays recognized by the Company, and shall accrue paid time off ("***PTO***") in accordance with Company policy.

(e) Reimbursement of Expenses. Executive shall be reimbursed for such reasonable and necessary business expenses incurred by Executive while the Executive is employed by the Company, which are directly related to the furtherance of the Company's business, upon presentation of documentation regarding such expenses. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code ("***Section 409A***"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which Executive incurs such business expense.

4. Termination.

(a) Termination By the Company. The Company may terminate Executive's employment with the Company under the following conditions:

(1) Death or Disability. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability (as defined below).

(2) For Cause. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of written notice to the Executive specifying the Cause or Causes (as defined below) relied upon for such termination. Any notice of termination given pursuant to this Section 4(a)(2) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(3) Without Cause. The Company may terminate the Executive's employment under this Agreement at any time and for any reason by delivery of written notice of such termination to the Executive. Any notice of termination given pursuant to this Section 4(a)(3) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(b) Termination by the Executive. Executive may terminate Executive's employment with the Company under the following conditions:

(1) Termination by Executive without Good Reason. The Executive may terminate his employment hereunder without Good Reason (as defined below) upon thirty (30) days written notice to the Company.

(2) Termination by Executive for Good Reason. The Executive may terminate his employment for Good Reason. For purposes of this Agreement, "***Good Reason***" means the existence of any one or more of the following conditions without the Executive's consent, provided Executive submits written notice to the Company within 45 days of when such condition(s) first arose specifying the condition(s): (i) a material adverse change in his title or reporting relationships; (ii) change in his position with the Company which materially reduces his authority, duties or responsibilities, or the assignment to the Executive of duties materially inconsistent with the Executive's position with the Company; (iii) a material reduction in the Executive's then current Base Salary; (iv) a relocation of Executive's place of employment by more than 35 miles from Pleasanton, California, unless the new place of employment is closer to Executive's primary residence; and (v) a material breach by the Company of this Agreement; provided that the Company fails to correct the act or omission within 30 days after receiving the Executive's written notice and the Executive actually terminates his employment within 60 days after the date the Company receives the Executive's notice.

(c) Termination by Mutual Agreement of the Parties. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in this Agreement.

(d) Compensation Upon Termination.

(1) Death or Complete Disability. If the Executive's employment is terminated by death or Complete Disability as provided in Section 4(e)(1), the Company shall pay the Executive's accrued Base Salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination (the "***Accrued Obligations***") to Executive and/or Executive's heirs, as applicable, and the Company shall thereafter have no further obligations to the Executive and/or Executive's heirs under this Agreement.

(2) Cause, Resignation, Mutual Agreement. If the Executive's employment is terminated by the Company for Cause, by Executive's termination without Good Reason or by mutual agreement of the Parties, the Company shall pay the Accrued Obligations at the time Executive or the Company provides notice of termination, or at the time the Parties mutually agree to terminate Executive's employment, as applicable, and the Company shall thereafter have no further obligations to Executive under this Agreement.

(3) Without Cause or by Executive for Good Reason. If the Company terminates the Executive's employment without Cause or if the Executive terminates employment for Good Reason, then upon the Executive's furnishing to the Company and not revoking a waiver of claims in a form satisfactory to the Company (the "***Release***") within 60 days following the date of termination, (provided, that if the 60th day falls in the calendar year following the year during which the termination or separation from service occurred, then the payments will commence in such subsequent calendar year; provided further that if such payments commence in such subsequent year, the first such payment shall be a lump sum in an amount equal to the payments that would have come due since Executive's separation from service) the Executive shall be entitled to the following:

(i) the Accrued Obligations;

(ii) payment of the Executive's then-existing Base Salary over a period of six (6) months following the termination date, subject to ordinary withholdings in accordance with the Company's standard payroll practices; and

(iii) until the earliest to occur of (x) the expiration of twelve (12) months following the Termination Date, and (y) the date Executive receives health, dental and vision coverage through another policy of insurance, and subject to Executive's valid COBRA election, the Company shall make payment of the Executive's premiums on the same terms that existed prior to Executive's termination; provided that if such payment of premiums would otherwise violate the nondiscrimination rules or cause the coverage to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the "***Act***") or Section 105(h) of the Internal Revenue Code of 1986, as amended (the "***Code***"), these payments shall be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 105(h). Notwithstanding the foregoing, the benefits described in subsections (ii) and (iii) shall commence on the first payroll period following the date the Release becomes effective and irrevocable; provided, however, that if the 60th day following the date of termination occurs in the calendar year following the year of termination, then such payments shall commence no earlier than January 1 of such subsequent calendar year. The first payment shall be in an amount equal to the total amount to which Executive would otherwise have been entitled during the period following the Executive's last day of employment if such deferral had not been required.

(4) Condition on Obligations. Notwithstanding any provisions in this Agreement to the contrary, including any provisions contained in this Section 4(d)(4), the Company's obligations, and the Executive's rights, pursuant to Section 4(d)(3) shall cease and be rendered a nullity immediately should the Executive violate the provision of Section 5, or should the Executive violate the terms and conditions of the Executive's previously executed Proprietary Information and Inventions Agreement, which shall continue to apply to Executive's employment. Further, Executive covenants and agrees to notify the Company within five (5) business days of Executive's acceptance of employment or consulting or receipt of benefits as set forth above respectively in Section 4(d)(3)(iii).

(e) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(1) Complete Disability. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance covering employees of the Company then in force. In the event the Company has no policy of disability income insurance covering employees of the Company in force when the Executive becomes disabled, the term Complete Disability shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board, determines to have incapacitated the Executive from satisfactorily performing all of the Executive's usual services for the Company for a period of at least one hundred twenty (120) consecutive days during any twelve (12) month period. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

(2) For Cause. "***Cause***" for the Company to terminate Executive's employment hereunder shall mean the occurrence of any of the following events:

(i) The Executive's willful failure to perform the Executive's job duties under this Agreement, provided, however, Executive has received written notice from the Company identifying such performance failure(s) and has failed to cure the same within 30 days of the Executive's receipt of such notice;

(ii) The willful failure by the Executive to comply with all material applicable laws in performing the Executive's job duties or in directing the conduct of the Company's business;

(iii) The willful failure by the Executive to follow the Company's policies and procedures, including, but not limited to, those contained in the Company's Code of Conduct;

(iv) The commission by the Executive of any felony or intentionally fraudulent or other act against the Company, or its affiliates, subsidiaries, employees, agents, representatives or clients which demonstrates the Executive's untrustworthiness or lack of integrity;

(v) the Executive's engaging or in any manner participating in any activity which is competitive with or intentionally injurious to the Company or its Parents, or any of their affiliates or subsidiaries or which violates any material provisions of Section 5 hereof; or

(vi) the Executive's commission of any fraud against the Company, or any of its affiliates or subsidiaries, or use or intentional appropriation for Executive's personal use or benefit of any funds or properties of the Company not authorized by the Board or the Company's Chairman, as applicable, to be so used or appropriated.

(3) Termination Date. The "***Termination Date***" is the date on which Executive is no longer employed with the Company.

5. Miscellaneous.

(a) Arbitration. Executive shall execute and deliver a Mutual Arbitration Agreement with the Company, a form of which is attached hereto as Exhibit A.

(b) Clawback. Any amounts paid pursuant to this Agreement will be subject to recoupment in accordance with any claw back policy that the Company has adopted or is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law.

(c) Entire Agreement. This Agreement and Exhibits attached hereto, are intended to be the final, complete, and exclusive statement of the terms of Executive's employment by the Company. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Executive and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Executive acknowledges that he does not rely upon any representations, oral or written, concerning the terms of his employment by the Company. To the extent that the practices, policies, or procedures of the Company, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

(d) Amendments, Waivers. This Agreement may only be modified by an instrument in writing, signed by Executive and by a duly authorized representative of the Company other than Executive. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(e) Assignment; Successors and Assigns. Executive agrees that the Executive will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights, or obligations under this Agreement, nor shall Executive's rights be subject to encumbrance or the claims of creditors. Any purported assignment, transfer, or delegation by Executive shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation or entity, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder to any successor in interest, provided specifically that the Company may at any time (upon written notice to Executive) assign all of its rights and obligations hereunder (including but not limited to the right to receive Executive's services as provided hereunder) to a third party purchaser. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

(f) Section 409A Compliance.

(1) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement will be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements will be paid as soon as administratively practicable, but in no event will any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year will not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(2) To the extent that any of the payments or benefits provided for in Section 4(d) are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the United States Internal Revenue Code (the "Code"), the following interpretations apply to Section 4:

(3) Any termination of Executive's employment triggering payment of benefits under Section 4(d) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Executive's employment does not constitute a separation of service, any benefits payable under Section 4(d) that constitute deferred compensation under Section 409A of the Code will be delayed until after the date of a subsequent event constituting a separation of service.

(4) If Executive is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Section 4(d) that constitute non-qualified deferred compensation under Section 409A of the Code will be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Executive's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) Executive's death, the Company will pay Executive in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid Executive prior to that date under Section 4(d) of this Agreement.

(5) It is intended that each installment of the payments and benefits provided under Section 4(d) of this Agreement will be treated as a separate "payment" for purposes of Section 409A of the Code.

(6) Neither the Company nor Executive will have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

(g) Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered personally or via courier, (ii) upon confirmation of receipt, if given by electronic mail, and (iii) on the third business day following mailing, if mailed first class, postage prepaid, registered, or certified mail from a United States address as follows or at such other address as each party hereafter designates:

to the Company at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

and to Executive at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

(h) Severability; Enforcement. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator to be invalid, unenforceable, or void, such provision shall be enforced (by blue penciling or otherwise) to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

(i) Governing Law. This agreement and the rights and obligations of the company and executive hereunder shall be determined under, governed by, and construed in accordance with the laws of the state of California as applied to agreements among California residents entered into and to be performed entirely within California.

(j) Executive Acknowledgment. Executive acknowledges (i) that the Executive has consulted with independent counsel of the Executive's own choice concerning this Agreement and (ii) that the Executive has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on the Executive's own judgment.

(k) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that any party so delivering an executed counterpart by facsimile shall thereafter promptly deliver a manually executed counterpart of this Agreement to the other parties, but failure to deliver such manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

ProSomnus Sleep Technologies, Inc.

/s/ Len Liptak
By: Len Liptak
Its: CEO

Executive

/s/ Laing Rikkers
Laing Rikkers

EXHIBIT A

MUTUAL ARBITRATION AGREEMENT

Please Read Carefully – By Signing This Document You Give Up Certain Legal Rights

1. ProSomnus Sleep Technologies, Inc., (the "Company") and the undersigned employee ("Employee") have entered into this Mutual Agreement to Arbitrate Claims ("Agreement") in order to establish and gain the benefits of a timely, impartial, and cost-effective dispute resolution procedure. Employee understands that any reference in this Agreement to the Company will also be a reference to any and all benefit plans, the benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them.

2. Claims Covered by the Agreement: The Company and Employee mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") arising out of Employee's employment (or termination) that the Company may have against Employee or that Employee may have against the Company or its officers, directors, employees, or agents. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all such claims. The claims covered by this Agreement include, but are not limited to: (i) claims for discrimination or harassment on the basis of ancestry, age, color, marital status, medical condition, physical or mental disability, national origin, race, religion, pregnancy, sexual orientation, or any other characteristic protected by applicable law; (ii) claims for retaliation; (iii) claims for breach of any contract or covenant (express or implied); (iv) claims for wages or other compensation due; (v) claims for benefits (except where an employee benefit or pension plan specifies that its claim procedure shall culminate in a resolution procedure different from this one); (vi) claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance now in existence, or hereinafter enacted, and amended from time to time; and (vii) any tort claims (including, but not limited to, negligent or intentional injury, defamation, and termination of employment in violation of public policy).

3. Waiver of Right to Court or Jury Trial and for Class Action Relief: The Company and Employee agree to give up their respective rights to have the above-mentioned claims decided in a court of law before a judge or jury or by administrative proceeding, and instead are accepting and agreeing to the use of final and binding arbitration. The sole exception to the foregoing is a hearing before the California Labor Commissioner on a claim for unpaid wages; however, any subsequent proceeding resulting from such a hearing that would otherwise be heard in a court of law, including any challenge or appeal of a decision rendered in such hearing, is subject to this Agreement and must be arbitrated. Employee also agrees and understands that Employee waives any right to bring claims as a class representative, or as a member of a collective action, and that any claims that Employee may bring must be brought solely in the Employee's individual capacity.

4. Claims Not Covered by the Agreement: This Agreement does not cover: (i) claims by Employee for workers' compensation or unemployment insurance (an exclusive government-created remedy exists for these claims); (ii) claims for unpaid compensation or benefits within the jurisdiction of the California Department of Labor Standards Enforcement; (iii) claims for relief under the California Private Attorneys General Act (except to the extent such claims are permitted to be arbitrated, in which case such claims will be subject to arbitration); and (iv) claims which even in the absence of the Agreement could not have been litigated in court or before any administrative proceeding under applicable federal, state or local law. Nothing in this Agreement precludes either party from filing a charge or complaint with any state or federal administrative agency that prosecutes a claim on behalf of the government, for purposes of assisting or cooperating with such agency in its investigation or prosecution of charges or complaints. However, the parties waive their right to any personal remedy or relief as a result of such charges or complaints brought by such prosecuting agencies, to the extent that is permissible under law.

5. Notice of Claims and Statute of Limitations: All disputes between Employee and the Company (and its affiliates, shareholders, directors, officers, employees, agents, successors, attorneys, and assigns) relating to Employee's services with the Company or this Agreement, will be resolved by final and binding arbitration to the fullest extent permitted by law. Except as otherwise provided in this Agreement, the arbitration provisions are to apply to the resolution of disputes that otherwise would not be resolved in a court of law. All disputes must be brought within the applicable statute of limitations established by law and all claims must be sent via registered or certified mail, and shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. Failure to comply with the requirements of this Section 4 may constitute a waiver of all rights that the party seeking arbitration may have against the other party.

6. Arbitration Procedures: The arbitration will be conducted in accordance with the then-existing JAMS Employment Arbitration Rules & Procedures, and as augmented in this Agreement. Arbitration will be initiated as provided by the JAMS Employment Rules. JAMS Employment Rules can be found at jamsadr.com/rules-employment-arbitration. Either Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither Party will initiate or prosecute any lawsuit or administrative action in any way related to any applicable dispute or claim, except as set forth in this Agreement. All disputes or claims subject to arbitration will be decided by a single arbitrator. The arbitrator will be selected by mutual agreement of the Parties within 30 days of the effective date of the notice initiating the arbitration. If the Parties cannot agree on an arbitrator, then the complaining Party will notify JAMS and request selection of an arbitrator in accordance with the JAMS Employment Rules or other applicable JAMS rules. The arbitrator will only have authority to award equitable relief, damages, costs, and fees as a court would have for the particular claims asserted, and any action of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved Party. All other aspects of the arbitrator's ruling will be final.

7. Arbitration Decision: The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, all proceedings and all documents prepared in connection with any arbitration will be confidential and the arbitration subject matter will not be disclosed to any person other than the Parties to the proceedings, their counsel, witnesses and experts, the arbitrator, and, if involved, the court and court staff. The Parties will stipulate to all arbitration and court orders necessary to effectuate these confidentiality provisions. A court of competent jurisdiction will have the authority to enter a judgment upon the award made pursuant to the arbitration or applicable arbitration appeal.

8. Place of Arbitration: All arbitration proceedings will be conducted at a JAMS office located nearest to the location where the Employee was performing services for the Company.

9. Representation / Attorneys' Fees: Each party may be represented in the arbitration by an attorney or other representative selected by the party. Each party shall be responsible for its own attorneys' or representatives' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable attorneys' fees to the prevailing party in accordance with applicable law.

10. Discovery and Information Exchange: The arbitrator shall have discretion to order the scope of discovery and the pre-hearing exchange of information, consistent with the JAMS rules. The parties may engage in any method of discovery as outlined in the Federal Rules of Civil Procedure (exclusive of Rule 26(a)). Such discovery includes discovery sufficient to arbitrate adequately a claim, including access to essential and relevant documents and witnesses and the parties expressly empower the arbitrator to issue third-party document and deposition subpoenas. Discovery disputes are subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

11. Subpoenas: Each party shall have the right to subpoena witnesses and documents for the arbitration (including subpoenas to third parties for documents and depositions) and to issue document and testimonial subpoenas to third parties.

12. Injunctive Relief: The provisions of California Code of Civil Procedure §1281.8 regarding injunctive relief and other provisional remedies shall apply to any dispute between the parties to this agreement.

13. Arbitrator Fees and Costs: If Employee initiates the arbitration, the Company will bear the cost of the arbitrator and the administrative fees associated with the arbitration proceeding. However, the Employee will be responsible for the portion of the initial filing fee equivalent to the cost of a filing fee in a California Superior Court to initiate an action.

14. Federal Arbitration Act. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Section 1-14) and will be construed and governed accordingly. Questions of arbitrability (that is whether an issue is subject to arbitration under this Agreement) shall be decided by the arbitrator.

15. Consideration: The Company's offer of employment to Employee, or continued employment of Employee, and the mutual promises of the Company and Employee to arbitrate claims covered by this Agreement rather than to litigate them, provide good and sufficient consideration for this Agreement.

16. Construction: Should any part of this Agreement be found to be unenforceable, such portion shall be severed from the Agreement, and the remaining portions shall continue to be enforceable.

17. Sole and Entire Agreement: This Agreement expresses the entire Agreement of the parties concerning the subject matter hereof and there are no other agreements, oral or written, concerning arbitration, except as provided herein. This Agreement is not, and shall not be construed to create any contract of employment, express or implied.

18. Requirements for Modification or Revocation: This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the Chief Executive Officer of the Company and Employee, which specifically states an intent to revoke or modify this Agreement.

Feedback. The Company desires this Agreement to be as clear and as straightforward as possible given the important subject matter. If you have any questions about this Agreement or have any suggestions on how the Company can modify it to improve your or your colleagues' understanding of its terms, please feel free to contact your supervisor or any manager or authorized Company officer at any time.

You are not obligated to enter into this Agreement. You also have the opportunity to request changes to this Agreement before you sign it. Please bring any such requested changes to the attention of the Company before you sign it.

By signing below, you represent:

- You have carefully read this agreement, you understand its terms and you agree that all changes you have requested (if any) have been made to this Agreement.
- You have been given the opportunity to consult with legal counsel about this Agreement.
- You have been given sufficient time to read and understand this Agreement before signing it.

Laing Rikkers	Date
ProSomnus Sleep Technologies, Inc.	
By: Its:	Date

Exhibit 10.13

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is entered as of May 5, 2022, by and between **ProSomnus Sleep Technologies, Inc.**, a Delaware corporation (the "***Company***"), and Melinda Hungerman ("***Executive***"). The Company and Executive are hereinafter collectively referred to as the "Parties," and individually a "Party." This Agreement will become effective (the "***Effective Date***") upon the closing of the currently contemplated de-SPAC transaction with Lakeshore Acquisition I Corp. ("Purchaser" or "Parent"), whereby the Company will become an indirect wholly-owned subsidiary of Purchaser. Upon the closing of such transaction, this Agreement will supersede in entirety any prior employment agreement between Executive and the Company.

AGREEMENT

1. At-Will Employment. Executive shall be employed commencing on the Effective Date on an "at-will" basis, subject to the conditions of termination consistent with this Agreement.

2. Position, Duties, Responsibilities.

(a) Position and Location. Executive shall render services to the Company in the position of Chief Financial Officer (the "***CFO***") reporting to the Chief Executive Officer (the "***CEO***") of the Company, and shall perform all services appropriate to that position for an organization the size of the Company that is engaged in the type of business engaged by the Company, as well as such other services of a nature customary to the position of CFO, as may be assigned by the CEO. Executive shall devote the Executive's best efforts to the performance of the Executive's duties and must at all times act in good faith towards the Company and any company with the same ultimate beneficial ownership as the Company (the "***Group Companies***"). Executive's office will be in Pleasanton, California but Executive shall travel, from time to time, as Company business dictates without additional remuneration but subject to the reimbursement of business expenses, as set forth in Section 3(e) below.

(b) Other Activities. Except upon the prior written consent of the Board, Executive will not (i) accept any other full-time or part-time employment or engagement, (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be in conflict with, or that might place Executive in a conflicting position to that of the Company, or prevent Executive from devoting such time as necessary to fulfill the Executive's responsibilities under this Agreement, (iii) sell, market or represent any product or service other than the Company's products or services, or (iv) serve on any other board of directors for any other company (other than the Company) except with the prior written consent of the Board, which consent will not be unreasonably withheld.

(c) Devotion of Time and Energies. Except as set forth in Section 2(b), Executive will devote all of the Executive's working time and attention to the performance of the Executive's duties under this Agreement.

(d) Duties and Authority. Executive shall have responsibility for managing the financial operations of the Company as directed by the CEO from time to time, consistent with the Executive's position as CFO.

3. Compensation. In consideration of the services to be rendered under this Agreement, Executive shall be entitled to the following:

(a) Base Salary. The Company shall pay to Executive an annual salary of Two Hundred and Seventy ($270,000), less all applicable withholdings, which shall be payable in accordance with the Company's payroll practices (the "***Base Salary***").

(b) Annual Performance Bonus. Effective January 1, 2022, Executive shall be eligible to receive an annual bonus, target of 50% of the Executive's Base Salary (the "***Annual Performance Bonus***"). The Company shall pay the Annual Performance Bonus, if any, no later than the thirtieth day following the date the Company's auditors confirm the Company's financial statements for the applicable fiscal year, but in no event shall such Annual Performance Bonus be paid later than June 30 of the year following the year to which the Annual Performance Bonus relates. In order to be eligible to receive the Annual Performance Bonus, Executive must be a full-time employee of the Company on the date(s) the Annual Performance Bonus is calculated and paid. The Annual Performance Bonus shall be based on and subject to the additional terms and conditions as set forth in a separate writing between the Company and the Executive ("the ***CFO Bonus Plan***"). The Annual Performance Bonus shall be subject to annual review and adjustment subject to the Board's discretion. At the discretion of the Board, the Annual Performance Bonus may be paid out in either cash or Company stock.

(c) Equity. As soon as reasonably practicable following the Effective Date, the Company will recommend to the board of directors of Parent the issuance to Executive of an initial grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee, which number of shares shall represent 0.5% of the Company's common stock. (the "***Initial Grant***"). Additionally, on the first annual anniversary of the Effective Date of this Agreement, the Company shall recommend that the board of directors of Parent approve the issuance to Executive of an additional grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee (the "***Annual Grant***"). Both the Initial Grant and Annual Grant are subject to the approval of the board of directors of Parent (including without limitation the vesting provisions of the award) and the terms and conditions of the Parent's Equity Incentive Plan and forms of award agreement.

(d) Employee Benefits and Vacation. While Executive is employed by the Company hereunder, Executive shall be entitled to participate in all employee benefit plans to the extent that Executive meets the eligibility requirements for each individual plan or program, including but not limited to participation in the Company's health, dental, and vision insurance plans for Executives, which shall be paid for by the Company. Executive shall be entitled to be paid for state and federal holidays recognized by the Company, and shall accrue paid time off ("***PTO***") in accordance with Company policy.

(e) Reimbursement of Expenses. Executive shall be reimbursed for such reasonable and necessary business expenses incurred by Executive while the Executive is employed by the Company, which are directly related to the furtherance of the Company's business, upon presentation of documentation regarding such expenses. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code ("***Section 409A***"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which Executive incurs such business expense.

4. Termination.

(a) Termination By the Company. The Company may terminate Executive's employment with the Company under the following conditions:

(1) Death or Disability. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability (as defined below).

(2) For Cause. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of written notice to the Executive specifying the Cause or Causes (as defined below) relied upon for such termination. Any notice of termination given pursuant to this Section 4(a)(2) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(3) Without Cause. The Company may terminate the Executive's employment under this Agreement at any time and for any reason by delivery of written notice of such termination to the Executive. Any notice of termination given pursuant to this Section 4(a)(3) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(b) Termination by the Executive. Executive may terminate Executive's employment with the Company under the following conditions:

(1) Termination by Executive without Good Reason. The Executive may terminate his employment hereunder without Good Reason (as defined below) upon thirty (30) days written notice to the Company.

(2) Termination by Executive for Good Reason. The Executive may terminate his employment for Good Reason. For purposes of this Agreement, "***Good Reason***" means the existence of any one or more of the following conditions without the Executive's consent, provided Executive submits written notice to the Company within 45 days of when such condition(s) first arose specifying the condition(s): (i) a material adverse change in his title or reporting relationships; (ii) change in his position with the Company which materially reduces his authority, duties or responsibilities, or the assignment to the Executive of duties materially inconsistent with the Executive's position with the Company; (iii) a material reduction in the Executive's then current Base Salary; (iv) a relocation of Executive's place of employment by more than 35 miles from Pleasanton, California, unless the new place of employment is closer to Executive's primary residence; and (v) a material breach by the Company of this Agreement; provided that the Company fails to correct the act or omission within 30 days after receiving the Executive's written notice and the Executive actually terminates his employment within 60 days after the date the Company receives the Executive's notice.

(c) Termination by Mutual Agreement of the Parties. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in this Agreement.

(d) Compensation Upon Termination.

(1) Death or Complete Disability. If the Executive's employment is terminated by death or Complete Disability as provided in Section 4(e)(1), the Company shall pay the Executive's accrued Base Salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination (the "***Accrued Obligations***") to Executive and/or Executive's heirs, as applicable, and the Company shall thereafter have no further obligations to the Executive and/or Executive's heirs under this Agreement.

(2) Cause, Resignation, Mutual Agreement. If the Executive's employment is terminated by the Company for Cause, by Executive's termination without Good Reason or by mutual agreement of the Parties, the Company shall pay the Accrued Obligations at the time Executive or the Company provides notice of termination, or at the time the Parties mutually agree to terminate Executive's employment, as applicable, and the Company shall thereafter have no further obligations to Executive under this Agreement.

(3) Without Cause or by Executive for Good Reason. If the Company terminates the Executive's employment without Cause or if the Executive terminates employment for Good Reason, then upon the Executive's furnishing to the Company and not revoking a waiver of claims in a form satisfactory to the Company (the "***Release***") within 60 days following the date of termination, (provided, that if the 60th day falls in the calendar year following the year during which the termination or separation from service occurred, then the payments will commence in such subsequent calendar year; provided further that if such payments commence in such subsequent year, the first such payment shall be a lump sum in an amount equal to the payments that would have come due since Executive's separation from service) the Executive shall be entitled to the following:

(i) the Accrued Obligations;

(ii) payment of the Executive's then-existing Base Salary over a period of six (6) following the termination date, subject to ordinary withholdings in accordance with the Company's standard payroll practices; and

(iii) until the earliest to occur of (x) the expiration of twelve (12) months following the Termination Date, and (y) the date Executive receives health, dental and vision coverage through another policy of insurance, and subject to Executive's valid COBRA election, the Company shall make payment of the Executive's premiums on the same terms that existed prior to Executive's termination; provided that if such payment of premiums would otherwise violate the nondiscrimination rules or cause the coverage to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the "***Act***") or Section 105(h) of the Internal Revenue Code of 1986, as amended (the "***Code***"), these payments shall be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 105(h). Notwithstanding the foregoing, the benefits described in subsections (ii) and (iii) shall commence on the first payroll period following the date the Release becomes effective and irrevocable; provided, however, that if the 60th day following the date of termination occurs in the calendar year following the year of termination, then such payments shall commence no earlier than January 1 of such subsequent calendar year. The first payment shall be in an amount equal to the total amount to which Executive would otherwise have been entitled during the period following the Executive's last day of employment if such deferral had not been required.

(4) Condition on Obligations. Notwithstanding any provisions in this Agreement to the contrary, including any provisions contained in this Section 4(d)(4), the Company's obligations, and the Executive's rights, pursuant to Section 4(d)(3) shall cease and be rendered a nullity immediately should the Executive violate the provision of Section 5, or should the Executive violate the terms and conditions of the Executive's previously executed Proprietary Information and Inventions Agreement, which shall continue to apply to Executive's employment. Further, Executive covenants and agrees to notify the Company within five (5) business days of Executive's acceptance of employment or consulting or receipt of benefits as set forth above respectively in Section 4(d)(3)(iii).

(e) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(1) Complete Disability. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance covering employees of the Company then in force. In the event the Company has no policy of disability income insurance covering employees of the Company in force when the Executive becomes disabled, the term Complete Disability shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board, determines to have incapacitated the Executive from satisfactorily performing all of the Executive's usual services for the Company for a period of at least one hundred twenty (120) consecutive days during any twelve (12) month period. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

(2) For Cause. "***Cause***" for the Company to terminate Executive's employment hereunder shall mean the occurrence of any of the following events:

(i) The Executive's willful failure to perform the Executive's job duties under this Agreement, provided, however, Executive has received written notice from the Company identifying such performance failure(s) and has failed to cure the same within 30 days of the Executive's receipt of such notice;

(ii) The willful failure by the Executive to comply with all material applicable laws in performing the Executive's job duties or in directing the conduct of the Company's business;

(iii) The willful failure by the Executive to follow the Company's policies and procedures, including, but not limited to, those contained in the Company's Code of Conduct;

(iv) The commission by the Executive of any felony or intentionally fraudulent or other act against the Company, or its affiliates, subsidiaries, employees, agents, representatives or clients which demonstrates the Executive's untrustworthiness or lack of integrity;

(v) the Executive's engaging or in any manner participating in any activity which is competitive with or intentionally injurious to the Company or its Parents, or any of their affiliates or subsidiaries or which violates any material provisions of Section 5 hereof; or

(vi) the Executive's commission of any fraud against the Company, or any of its affiliates or subsidiaries, or use or intentional appropriation for Executive's personal use or benefit of any funds or properties of the Company not authorized by the Board or the Company's Chairman, as applicable, to be so used or appropriated.

(3) Termination Date. The "***Termination Date***" is the date on which Executive is no longer employed with the Company.

5. Miscellaneous.

(a) Arbitration. Executive shall execute and deliver a Mutual Arbitration Agreement with the Company, a form of which is attached hereto as Exhibit A.

(b) Clawback. Any amounts paid pursuant to this Agreement will be subject to recoupment in accordance with any claw back policy that the Company has adopted or is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law.

(c) Entire Agreement. This Agreement and Exhibits attached hereto, are intended to be the final, complete, and exclusive statement of the terms of Executive's employment by the Company. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Executive and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Executive acknowledges that he does not rely upon any representations, oral or written, concerning the terms of his employment by the Company. To the extent that the practices, policies, or procedures of the Company, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

(d) Amendments, Waivers. This Agreement may only be modified by an instrument in writing, signed by Executive and by a duly authorized representative of the Company other than Executive. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(e) Assignment; Successors and Assigns. Executive agrees that the Executive will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights, or obligations under this Agreement, nor shall Executive's rights be subject to encumbrance or the claims of creditors. Any purported assignment, transfer, or delegation by Executive shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation or entity, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder to any successor in interest, provided specifically that the Company may at any time (upon written notice to Executive) assign all of its rights and obligations hereunder (including but not limited to the right to receive Executive's services as provided hereunder) to a third party purchaser. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

(f) Section 409A Compliance.

(1) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement will be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements will be paid as soon as administratively practicable, but in no event will any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year will not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(2) To the extent that any of the payments or benefits provided for in Section 4(d) are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the United States Internal Revenue Code (the "Code"), the following interpretations apply to Section 4:

(3) Any termination of Executive's employment triggering payment of benefits under Section 4(d) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Executive's employment does not constitute a separation of service, any benefits payable under Section 4(d) that constitute deferred compensation under Section 409A of the Code will be delayed until after the date of a subsequent event constituting a separation of service.

(4) If Executive is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Section 4(d) that constitute non-qualified deferred compensation under Section 409A of the Code will be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Executive's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) Executive's death, the Company will pay Executive in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid Executive prior to that date under Section 4(d) of this Agreement.

(5) It is intended that each installment of the payments and benefits provided under Section 4(d) of this Agreement will be treated as a separate "payment" for purposes of Section 409A of the Code.

(6) Neither the Company nor Executive will have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

(g) Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered personally or via courier, (ii) upon confirmation of receipt, if given by electronic mail, and (iii) on the third business day following mailing, if mailed first class, postage prepaid, registered, or certified mail from a United States address as follows or at such other address as each party hereafter designates:

to the Company at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

and to Executive at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

(h) Severability; Enforcement. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator to be invalid, unenforceable, or void, such provision shall be enforced (by blue penciling or otherwise) to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

(i) Governing Law. This agreement and the rights and obligations of the company and executive hereunder shall be determined under, governed by, and construed in accordance with the laws of the state of California as applied to agreements among California residents entered into and to be performed entirely within California.

(j) Executive Acknowledgment. Executive acknowledges (i) that the Executive has consulted with independent counsel of the Executive's own choice concerning this Agreement and (ii) that the Executive has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on the Executive's own judgment.

(k) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that any party so delivering an executed counterpart by facsimile shall thereafter promptly deliver a manually executed counterpart of this Agreement to the other parties, but failure to deliver such manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

ProSomnus Sleep Technologies, Inc.

/s/ Len Liptak
By: Len Liptak
Its: CEO

Executive

/s/ Melinda Hungerman
Melinda Hungerman

EXHIBIT A

MUTUAL ARBITRATION AGREEMENT

Please Read Carefully – By Signing This Document You Give Up Certain Legal Rights

1. ProSomnus Sleep Technologies, Inc., (the "Company") and the undersigned employee ("Employee") have entered into this Mutual Agreement to Arbitrate Claims ("Agreement") in order to establish and gain the benefits of a timely, impartial, and cost-effective dispute resolution procedure. Employee understands that any reference in this Agreement to the Company will also be a reference to any and all benefit plans, the benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them.

2. Claims Covered by the Agreement: The Company and Employee mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") arising out of Employee's employment (or termination) that the Company may have against Employee or that Employee may have against the Company or its officers, directors, employees, or agents. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all such claims. The claims covered by this Agreement include, but are not limited to: (i) claims for discrimination or harassment on the basis of ancestry, age, color, marital status, medical condition, physical or mental disability, national origin, race, religion, pregnancy, sexual orientation, or any other characteristic protected by applicable law; (ii) claims for retaliation; (iii) claims for breach of any contract or covenant (express or implied); (iv) claims for wages or other compensation due; (v) claims for benefits (except where an employee benefit or pension plan specifies that its claim procedure shall culminate in a resolution procedure different from this one); (vi) claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance now in existence, or hereinafter enacted, and amended from time to time; and (vii) any tort claims (including, but not limited to, negligent or intentional injury, defamation, and termination of employment in violation of public policy).

3. Waiver of Right to Court or Jury Trial and for Class Action Relief: The Company and Employee agree to give up their respective rights to have the above-mentioned claims decided in a court of law before a judge or jury or by administrative proceeding, and instead are accepting and agreeing to the use of final and binding arbitration. The sole exception to the foregoing is a hearing before the California Labor Commissioner on a claim for unpaid wages; however, any subsequent proceeding resulting from such a hearing that would otherwise be heard in a court of law, including any challenge or appeal of a decision rendered in such hearing, is subject to this Agreement and must be arbitrated. Employee also agrees and understands that Employee waives any right to bring claims as a class representative, or as a member of a collective action, and that any claims that Employee may bring must be brought solely in the Employee's individual capacity.

4. Claims Not Covered by the Agreement: This Agreement does not cover: (i) claims by Employee for workers' compensation or unemployment insurance (an exclusive government-created remedy exists for these claims); (ii) claims for unpaid compensation or benefits within the jurisdiction of the California Department of Labor Standards Enforcement; (iii) claims for relief under the California Private Attorneys General Act (except to the extent such claims are permitted to be arbitrated, in which case such claims will be subject to arbitration); and (iv) claims which even in the absence of the Agreement could not have been litigated in court or before any administrative proceeding under applicable federal, state or local law. Nothing in this Agreement precludes either party from filing a charge or complaint with any state or federal administrative agency that prosecutes a claim on behalf of the government, for purposes of assisting or cooperating with such agency in its investigation or prosecution of charges or complaints. However, the parties waive their right to any personal remedy or relief as a result of such charges or complaints brought by such prosecuting agencies, to the extent that is permissible under law.

5. Notice of Claims and Statute of Limitations: All disputes between Employee and the Company (and its affiliates, shareholders, directors, officers, employees, agents, successors, attorneys, and assigns) relating to Employee's services with the Company or this Agreement, will be resolved by final and binding arbitration to the fullest extent permitted by law. Except as otherwise provided in this Agreement, the arbitration provisions are to apply to the resolution of disputes that otherwise would not be resolved in a court of law. All disputes must be brought within the applicable statute of limitations established by law and all claims must be sent via registered or certified mail, and shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. Failure to comply with the requirements of this Section 4 may constitute a waiver of all rights that the party seeking arbitration may have against the other party.

6. Arbitration Procedures: The arbitration will be conducted in accordance with the then-existing JAMS Employment Arbitration Rules & Procedures, and as augmented in this Agreement. Arbitration will be initiated as provided by the JAMS Employment Rules. JAMS Employment Rules can be found at jamsadr.com/rules-employment-arbitration. Either Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither Party will initiate or prosecute any lawsuit or administrative action in any way related to any applicable dispute or claim, except as set forth in this Agreement. All disputes or claims subject to arbitration will be decided by a single arbitrator. The arbitrator will be selected by mutual agreement of the Parties within 30 days of the effective date of the notice initiating the arbitration. If the Parties cannot agree on an arbitrator, then the complaining Party will notify JAMS and request selection of an arbitrator in accordance with the JAMS Employment Rules or other applicable JAMS rules. The arbitrator will only have authority to award equitable relief, damages, costs, and fees as a court would have for the particular claims asserted, and any action of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved Party. All other aspects of the arbitrator's ruling will be final.

7. Arbitration Decision: The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, all proceedings and all documents prepared in connection with any arbitration will be confidential and the arbitration subject matter will not be disclosed to any person other than the Parties to the proceedings, their counsel, witnesses and experts, the arbitrator, and, if involved, the court and court staff. The Parties will stipulate to all arbitration and court orders necessary to effectuate these confidentiality provisions. A court of competent jurisdiction will have the authority to enter a judgment upon the award made pursuant to the arbitration or applicable arbitration appeal.

8. Place of Arbitration: All arbitration proceedings will be conducted at a JAMS office located nearest to the location where the Employee was performing services for the Company.

9. Representation / Attorneys' Fees: Each party may be represented in the arbitration by an attorney or other representative selected by the party. Each party shall be responsible for its own attorneys' or representatives' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable attorneys' fees to the prevailing party in accordance with applicable law.

10. Discovery and Information Exchange: The arbitrator shall have discretion to order the scope of discovery and the pre-hearing exchange of information, consistent with the JAMS rules. The parties may engage in any method of discovery as outlined in the Federal Rules of Civil Procedure (exclusive of Rule 26(a)). Such discovery includes discovery sufficient to arbitrate adequately a claim, including access to essential and relevant documents and witnesses and the parties expressly empower the arbitrator to issue third-party document and deposition subpoenas. Discovery disputes are subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

11. Subpoenas: Each party shall have the right to subpoena witnesses and documents for the arbitration (including subpoenas to third parties for documents and depositions) and to issue document and testimonial subpoenas to third parties.

12. Injunctive Relief: The provisions of California Code of Civil Procedure §1281.8 regarding injunctive relief and other provisional remedies shall apply to any dispute between the parties to this agreement.

13. Arbitrator Fees and Costs: If Employee initiates the arbitration, the Company will bear the cost of the arbitrator and the administrative fees associated with the arbitration proceeding. However, the Employee will be responsible for the portion of the initial filing fee equivalent to the cost of a filing fee in a California Superior Court to initiate an action.

14. Federal Arbitration Act. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Section 1-14) and will be construed and governed accordingly. Questions of arbitrability (that is whether an issue is subject to arbitration under this Agreement) shall be decided by the arbitrator.

15. Consideration: The Company's offer of employment to Employee, or continued employment of Employee, and the mutual promises of the Company and Employee to arbitrate claims covered by this Agreement rather than to litigate them, provide good and sufficient consideration for this Agreement.

16. Construction: Should any part of this Agreement be found to be unenforceable, such portion shall be severed from the Agreement, and the remaining portions shall continue to be enforceable.

17. Sole and Entire Agreement: This Agreement expresses the entire Agreement of the parties concerning the subject matter hereof and there are no other agreements, oral or written, concerning arbitration, except as provided herein. This Agreement is not, and shall not be construed to create any contract of employment, express or implied.

18. Requirements for Modification or Revocation: This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the Chief Executive Officer of the Company and Employee, which specifically states an intent to revoke or modify this Agreement.

Feedback. The Company desires this Agreement to be as clear and as straightforward as possible given the important subject matter. If you have any questions about this Agreement or have any suggestions on how the Company can modify it to improve your or your colleagues' understanding of its terms, please feel free to contact your supervisor or any manager or authorized Company officer at any time.

You are not obligated to enter into this Agreement. You also have the opportunity to request changes to this Agreement before you sign it. Please bring any such requested changes to the attention of the Company before you sign it.

By signing below, you represent:

- You have carefully read this agreement, you understand its terms and you agree that all changes you have requested (if any) have been made to this Agreement.
- You have been given the opportunity to consult with legal counsel about this Agreement.
- You have been given sufficient time to read and understand this Agreement before signing it.

Melinda Hungerman	Date
ProSomnus Sleep Technologies, Inc.	
By: Its:	Date

Exhibit 10.14

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "***Agreement***") is entered as of May 5, 2022, by and between **ProSomnus Sleep Technologies, Inc.**, a Delaware corporation (the "***Company***"), and Sunghan Kim ("***Executive***"). The Company and Executive are hereinafter collectively referred to as the "Parties," and individually a "Party." This Agreement will become effective (the "***Effective Date***") upon the closing of the currently contemplated de-SPAC transaction with Lakeshore Acquisition I Corp. ("Purchaser" or "Parent"), whereby the Company will become an indirect wholly-owned subsidiary of Purchaser. Upon the closing of such transaction, this Agreement will supersede in entirety any prior employment agreement between Executive and the Company.

AGREEMENT

1. At-Will Employment. Executive shall be employed commencing on the Effective Date on an "at-will" basis, subject to the conditions of termination consistent with this Agreement.

2. Position, Duties, Responsibilities.

(a) Position and Location. Executive shall render services to the Company in the position of Chief Technical Officer ("***CTO***") reporting to the Chief Executive Officer (the "***CEO***") of the Company, and shall perform all services appropriate to that position for an organization the size of the Company that is engaged in the type of business engaged by the Company, as well as such other services of a nature customary to the position of CTO, as may be assigned by the CEO. Executive shall devote the Executive's best efforts to the performance of the Executive's duties and must at all times act in good faith towards the Company and any company with the same ultimate beneficial ownership as the Company (the "***Group Companies***"). Executive's office will be in Pleasanton, California but Executive shall travel, from time to time, as Company business dictates without additional remuneration but subject to the reimbursement of business expenses, as set forth in Section 3(e) below.

(b) Other Activities. Except upon the prior written consent of the Board, Executive will not (i) accept any other full-time or part-time employment or engagement, (ii) engage, directly or indirectly, in any other business activity (whether or not pursued for pecuniary advantage) that is or may be in conflict with, or that might place Executive in a conflicting position to that of the Company, or prevent Executive from devoting such time as necessary to fulfill the Executive's responsibilities under this Agreement, (iii) sell, market or represent any product or service other than the Company's products or services, or (iv) serve on any other board of directors for any other company (other than the Company) except with the prior written consent of the Board, which consent will not be unreasonably withheld.

(c) Devotion of Time and Energies. Except as set forth in Section 2(b), Executive will devote all of the Executive's working time and attention to the performance of the Executive's duties under this Agreement.

(d) Duties and Authority. Executive shall have responsibility for managing the technical operations of the Company as directed by the CEO from time to time, consistent with the Executive's position as CTO.

3. Compensation. In consideration of the services to be rendered under this Agreement, Executive shall be entitled to the following:

(a) Base Salary. The Company shall pay to Executive an annual salary of Three Hundred Thousand ($300,000), less all applicable withholdings, which shall be payable in accordance with the Company's payroll practices (the "***Base Salary***").

(b) Annual Performance Bonus. Effective January 1, 2022, Executive shall be eligible to receive an annual bonus, target of 50% of the Executive's Base Salary (the "***Annual Performance Bonus***"). The Company shall pay the Annual Performance Bonus, if any, no later than the thirtieth day following the date the Company's auditors confirm the Company's financial statements for the applicable fiscal year, but in no event shall such Annual Performance Bonus be paid later than June 30 of the year following the year to which the Annual Performance Bonus relates. In order to be eligible to receive the Annual Performance Bonus, Executive must be a full-time employee of the Company on the date(s) the Annual Performance Bonus is calculated and paid. The Annual Performance Bonus shall be based on and subject to the additional terms and conditions as set forth in a separate writing between the Company and the Executive ("the ***CTO Bonus Plan***"). The Annual Performance Bonus shall be subject to annual review and adjustment subject to the Board's discretion. At the discretion of the Board, the Annual Performance Bonus may be paid out in either cash or Company stock.

(c) Equity. As soon as reasonably practicable following the Effective Date, the Company will recommend to the board of directors of Parent the issuance to Executive of an initial grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee, which number of shares shall represent 1.7% of the Company's common stock. (the "***Initial Grant***"). Additionally, on the first annual anniversary of the Effective Date of this Agreement, the Company shall recommend that the board of directors of Parent approve the issuance to Executive of an additional grant of an option to purchase a number of shares of its common stock to be determined by the Company's Compensation Committee (the "***Annual Grant***"). Both the Initial Grant and Annual Grant are subject to the approval of the board of directors of Parent (including without limitation the vesting provisions of the award) and the terms and conditions of the Parent's Equity Incentive Plan and forms of award agreement.

(d) Employee Benefits and Vacation. While Executive is employed by the Company hereunder, Executive shall be entitled to participate in all employee benefit plans to the extent that Executive meets the eligibility requirements for each individual plan or program, including but not limited to participation in the Company's health, dental, and vision insurance plans for Executives, which shall be paid for by the Company. Executive shall be entitled to be paid for state and federal holidays recognized by the Company, and shall accrue paid time off ("***PTO***") in accordance with Company policy.

(e) Reimbursement of Expenses. Executive shall be reimbursed for such reasonable and necessary business expenses incurred by Executive while the Executive is employed by the Company, which are directly related to the furtherance of the Company's business, upon presentation of documentation regarding such expenses. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code ("***Section 409A***"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which Executive incurs such business expense.

4. Termination.

(a) Termination By the Company. The Company may terminate Executive's employment with the Company under the following conditions:

(1) Death or Disability. The Executive's employment with the Company shall terminate effective upon the date of the Executive's death or Complete Disability (as defined below).

(2) For Cause. The Company may terminate the Executive's employment under this Agreement for Cause by delivery of written notice to the Executive specifying the Cause or Causes (as defined below) relied upon for such termination. Any notice of termination given pursuant to this Section 4(a)(2) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(3) Without Cause. The Company may terminate the Executive's employment under this Agreement at any time and for any reason by delivery of written notice of such termination to the Executive. Any notice of termination given pursuant to this Section 4(a)(3) shall effect termination as of the date specified in such notice or, in the event no such date is specified, on the last day of the month in which such notice is delivered or deemed delivered as provided below.

(b) Termination by the Executive. Executive may terminate Executive's employment with the Company under the following conditions:

(1) Termination by Executive without Good Reason. The Executive may terminate his employment hereunder without Good Reason (as defined below) upon thirty (30) days written notice to the Company.

(2) Termination by Executive for Good Reason. The Executive may terminate his employment for Good Reason. For purposes of this Agreement, "***Good Reason***" means the existence of any one or more of the following conditions without the Executive's consent, provided Executive submits written notice to the Company within 45 days of when such condition(s) first arose specifying the condition(s): (i) a material adverse change in his title or reporting relationships; (ii) change in his position with the Company which materially reduces his authority, duties or responsibilities, or the assignment to the Executive of duties materially inconsistent with the Executive's position with the Company; (iii) a material reduction in the Executive's then current Base Salary; (iv) a relocation of Executive's place of employment by more than 35 miles from Pleasanton, California, unless the new place of employment is closer to Executive's primary residence; and (v) a material breach by the Company of this Agreement; provided that the Company fails to correct the act or omission within 30 days after receiving the Executive's written notice and the Executive actually terminates his employment within 60 days after the date the Company receives the Executive's notice.

(c) Termination by Mutual Agreement of the Parties. The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in this Agreement.

(d) Compensation Upon Termination.

(1) Death or Complete Disability. If the Executive's employment is terminated by death or Complete Disability as provided in Section 4(e)(1), the Company shall pay the Executive's accrued Base Salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination (the "***Accrued Obligations***") to Executive and/or Executive's heirs, as applicable, and the Company shall thereafter have no further obligations to the Executive and/or Executive's heirs under this Agreement.

(2) Cause, Resignation, Mutual Agreement. If the Executive's employment is terminated by the Company for Cause, by Executive's termination without Good Reason or by mutual agreement of the Parties, the Company shall pay the Accrued Obligations at the time Executive or the Company provides notice of termination, or at the time the Parties mutually agree to terminate Executive's employment, as applicable, and the Company shall thereafter have no further obligations to Executive under this Agreement.

(3) Without Cause or by Executive for Good Reason. If the Company terminates the Executive's employment without Cause or if the Executive terminates employment for Good Reason, then upon the Executive's furnishing to the Company and not revoking a waiver of claims in a form satisfactory to the Company (the "***Release***") within 60 days following the date of termination, (provided, that if the 60th day falls in the calendar year following the year during which the termination or separation from service occurred, then the payments will commence in such subsequent calendar year; provided further that if such payments commence in such subsequent year, the first such payment shall be a lump sum in an amount equal to the payments that would have come due since Executive's separation from service) the Executive shall be entitled to the following:

(i) the Accrued Obligations;

(ii) payment of the Executive's then-existing Base Salary over a period of six (6) following the termination date, subject to ordinary withholdings in accordance with the Company's standard payroll practices; and

(iii) until the earliest to occur of (x) the expiration of twelve (12) months following the Termination Date, and (y) the date Executive receives health, dental and vision coverage through another policy of insurance, and subject to Executive's valid COBRA election, the Company shall make payment of the Executive's premiums on the same terms that existed prior to Executive's termination; provided that if such payment of premiums would otherwise violate the nondiscrimination rules or cause the coverage to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the "***Act***") or Section 105(h) of the Internal Revenue Code of 1986, as amended (the "***Code***"), these payments shall be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 105(h). Notwithstanding the foregoing, the benefits described in subsections (ii) and (iii) shall commence on the first payroll period following the date the Release becomes effective and irrevocable; provided, however, that if the 60th day following the date of termination occurs in the calendar year following the year of termination, then such payments shall commence no earlier than January 1 of such subsequent calendar year. The first payment shall be in an amount equal to the total amount to which Executive would otherwise have been entitled during the period following the Executive's last day of employment if such deferral had not been required.

(4) Condition on Obligations. Notwithstanding any provisions in this Agreement to the contrary, including any provisions contained in this Section 4(d)(4), the Company's obligations, and the Executive's rights, pursuant to Section 4(d)(3) shall cease and be rendered a nullity immediately should the Executive violate the provision of Section 5, or should the Executive violate the terms and conditions of the Executive's previously executed Proprietary Information and Inventions Agreement, which shall continue to apply to Executive's employment. Further, Executive covenants and agrees to notify the Company within five (5) business days of Executive's acceptance of employment or consulting or receipt of benefits as set forth above respectively in Section 4(d)(3)(iii).

(e) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(1) Complete Disability. "***Complete Disability***" shall mean the inability of the Executive to perform the Executive's duties under this Agreement because the Executive has become permanently disabled within the meaning of any policy of disability income insurance covering employees of the Company then in force. In the event the Company has no policy of disability income insurance covering employees of the Company in force when the Executive becomes disabled, the term Complete Disability shall mean the inability of the Executive to perform the Executive's duties under this Agreement by reason of any incapacity, physical or mental, which the Board, based upon medical advice or an opinion provided by a licensed physician acceptable to the Board, determines to have incapacitated the Executive from satisfactorily performing all of the Executive's usual services for the Company for a period of at least one hundred twenty (120) consecutive days during any twelve (12) month period. Based upon such medical advice or opinion, the determination of the Board shall be final and binding and the date such determination is made shall be the date of such Complete Disability for purposes of this Agreement.

(2) For Cause. "***Cause***" for the Company to terminate Executive's employment hereunder shall mean the occurrence of any of the following events:

(i) The Executive's willful failure to perform the Executive's job duties under this Agreement, provided, however, Executive has received written notice from the Company identifying such performance failure(s) and has failed to cure the same within 30 days of the Executive's receipt of such notice;

(ii) The willful failure by the Executive to comply with all material applicable laws in performing the Executive's job duties or in directing the conduct of the Company's business;

(iii) The willful failure by the Executive to follow the Company's policies and procedures, including, but not limited to, those contained in the Company's Code of Conduct;

(iv) The commission by the Executive of any felony or intentionally fraudulent or other act against the Company, or its affiliates, subsidiaries, employees, agents, representatives or clients which demonstrates the Executive's untrustworthiness or lack of integrity;

(v) the Executive's engaging or in any manner participating in any activity which is competitive with or intentionally injurious to the Company or its Parents, or any of their affiliates or subsidiaries or which violates any material provisions of Section 5 hereof; or

(vi) the Executive's commission of any fraud against the Company, or any of its affiliates or subsidiaries, or use or intentional appropriation for Executive's personal use or benefit of any funds or properties of the Company not authorized by the Board or the Company's Chairman, as applicable, to be so used or appropriated.

(3) Termination Date. The "***Termination Date***" is the date on which Executive is no longer employed with the Company.

5. Miscellaneous.

(a) Arbitration. Executive shall execute and deliver a Mutual Arbitration Agreement with the Company, a form of which is attached hereto as Exhibit A.

(b) Clawback. Any amounts paid pursuant to this Agreement will be subject to recoupment in accordance with any claw back policy that the Company has adopted or is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law.

(c) Entire Agreement. This Agreement and Exhibits attached hereto, are intended to be the final, complete, and exclusive statement of the terms of Executive's employment by the Company. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Executive and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Executive acknowledges that he does not rely upon any representations, oral or written, concerning the terms of his employment by the Company. To the extent that the practices, policies, or procedures of the Company, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

(d) Amendments, Waivers. This Agreement may only be modified by an instrument in writing, signed by Executive and by a duly authorized representative of the Company other than Executive. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

(e) Assignment; Successors and Assigns. Executive agrees that the Executive will not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights, or obligations under this Agreement, nor shall Executive's rights be subject to encumbrance or the claims of creditors. Any purported assignment, transfer, or delegation by Executive shall be null and void. Nothing in this Agreement shall prevent the consolidation of the Company with, or its merger into, any other corporation or entity, or the sale by the Company of all or substantially all of its properties or assets, or the assignment by the Company of this Agreement and the performance of its obligations hereunder to any successor in interest, provided specifically that the Company may at any time (upon written notice to Executive) assign all of its rights and obligations hereunder (including but not limited to the right to receive Executive's services as provided hereunder) to a third party purchaser. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

(f) Section 409A Compliance.

(1) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement will be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements will be paid as soon as administratively practicable, but in no event will any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year will not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(2) To the extent that any of the payments or benefits provided for in Section 4(d) are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the United States Internal Revenue Code (the "Code"), the following interpretations apply to Section 4:

(3) Any termination of Executive's employment triggering payment of benefits under Section 4(d) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Executive's employment does not constitute a separation of service, any benefits payable under Section 4(d) that constitute deferred compensation under Section 409A of the Code will be delayed until after the date of a subsequent event constituting a separation of service.

(4) If Executive is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Section 4(d) that constitute non-qualified deferred compensation under Section 409A of the Code will be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Executive's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) Executive's death, the Company will pay Executive in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid Executive prior to that date under Section 4(d) of this Agreement.

(5) It is intended that each installment of the payments and benefits provided under Section 4(d) of this Agreement will be treated as a separate "payment" for purposes of Section 409A of the Code.

(6) Neither the Company nor Executive will have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

(g) Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (i) upon receipt, if delivered personally or via courier, (ii) upon confirmation of receipt, if given by electronic mail, and (iii) on the third business day following mailing, if mailed first class, postage prepaid, registered, or certified mail from a United States address as follows or at such other address as each party hereafter designates:

to the Company at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

and to Executive at:

5860 West Las Positas Blvd,
Suite 25
Pleasanton, CA 94588

(h) Severability; Enforcement. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator to be invalid, unenforceable, or void, such provision shall be enforced (by blue penciling or otherwise) to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

(i) Governing Law. This agreement and the rights and obligations of the company and executive hereunder shall be determined under, governed by, and construed in accordance with the laws of the state of California as applied to agreements among California residents entered into and to be performed entirely within California.

(j) Executive Acknowledgment. Executive acknowledges (i) that the Executive has consulted with independent counsel of the Executive's own choice concerning this Agreement and (ii) that the Executive has read and understands this Agreement, is fully aware of its legal effect, and has entered into it freely based on the Executive's own judgment.

(k) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement; provided, however, that any party so delivering an executed counterpart by facsimile shall thereafter promptly deliver a manually executed counterpart of this Agreement to the other parties, but failure to deliver such manually executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

ProSomnus Sleep Technologies, Inc.

/s/ Len Liptak
By: Len Liptak
Its: CEO

Executive

/s/ Sung Kim
Sung Kim

EXHIBIT A

MUTUAL ARBITRATION AGREEMENT

Please Read Carefully – By Signing This Document You Give Up Certain Legal Rights

1. ProSomnus Sleep Technologies, Inc., (the "Company") and the undersigned employee ("Employee") have entered into this Mutual Agreement to Arbitrate Claims ("Agreement") in order to establish and gain the benefits of a timely, impartial, and cost-effective dispute resolution procedure. Employee understands that any reference in this Agreement to the Company will also be a reference to any and all benefit plans, the benefit plans' sponsors, fiduciaries, administrators, affiliates, and all successors and assigns of any of them.

2. Claims Covered by the Agreement: The Company and Employee mutually consent to the resolution by final and binding arbitration of all claims or controversies ("claims") arising out of Employee's employment (or termination) that the Company may have against Employee or that Employee may have against the Company or its officers, directors, employees, or agents. Final and binding arbitration shall provide the sole and exclusive remedy and forum for all such claims. The claims covered by this Agreement include, but are not limited to: (i) claims for discrimination or harassment on the basis of ancestry, age, color, marital status, medical condition, physical or mental disability, national origin, race, religion, pregnancy, sexual orientation, or any other characteristic protected by applicable law; (ii) claims for retaliation; (iii) claims for breach of any contract or covenant (express or implied); (iv) claims for wages or other compensation due; (v) claims for benefits (except where an employee benefit or pension plan specifies that its claim procedure shall culminate in a resolution procedure different from this one); (vi) claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance now in existence, or hereinafter enacted, and amended from time to time; and (vii) any tort claims (including, but not limited to, negligent or intentional injury, defamation, and termination of employment in violation of public policy).

3. Waiver of Right to Court or Jury Trial and for Class Action Relief: The Company and Employee agree to give up their respective rights to have the above-mentioned claims decided in a court of law before a judge or jury or by administrative proceeding, and instead are accepting and agreeing to the use of final and binding arbitration. The sole exception to the foregoing is a hearing before the California Labor Commissioner on a claim for unpaid wages; however, any subsequent proceeding resulting from such a hearing that would otherwise be heard in a court of law, including any challenge or appeal of a decision rendered in such hearing, is subject to this Agreement and must be arbitrated. Employee also agrees and understands that Employee waives any right to bring claims as a class representative, or as a member of a collective action, and that any claims that Employee may bring must be brought solely in the Employee's individual capacity.

4. Claims Not Covered by the Agreement: This Agreement does not cover: (i) claims by Employee for workers' compensation or unemployment insurance (an exclusive government-created remedy exists for these claims); (ii) claims for unpaid compensation or benefits within the jurisdiction of the California Department of Labor Standards Enforcement; (iii) claims for relief under the California Private Attorneys General Act (except to the extent such claims are permitted to be arbitrated, in which case such claims will be subject to arbitration); and (iv) claims which even in the absence of the Agreement could not have been litigated in court or before any administrative proceeding under applicable federal, state or local law. Nothing in this Agreement precludes either party from filing a charge or complaint with any state or federal administrative agency that prosecutes a claim on behalf of the government, for purposes of assisting or cooperating with such agency in its investigation or prosecution of charges or complaints. However, the parties waive their right to any personal remedy or relief as a result of such charges or complaints brought by such prosecuting agencies, to the extent that is permissible under law.

5. Notice of Claims and Statute of Limitations: All disputes between Employee and the Company (and its affiliates, shareholders, directors, officers, employees, agents, successors, attorneys, and assigns) relating to Employee's services with the Company or this Agreement, will be resolved by final and binding arbitration to the fullest extent permitted by law. Except as otherwise provided in this Agreement, the arbitration provisions are to apply to the resolution of disputes that otherwise would not be resolved in a court of law. All disputes must be brought within the applicable statute of limitations established by law and all claims must be sent via registered or certified mail, and shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. Failure to comply with the requirements of this Section 4 may constitute a waiver of all rights that the party seeking arbitration may have against the other party.

6. Arbitration Procedures: The arbitration will be conducted in accordance with the then-existing JAMS Employment Arbitration Rules & Procedures, and as augmented in this Agreement. Arbitration will be initiated as provided by the JAMS Employment Rules. JAMS Employment Rules can be found at jamsadr.com/rules-employment-arbitration. Either Party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither Party will initiate or prosecute any lawsuit or administrative action in any way related to any applicable dispute or claim, except as set forth in this Agreement. All disputes or claims subject to arbitration will be decided by a single arbitrator. The arbitrator will be selected by mutual agreement of the Parties within 30 days of the effective date of the notice initiating the arbitration. If the Parties cannot agree on an arbitrator, then the complaining Party will notify JAMS and request selection of an arbitrator in accordance with the JAMS Employment Rules or other applicable JAMS rules. The arbitrator will only have authority to award equitable relief, damages, costs, and fees as a court would have for the particular claims asserted, and any action of the arbitrator in contravention of this limitation may be the subject of court appeal by the aggrieved Party. All other aspects of the arbitrator's ruling will be final.

7. Arbitration Decision: The Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, all proceedings and all documents prepared in connection with any arbitration will be confidential and the arbitration subject matter will not be disclosed to any person other than the Parties to the proceedings, their counsel, witnesses and experts, the arbitrator, and, if involved, the court and court staff. The Parties will stipulate to all arbitration and court orders necessary to effectuate these confidentiality provisions. A court of competent jurisdiction will have the authority to enter a judgment upon the award made pursuant to the arbitration or applicable arbitration appeal.

8. Place of Arbitration: All arbitration proceedings will be conducted at a JAMS office located nearest to the location where the Employee was performing services for the Company.

9. Representation / Attorneys' Fees: Each party may be represented in the arbitration by an attorney or other representative selected by the party. Each party shall be responsible for its own attorneys' or representatives' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees, the arbitrator may award reasonable attorneys' fees to the prevailing party in accordance with applicable law.

10. Discovery and Information Exchange: The arbitrator shall have discretion to order the scope of discovery and the pre-hearing exchange of information, consistent with the JAMS rules. The parties may engage in any method of discovery as outlined in the Federal Rules of Civil Procedure (exclusive of Rule 26(a)). Such discovery includes discovery sufficient to arbitrate adequately a claim, including access to essential and relevant documents and witnesses and the parties expressly empower the arbitrator to issue third-party document and deposition subpoenas. Discovery disputes are subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

11. Subpoenas: Each party shall have the right to subpoena witnesses and documents for the arbitration (including subpoenas to third parties for documents and depositions) and to issue document and testimonial subpoenas to third parties.

12. Injunctive Relief: The provisions of California Code of Civil Procedure §1281.8 regarding injunctive relief and other provisional remedies shall apply to any dispute between the parties to this agreement.

13. Arbitrator Fees and Costs: If Employee initiates the arbitration, the Company will bear the cost of the arbitrator and the administrative fees associated with the arbitration proceeding. However, the Employee will be responsible for the portion of the initial filing fee equivalent to the cost of a filing fee in a California Superior Court to initiate an action.

14. Federal Arbitration Act. This Agreement is made under the provisions of the Federal Arbitration Act (9 U.S.C., Section 1-14) and will be construed and governed accordingly. Questions of arbitrability (that is whether an issue is subject to arbitration under this Agreement) shall be decided by the arbitrator.

15. Consideration: The Company's offer of employment to Employee, or continued employment of Employee, and the mutual promises of the Company and Employee to arbitrate claims covered by this Agreement rather than to litigate them, provide good and sufficient consideration for this Agreement.

16. Construction: Should any part of this Agreement be found to be unenforceable, such portion shall be severed from the Agreement, and the remaining portions shall continue to be enforceable.

17. Sole and Entire Agreement: This Agreement expresses the entire Agreement of the parties concerning the subject matter hereof and there are no other agreements, oral or written, concerning arbitration, except as provided herein. This Agreement is not, and shall not be construed to create any contract of employment, express or implied.

18. Requirements for Modification or Revocation: This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the Chief Executive Officer of the Company and Employee, which specifically states an intent to revoke or modify this Agreement.

Feedback. The Company desires this Agreement to be as clear and as straightforward as possible given the important subject matter. If you have any questions about this Agreement or have any suggestions on how the Company can modify it to improve your or your colleagues' understanding of its terms, please feel free to contact your supervisor or any manager or authorized Company officer at any time.

You are not obligated to enter into this Agreement. You also have the opportunity to request changes to this Agreement before you sign it. Please bring any such requested changes to the attention of the Company before you sign it.

By signing below, you represent:

- You have carefully read this agreement, you understand its terms and you agree that all changes you have requested (if any) have been made to this Agreement.
- You have been given the opportunity to consult with legal counsel about this Agreement.
- You have been given sufficient time to read and understand this Agreement before signing it.

Sunghan Kim	Date
ProSomnus Sleep Technologies, Inc.	
By: Its:	Date

Exhibit 16.1

December 12, 2022

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Ladies and Gentlemen:

We have read Item 4.01 of Form 8-K filed with the U.S. Securities and Exchange Commission on December 12, 2022 of ProSomnus, Inc. (the "Company") and agree with the statements relating only to UHY LLP contained therein. We have no basis to agree or disagree with other statements of the Company contained therein.

We hereby consent to the filing of this letter as an exhibit to the foregoing report on Form 8-K.

/s/ UHY LLP

Exhibit 16.2

December 12, 2022

Securities and Exchange Commission

Washington, D.C. 20549

Commissioners:

We have read Prosomnus, Inc.'s statements included under Item 4.01 of its Form 8-K filed on December 12, 2022, and we agree with such statements concerning our Firm.

/s/ SingerLewak LLP

Exhibit 21.1

List of Subsidiaries

Name of Subsidiary	Jurisdiction of Incorporation
ProSomnus Holdings Inc.	Delaware
ProSomnus Sleep Technologies, Inc.	Delaware

Exhibit 99.1

PROSOMNUS HOLDINGS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

As of September 30, 2022 and December 31, 2021

	September 30, 2022 (Unaudited)	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,160,803	$ 1,500,582
Accounts receivable, net of allowance for doubtful accounts of $154,000 and $100,000 at September 30, 2022 and December 31, 2021, respectively	2,341,057	2,098,982
Inventory	405,705	378,769
Prepaid expenses and other current assets	421,105	148,207
Total current assets	5,328,670	4,126,540
Property and equipment, net	1,035,053	3,356,595
Right-of-use assets, net	3,820,770	-
Deferred financing costs	1,807,626	—
Other assets	262,914	154,797
Total assets	$ 12,255,033	$ 7,637,932
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 3,150,787	$ 955,648
Accrued compensation	2,269,586	1,642,474
Other accrued expenses	1,398,434	1,161,781
Revolving line of credit	1,759,377	587,816
Current portion of subordinated loan and security agreement	1,454,914	968,493
Current portion of equipment financing obligation	60,008	55,333
Current portion of finance lease liabilities	1,160,737	926,104
Current portion of operating lease liabilities	224,904	-
Commission settlement	147,249	274,323
Liability for subscription agreements	1,225,000	
Total current liabilities	12,850,996	6,571,972
Subordinated loan and security agreement, net of current portion	3,016,251	3,908,003
Equipment financing obligation, net of current portion	199,008	244,617
Finance lease liabilities, net of current portion	1,588,652	866,853
Operating lease liabilities, net of current portion	84,611	-
Subordinated notes	7,644,892	6,620,811
Bridge Loan (Unsecured subordinated promissory notes)	2,757,107	-
Bridge Loan (Secured subordinated loan)	1,977,592	-
Accrued interest	5,487,576	3,392,003
Warrant liability	583,000	562,244
Deferred rent	-	57,741
Total liabilities	36,189,685	22,224,244
Commitments and contingencies (Note 9)		
Series B redeemable convertible preferred stock, $0.0001 par value, 7,610,700 shares authorized; 7,288,333 shares issued and outstanding; liquidation preference of $26,237,999	12,389,547	12,389,547
Series A redeemable convertible preferred stock, $0.0001 par value, 43,585 and 26,250 shares authorized; 26,245 shares issued and outstanding; liquidation preference of $26,245,000	26,245,000	26,245,000
Stockholders' deficit:		
Common stock, $0.0001 par value, 36,038,535 shares authorized; 24,781,992 and 24,566,386 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	2,477	2,456
Additional paid-in capital	150,430,939	150,425,960
Accumulated deficit	(213,002,615)	(203,649,275)
Total stockholders' deficit	(62,569,199)	(53,220,859)
Total liabilities, redeemable convertible preferred stock, and stockholders' deficit	$ 12,255,033	$ 7,637,932

PROSOMNUS HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

For the three and nine months ended September 30, 2022 and 2021

(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue, net	$ 4,997,979	$ 3,702,539	$ 13,601,031	$ 9,671,675
Cost of Revenue	2,540,288	1,758,698	6,440,475	4,626,103
Gross Profit	2,457,691	1,943,841	7,160,556	5,045,572
Operating expenses				
Research and development	688,540	569,983	1,915,521	1,429,485
Sales and marketing	2,319,362	1,508,299	6,450,173	4,108,089
General and administrative	1,577,049	1,129,069	4,213,458	3,226,766
Total operating expenses	4,584,951	3,207,351	12,579,152	8,764,340
Other income (expense)				
Interest expense	(1,421,702)	(860,946)	(3,714,777)	(2,305,418)
Forgiveness of PPP loans	-	1,003,112	-	2,281,262
Change in fair value of warrant liability	-	-	(20,756)	(44,334)
Loss on extinguishment of debt	-	-	(192,731)	-
Total other expense	(1,421,702)	142,166	(3,928,264)	(68,490)
Net loss before income taxes	(3,548,962)	(1,121,344)	(9,346,860)	(3,787,258)
Provision for income taxes	-	-	(6,480)	(7,652)
Net loss	$ (3,548,962)	$ (1,121,344)	$ (9,353,340)	$ (3,794,910)
Net loss per share attributable to common stockholders, basic and diluted	$ (0.14)	$ (0.05)	$ (0.38)	$ (0.16)
Weighted average shares attributable to common stockholders, basic and diluted	24,713,218	24,433,747	24,611,666	24,269,187

PROSOMNUS HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT

For the three and nine months ended September 30, 2022 and 2021

(Unaudited)

	Redeemable Convertible Preferred Stock						Additional		Total
	Series B		Series A		Common Stock		Paid-In	Accumulated	Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Deficit	Deficit
Balance as of January 1, 2022	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,566,386	$ 2,456	$ 150,425,960	$ (203,649,275)	$ (53,220,859)
Vesting of restricted stock awards	—	—	—	—	73,724	7	(7)	—	—
Net loss	—	—	—	—	—	—	—	(2,980,733)	(2,980,733)
Balance as of March 31, 2022	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,640,110	$ 2,463	$ 150,425,953	$ (206,630,008)	$ (56,201,592)
Vesting of restricted stock awards	—	—	—	—	62,781	6	(6)	—	—
Stock-based compensation expense	—	—	—	—	—	—	4,000	—	4 ,000
Net loss	—	—	—	—	—	—	—	(2,823,645)	(2,823,645)
Balance as of June 30, 2022	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,702,891	$ 2,469	$ 150,429,947	$ (209,453,653)	$ (59,021,237)
Vesting of restricted stock awards	—	—	—	—	79,031	8	(8)	—	—
Stock-based compensation expense	—	—	—	—	—	—	1,000	—	1,000
Net loss	—	—	—	—	—	—	—	(3,548,962)	(3,548,962)
Balance as of September 30, 2022	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,781,922	$ 2,477	$ 150,430,939	$ (213,002,615)	$ (62,569,199)

	Redeemable Convertible Preferred Stock						Additional		Total
	Series B		Series A		Common Stock		Paid-In	Accumulated	Stockholders'
	Shares	Amount	Shares	Amount	Shares	Amount	Capital	Deficit	Deficit
Balance as of January 1, 2021	7,288,333	12,389,547	26,245	$ 26,245,000	24,184,697	$ 2,418	$ 150,421,286	$ (197,671,868)	$ (47,248,164)
Vesting of restricted stock awards	—	—	—	—	71,611	7	(7)	—	—
Stock-based compensation expense	—	—	—	—	—	—	1,000	—	1,000
Net loss	—	—	—	—	—	—	—	(1,892,412)	(1,892,412)
Balance as of March 31, 2021	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,256,308	$ 2,425	$ 150,422,279	$ (199,564,280)	$ (49,139,576)
Vesting of restricted stock awards	—	—	—	—	71,611	7	(7)	—	—
Stock-based compensation expense	—	—	—	—	—	—	1,000	—	1,000
Net loss	—	—	—	—	—	—	—	(781,154)	(781,154)
Balance as of June 30, 2021	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,327,919	$ 2,432	$ 150,423,272	$ (200,345,434)	$ (49,919,730)
Vesting of restricted stock awards	—	—	—	—	94,094	9	(9)	—	—
Stock-based compensation expense	—	—	—	—	—	—	1,000	—	1,000
Net loss	—	—	—	—	—	—	—	(1,121,344)	(1,121,344)
Balance as of September 30, 2021	7,288,333	$ 12,389,547	26,245	$ 26,245,000	24,422,013	$ 2,441	$ 150,424,263	$ (201,466,778)	$ (51,040,074)

PROSOMNUS HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

For the nine months ended September 30, 2022 and 2021

(Unaudited)

	Nine Months Ended September 30,	
	2022	**2021**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (9,353,340)	$ (3,794,910)
Adjustments to reconcile net loss to net cash used in operating activities:		
Forgiveness of PPP loans	—	(2,281,262)
Depreciation	302,932	640,919
Amortization of finance right-of-use asset	597,904	—
Amortization of operating right-of-use asset	131,090	—
Noncash interest	2,934,254	1,769,576
Amortization of debt discount	135,956	93,338
Loss on extinguishment of debt	192,731	—
Bad debt expense	54,448	60,000
Stock-based compensation	5,000	3,000
Change in fair value of warrant liability	20,756	44,334
Changes in operating assets and liabilities:		
Accounts receivable	(296,524)	(746,447)
Inventory	(26,936)	(132,684)
Prepaid expenses and other current assets	(319,416)	(5,639)
Deferred financing costs	(1,807,626)	—
Other assets	(108,117)	(530)
Accounts payable	2,195,139	152,871
Accrued compensation	627,112	563,407
Other accrued expenses	227,803	159,827
Operating lease liability	(148,486)	—
Commission settlement	(127,074)	(99,051)
Net cash used in operating activities	(4,762,394)	(3,573,251)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(331,373)	(188,463)
Net cash used in investing activities	(331,373)	(188,463)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from subscription agreements	1,225,000	—
Proceeds from line of credit	18,759,540	5,136,583
Repayment of line of credit	(17,587,978)	(4,466,536)
Proceeds from issuance of subordinated notes	375,000	830,000
Repayments of subordinated notes	(75,000)	—
Principal payments on capital lease obligations	—	(544,702)
Principal payments on finance lease obligations	(822,315)	—
Principal payments on equipment financing obligation	(41,728)	(36,739)
Proceeds from Paycheck Protection Program loans	—	1,003,112
Proceeds from subordinated loan and security agreement	—	2,000,000
Repayments of subordinated loan and security agreement	(710,320)	(471,155)
Proceeds from unsecured subordinated promissory notes	5,131,789	—
Repayments of unsecured subordinated promissory note	(500,000)	—
Net cash provided by financing activities	5,753,988	3,450,563
Net increase (decrease) in cash and cash equivalents	660,221	(311,151)
Cash and cash equivalents at beginning of year	1,500,582	1,555,554
Cash and cash equivalents at end of year	$ 2,160,803	$ 1,244,403
Supplemental disclosure of cash flow information		
Cash paid for interest	$ 559,230	$ 457,782
Cash paid for income taxes	$ 6,480	$ 7,652
Supplemental disclosure of noncash investing and financing activities:		
Acquisition of property and equipment through capital leases	$ -	$ 648,259
Acquisition of property and equipment through finance leases	$ 1,560,520	$ -
Addition of ROU assets from finance lease modification	$ 239,000	$ -
Issuance of redeemable convertible preferred stock warrant in connection with subordinated loan and security agreement	$ -	$ 143,333

PROSOMNUS HOLDINGS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES

Company Organization

ProSomnus Holdings, Inc. along with its wholly-owned subsidiary, ProSomnus Sleep Technologies, Inc., (collectively, the "Company" or "ProSomnus") is located in Pleasanton, California. The Company was incorporated in Delaware. The Company is focused on the development, manufacturing and marketing of precision intraoral medical devices, a new option for treating and managing patients with mild to moderate obstructive sleep apnea ("OSA"). ProSomnus precision intraoral devices are classified by the U.S. Food and Drug Administration ("the FDA") as Class II medical devices for the treatment of snoring and mild to moderate OSA. The Company received pre-market notification and FDA clearance pursuant to Section 510(k) of the Federal Food, Drug, and Cosmetic Act ("FDCA") for the first intraoral device in July 2014 and the devices have been commercially available in the United States since August 2014.

The Company is dedicated to further advancing the treatment of OSA through ongoing research, product development, and process enhancement for improved effectiveness, efficiency, and convenience for patients and doctors alike.

The Company is focused on commercializing device designs that are clinically relevant, creating treatment experiences that exceed the needs of the practicing sleep dentist and his or her patients, and supporting scientific research that further establishes dental sleep medicine as a viable therapy for OSA.

Basis of Presentation

The accompanying condensed consolidated financial statements were prepared on the accrual basis of accounting in accordance with principles generally accepted in the United States of America ("U.S. GAAP").

Liquidity and Management's Plans

These condensed consolidated financial statements have been prepared in accordance with U.S. GAAP assuming the Company will continue as a going concern.

The Company has incurred recurring losses from operations and recurring negative cash flows from operating activities. At September 30, 2022, the Company had negative working capital of approximately ($6.3) million and cash and cash equivalents of approximately $2.2 million, of which $500,000 is subject to a compensating balance requirement for a loan agreement. The Company expects to continue to incur net losses for the foreseeable future as it continues the development of its products.

Through September 30, 2022, the Company has relied primarily on the proceeds from equity offerings, debt agreements and product sales to finance its operations. The Company expects to require additional financing to fund its future planned operations and will likely raise additional capital through the issuance of equity or borrowings. These factors raise substantial doubt about the Company's ability to continue as a going concern.

Management's plans to increase liquidity also include obtaining financial support from the primary stockholder of the Company, who has indicated its willingness and ability to provide additional financial support to the Company.

Emerging Growth Company

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes- Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards.

The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies are required to adopt the new or revised standard. This may make comparison of the Company's financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Unaudited Interim Financial Information

The accompanying interim condensed consolidated balance sheet as of September 30, 2022, the interim consolidated statements of operations and cash flows for the three and nine months ended September 30, 2022 and 2021, and the interim consolidated statements of stockholders' equity for the three and nine months ended September 30, 2022 and 2021 are unaudited. These unaudited interim financial statements are presented in accordance with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC") and do not include all disclosures normally required in annual financial statements prepared in accordance with GAAP. In management's opinion, the unaudited interim financial statements have been prepared on the same basis as the annual financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company's financial position as of September 30, 2022 and the Company's results of operations and cash flows for the three and nine months ended September 30, 2022 and 2021. The results of operations for the three and nine months ended September 30, 2022 are not necessarily indicative of the results to be expected for the full fiscal year or any other future interim or annual periods.

Merger Agreement with Lakeshore Acquisition I Corp.

On May 9, 2022, the Company entered into a Merger Agreement (the "Merger Agreement") with Lakeshore ("Lakeshore") Acquisition I Corp. (the "Business Combination Agreement"), a Cayman Islands exempted company (the "Purchaser"), which will result in the Purchaser acquiring 100% of the Company's equity securities. The Board of Directors of both the Purchaser and the Company have approved the proposed merger transaction. Completion of the transaction is expected to occur in late 2022, subject to approval of stockholders of the Company and the Purchaser and is subject to other customary closing conditions. There is no assurance that the transaction will be consummated.

In exchange for their equity securities, the Company's stockholders will receive an aggregate number of shares of common stock (the "Merger Consideration") of the newly formed public company ("Pubco") with an aggregate value equal to: (a) $113,000,000, minus (b) the amount by which the Closing Net Indebtedness (as defined in the Business Combination Agreement) exceeds $12,000,000. Additionally, PubCo shall make available to the Company no less than $40,000,000, prior to the payment of expenses incurred in connection with the transaction and any outstanding debt of the Company, in cash and cash equivalents immediately after the closing of the transaction, including the net proceeds from the Trust Account, after giving effect to any redemptions by shareholders of the Purchaser and the net proceeds from the Transaction Financing.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Additionally, the Company's stockholders may be entitled to receive up to 3,000,000 earn-out shares in three tranches:

- the first tranche of 1,000,000 earn-out shares will be issued when the volume-weighted average price per share of PubCo common stock is $12.50 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing;

- the second tranche of 1,000,000 earn-out shares will be issued when the volume-weighted average price per share of PubCo common stock is $15.00 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing; and

- the third tranche of 1,000,000 earn-out shares will be issued when the volume-weighted average price per share of PubCo common stock is $17.50 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing.

The earn-out shares will be allocated among the Company's stockholders in proportion to the number of shares issued to them at the Closing that continue to be held by them.

In connection with their entry into the Merger Agreement, the Purchaser and the Company entered into the Purchaser Support Agreement, dated as of May 9, 2022 (the "Purchaser Support Agreement"), with the initial shareholders of Lakeshore (the "Supporters"), pursuant to which the Supporters agreed (i) to vote the LAAA Ordinary Shares held by them in favor of the approval and adoption of the Merger Agreement and the transactions contemplated thereunder, (ii) to not transfer, during the term of the Purchaser Support Agreement, any PubCo Common Stock owned by them, (iii) to not transfer any PubCo Common Stock held by them in accordance with the lock-up provisions set forth in Lakeshore's final prospectus filed with the U.S. Securities and Exchange Commission on June 14, 2021, and (iv) to automatically (and with no further action by the Supporters) transfer up to an aggregate of 30% of the insider shares held by each Supporter to Equity Investors (as defined in the Purchaser Support Agreement) for no consideration.

In connection with their entry into the Merger Agreement, PubCo and the Company entered into a Voting and Support Agreement, dated as of May 9, 2022 (the "Voting and Support Agreement"), with certain ProSomnus stockholders, pursuant to which such ProSomnus stockholders agreed, among other things, (i) to vote the Company Stock (as defined in the Merger Agreement) held by them in favor of the approval and adoption of the Merger Agreement and the transactions contemplated thereunder, (ii) authorize and approve any amendment to the Company's Organizational Documents (as defined in the Merger Agreement) that is deemed necessary or advisable by ProSomnus for purposes of effecting the transactions contemplated under the Merger Agreement, and (iii) to not transfer, during the term of the Voting and Support Agreement, any Company Stock owned by them, except as permitted under the terms of the Voting and Support Agreement.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Pursuant to the Merger Agreement, Lakeshore has agreed to use its reasonable best efforts to, within sixty (60) days following the date of the Merger Agreement:

(A) enter into definitive agreements (i) with certain investors pursuant to which such investors will purchase shares of PubCo Common Stock at a purchase price of ten dollars ($10.00) per share, and/or (ii) with certain "beneficial owners" (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of PubCo Common Stock pursuant to which such Lakeshore stockholders shall agree not to redeem their shares of PubCo Common Stock in connection with the Business Combination and to waive their redemption rights under Lakeshore's amended and restated memorandum and articles of association; provided that the combination of proceeds under (i) and (ii) shall be equal to an aggregate of at least ten-million dollars ($10,000,000) held inside or outside the Trust Account immediately prior to the consummation of the Business Combination; and

(B) enter into definitive agreements with certain investors pursuant to which such investors will purchase convertible notes of PubCo with an aggregate principal funding equal to thirty million dollars ($30,000,000), in a private placement or placements to be consummated immediately prior to the consummation of the Business Combination.

Amendment to Certificate of Incorporation

On May 4, 2022, the Company's Board of Directors approved a resolution to amend the terms of the Certificate of Incorporation of the Company, to (i) deem the Merger Agreement and the resulting business combination to be a "Deemed Liquidation Event" and (ii) increasing the number of authorized shares of Series A Redeemable Convertible Preferred Stock to 43,585 shares to permit the issuance of such shares pursuant to the various other amendments described.

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. Intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and disclosure of contingent assets and liabilities. Actual results could differ from these estimates, and such differences could materially affect the results of operations reported in future periods. The Company's most significant estimates in these consolidated financial statements relate to the provision for doubtful accounts receivable, the warranty and rebate accruals, future revenue estimates used to calculate the current and long-term portions due under the subordinated loan agreement, the effective interest rates of the subordinated loan agreement, the estimates used to calculate the fair value of the warrant liability and discount rates for operating and finance lease agreements.

Risks and Uncertainties

Covid-19

In March 2020, the World Health Organization characterized the coronavirus ("COVID-19") as a pandemic, and the President of the United States declared the COVID-19 outbreak a national emergency.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

The rapid spread of the pandemic and the continuously evolving responses to combat it have had an increasingly negative impact on the global economy. In view of the rapidly changing business environment, unprecedented market volatility and heightened degree of uncertainty resulting from COVID-19, the Company is currently unable to fully determine the future impact on its business. Demand may shift over time, as the impacts of the COVID-19 pandemic may go through several phases of varying severity and duration. However, the Company continues to monitor the progression of the pandemic and its potential effect on the Company's financial position, results of operations, and cash flows. No adjustments have been made to these consolidated financial statements related to the outcome of this uncertainty.

Russia/Ukraine Conflict

Additionally, although we are a North American company with no operations in, or direct exposure to Russia and Ukraine, we have experienced shortages in materials and increased costs for transportation, energy, and raw material due in part to the negative impact of the *Russia-Ukraine* military conflict on the global economy. To date, the conflict between Russia and Ukraine has not had a material impact on our business, financial condition, or results of operations, but continued geopolitical turmoil, including expansion of the *Russia-Ukraine* conflict into other countries, or conflicts in other parts of the world, may negatively impact our supply chain and our ability to manufacture or sell our products.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk principally consist of accounts receivable and cash.

The Company sells its products to customers in North America and international locations. To reduce credit risk, management performs periodic credit evaluations of its customers' financial condition. No customers exceeded more than 10% of the Company's sales or accounts receivables as of and for the three and nine months ended September 30, 2022 and as of and during the year ended December 31, 2021.

The Company maintains its cash in bank accounts which, at times, may exceed federally insured limits as guaranteed by the Federal Deposit Insurance Corporation ("FDIC"). The Company believes its credit risk is mitigated due to the high quality of the banks in which it places its deposits.

Fair Value of Financial Instruments

The accounting standard for fair value measurements provides a framework for measuring fair value and requires expanded disclosures regarding fair value measurements. Fair value is defined as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date. This accounting standard establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs, where available. The following summarizes the three levels of inputs that may be used to measure fair value:

Level 1 Inputs — The valuation is based on quoted prices in active markets for identical instrument.

Level 2 Inputs — The valuation is based on observable inputs such as quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are *not* active, and model-based valuation techniques for which all significant assumptions are observable in the market.

Level 3 Inputs — The valuation is based on unobservable inputs that are supported by minimal or no market activity and that are significant to the fair value of the instrument. Level 3 valuations are typically performed using pricing models, discounted cash flow methodologies, or similar techniques that incorporate management's own estimates of assumptions that market participants would use in pricing the instrument, or valuations that require significant management judgment or estimation.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

The following tables provide a summary of the financial instruments that are measured at fair value on a recurring basis as of September 30, 2022 and December 31, 2021:

	September 30, 2022			
	Fair Value	Level 1	Level 2	Level 3
Warrant liability	$ 583,000	$ —	$ —	$ 583,000

	December 31, 2021			
	Fair Value	Level 1	Level 2	Level 3
Warrant liability	$ 562,244	$ —	$ —	$ 562,244

A financial instrument's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

Changes in fair value measurements categorized within Level 3 of the fair value hierarchy are analyzed each period based on changes in estimates or assumptions and recorded as appropriate. At September 30, 2022 and December 31, 2021, the warrants related to the Series B redeemable convertible preferred stock issuance are classified within level 3 of the valuation hierarchy.

The Company's non-financial assets, which include property and equipment and other assets, are not required to be measured at fair value on a recurring basis. However, on a periodic basis, or whenever events or changes in circumstances indicate that their carrying value may not be recoverable, the Company assesses its long-lived assets for impairment. When impairment has occurred, such long-lived assets are written down to fair value.

The Company believes the carrying amounts of financial instruments including cash and cash equivalents, accounts receivable (net of allowance for doubtful accounts), accounts payable and revolving line of credit approximate fair value due to their short-term nature.

Based on the borrowing rates currently available to the Company for loans with similar terms, the carrying value of the subordinated notes, the subordinated loan and security agreement and the equity financing obligations approximate the fair value.

Cash and Cash Equivalents

The company considers all demand deposits with an original maturity to the Company of 90 days or less as cash and cash equivalents. The Company places its cash and cash equivalents with high credit-quality financial institutions.

Accounts Receivable

The Company reports accounts receivables at net realizable value. The Company has not historically assessed finance charges on past due accounts, but retains the right to do so. The allowance for doubtful accounts is estimated based on historical write-off percentages and management's assessment of specific past due or delinquent customer accounts. The delinquency status of customers is determined by reference to contractual terms. Doubtful accounts are written off against the allowance for doubtful accounts after collection efforts have been exhausted and are recorded as recoveries of bad debts if subsequently collected. The allowance for doubtful accounts amounted to $154,000 and $100,000 as of September 30, 2022 and December 31, 2021, respectively. All accounts receivable are from customers primarily located in North America.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Inventory

Inventory is recorded at the lower of cost or net realizable value under the first-in, first-out method of accounting. Inventories primarily consist of purchased raw materials. The Company regularly reviews whether the net realizable value of its inventory is lower than its carrying value. If the valuation shows that the net realizable value is lower than the carrying value, the Company takes a charge to cost of sales and directly reduces the carrying value of the inventory. Indicators that could result in inventory write-downs include damaged or slow-moving materials and supplies.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives are as follows:

Manufacturing equipment	3 to 7 years
Computers and software	3 years
Furniture	7 years
Leasehold Improvements	Shorter of remaining lease term or estimated useful life

Maintenance and repairs are charged to operations as incurred.

Through December 31, 2021, equipment capitalized under capital lease obligations was included in property and equipment. Property and equipment capitalized under capital lease obligations were amortized using a straight-line method over the shorter of the life of the lease or the useful life of the asset, which ranges from 3 to 7 years, and was included in depreciation expense in the condensed consolidated statements of operations. On January 1, 2022 the Company adopted Accounting Standards Update ("ASU") 2016-02, *Leases* ("ASC 842"), which impacted the classification of equipment formerly capitalized under capital lease obligations. The equipment related to capital leases, now finance leases, have been reclassified from property and equipment to right-of-use assets on the condensed consolidated balance sheet.

Occasionally, the Company enters into finance lease arrangements for various machinery, equipment, computer-related equipment, or software. The Company records amortization of assets leased under finance lease arrangements.

Long-lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset many not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured at the amount by which the carrying amount of the asset exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of carrying amount or the fair value less costs to sell. No such impairments have been identified as of September 30, 2022 and December 31, 2021.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Deferred Financing Costs

The deferred transaction costs consist of legal, accounting, filing and other fees related to the business combination (See Note 14) that have been capitalized. The deferred transaction costs will be offset against proceeds from the transaction upon the effectiveness of such transaction. In the event the transaction is terminated, all capitalized deferred transaction costs would be expensed. As of September 30, 2022, $1,807,626 of deferred transaction costs were capitalized and recorded on the condensed consolidated balance sheets. There were no deferred financing costs as of December 31, 2021.

Redeemable Convertible Preferred Stock

The Company records all shares of redeemable convertible preferred stock at their respective issuance price, less issuance costs, on the dates of issuance. Under certain circumstances the Company may be required to redeem the Series A and Series B redeemable convertible preferred stock. The redeemable convertible preferred stock is presented outside of stockholders' deficit in the consolidated balance sheets. When redeemable convertible preferred stock is considered either currently redeemable or probable of becoming redeemable, the Company has elected to recognize changes in the redemption value immediately, as they occur and adjust the carrying value of redeemable convertible preferred stock to the greater of the redemption value at the end of each reporting period or the initial carrying amount.

Warrants for Redeemable Convertible Preferred Stock

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 480, *Distinguishing Liabilities from Equity* ("ASC 480") and ASC 815, *Derivatives and Hedging* ("ASC 815"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's own common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent reporting period end date while the warrants are outstanding.

For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash other income or expense on the condensed consolidated statements of operations.

Revenue Recognition

The Company creates customized precision milled intraoral devices. When devices are sold, they include an assurance-type warranty guaranteeing the fit and finish of the product for a period of 3 years from the date of sale.

In accordance with ASU 2014-09, "*Revenue from Contracts with Customers* (Topic 606)", the Company recognizes revenue upon meeting the following criteria:

- Identifying the contract with a customer: Customers submit authorized prescriptions and dental impressions to the Company. Authorized prescriptions constitute the contract with customers.

- Identifying the performance obligations within the contract: The sole performance obligation is the shipment of a completed customized intraoral device.

- Determining the transaction price: Prices are determined by standardized pricing sheets and adjusted for estimated returns, discounts, allowances and rebates.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

- Allocating the transaction price to the performance obligations: The full transaction price is allocated to the shipment of the completed intraoral device as it is the only element in the transaction.

- Recognize revenue as the performance obligation is satisfied: revenue is recognized upon transfer of control which occurs upon shipment of the product.

The Company does not require collateral or any other form of security from customers. Inbound shipping and handling costs related to sales are billed to customers. Outbound shipping costs are not billed to customers and are included in sales and marketing expenses. Taxes collected from customers and remitted to governmental authorities are excluded from revenue.

Standalone selling price for the various intraoral device models are determined using the Company's standard pricing sheet. The Company invoices customers upon shipment of the product and invoices are due within 30 days. Amounts that have been invoiced are recorded in accounts receivable and revenue as all revenue recognition criteria have been met. Given the nominal value of each transaction, the Company does not offer a financing component related to its sales arrangements.

Cost of Revenue

Cost of revenue consists primarily of materials and the costs related to the production of the intra- oral device, including employee compensation, other employee-related expenses and allocable manufacturing overhead costs. The Company has a policy to classify initial recruiting, onboarding and training costs of new manufacturing employees as part of research and development expense in the condensed consolidated statements of operations. For the three and nine months ended September 30, 2022, such costs totaled $55,651 and $153,569, respectively. For the three and nine months ended September 30, 2021, such costs totaled $45,788 and $108,914, respectively.

The Company utilizes the practical expedient which permits expensing of costs to obtain a contract when the expected amortization period is one year or less, which typically results in expensing commissions paid to employees. The Company expenses sales commissions paid to employees as sales are recognized.

Warranty

The Company offers a warranty guaranteeing the fit and finish of their intraoral devices for three years from the date of initial sale, as well as a guarantee for unlimited remaking of arches. The accrual for warranty claims and unlimited arch remakes totaled $293,536 and $217,244 at September 30, 2022 and December 31, 2021, respectively, and these amounts are recorded in other accrued expenses on the consolidated balance sheets.

Research and Development

Research and development costs are charged to operations as incurred.

Advertising

Advertising costs are expensed as incurred and totaled $27,655 and $62,485 for the three and nine months ended September 30, 2022, respectively. Advertising costs totaled $13,563 and $65,638 for the three and nine months ended September 30, 2021, respectively.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Stock-Based Compensation

The Company's stock-based compensation expense is recognized based on the estimated fair value of the restricted stock awards on the date of grant. The grant-date fair value of all stock- based payment awards is recognized as employee compensation expense on a straight-line basis over the requisite service period. The Company recognizes forfeitures of restricted stock awards as they occur.

Leases

The Company assesses at contract inception whether a contract is, or contains, a lease. Generally, the Company determines that a lease exists when (1) the contract involves the use of a distinct identified asset, (2) the Company obtains the right to substantially all economic benefits from use of the asset, and (3) the Company has the right to direct the use of the asset. A lease is classified as a finance lease when one or more of the following criteria are met: (1) the lease transfers ownership of the asset by the end of the lease term, (2) the lease contains an option to purchase the asset that is reasonably certain to be exercised, (3) the lease term is for a major part of the remaining useful life of the asset, (4) the present value of the lease payments equals or exceeds substantially all of the fair value of the asset or (5) the asset is of such a specialized nature that it is expected to have no alternative use to the lessor at the end of the lease term. A lease is classified as an operating lease if it does not meet any of these criteria.

At the lease commencement date, the Company recognizes a right-of-use asset and a lease liability for all leases, except short- term leases with an original term of 12 months or less. The right-of-use asset represents the right to use the leased asset for the lease term. The lease liability represents the present value of the lease payments under the lease. The right-of-use asset is initially measured at cost, which primarily comprises the initial amount of the lease liability, less any lease incentives received. All right-of-use assets are periodically reviewed for impairment in accordance with standards that apply to long-lived assets. The lease liability is initially measured at the present value of the lease payments, discounted using an estimate of the Company's incremental borrowing rate for a collateralized loan with the same term as the underlying leases for operating leases and the implied rate in the lease agreement for finance leases.

Lease payments included in the measurement of lease liabilities consist of (1) fixed lease payments for the noncancelable lease term, (2) fixed lease payments for optional renewal periods where it is reasonably certain the renewal option will be exercised, and (3) variable lease payments that depend on an underlying index or rate, based on the index or rate in effect at lease commencement. The Company's real estate operating lease agreement requires variable lease payments that do not depend on an underlying index or rate established at lease commencement. Such payments and changes in payments are recognized in operating expenses when incurred.

Lease expense for operating leases consists of the fixed lease payments recognized on a straight-line basis over the lease term plus variable lease payments as incurred. Lease expense for finance leases consists of the amortization of assets obtained under finance leases on a straight-line basis over the lease term and interest expense on the lease liability based on the discount rate at lease commencement.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Income Taxes

The Company accounts for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes as well as net operating loss carryforwards and tax credit carryforwards. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

Significant judgment may be required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, the Company considers all available evidence, including past operating results, estimates of future taxable income and the feasibility of tax planning strategies. In the event that the Company changes its determination as to the amount of deferred tax assets that is more likely than not to be realized, the Company will adjust its valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

The Company follows authoritative guidance regarding uncertain tax positions. The guidance requires that realization of an uncertain income tax position must be more likely than not (i.e., greater than 50% likelihood of receiving a benefit) before it can be recognized in the consolidated financial statements. The guidance further prescribes the benefit to be realized assumes a review by taxing authorities having all relevant information and applying current conventions.

The guidance also clarifies the consolidated financial statements classification of tax related penalties and interest and sets forth disclosures regarding unrecognized tax benefits. The Company recognizes potential accrued interest and penalties related to unrecognized tax benefits as income tax expense.

Net Loss per Share Attributable to Common Stockholders

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding during the period, without consideration for common stock equivalents. Diluted net loss per share attributable to common stockholders is the same as basic net loss per share attributable to common stockholders since the effects of potentially dilutive securities are antidilutive.

Recent Accounting Pronouncements

On January 1, 2022, the Company adopted Accounting Standards Update ("ASU") 2016-02, *Leases* (ASC 842), which superseded previous guidance related to accounting for leases within Topic 842, *Leases*. The Company elected the practical expedient provided under ASU 2018-11, *Leases (ASC 842) Targeted Improvements,* which amended ASU 2016-02 to provide entities an optional transition practical expedient to adopt the new standard with a cumulative effect adjustment as of the beginning of the year of adoption with prior year comparative financial information and disclosures remaining as previously reported. As a result, no adjustments were made to the condensed consolidated balance sheet prior to January 1, 2022 and amounts are reported in accordance with historical accounting under Topic 840, while the consolidated balance sheet as of September 2022 is presented under Topic 842.

The Company elected the package of practical expedients permitted under the transition guidance, which allowed it to carry forward historical lease classification, assessment on whether a contract was or contains a lease, and assessment of initial direct costs for any leases that existed prior to January 1, 2022. The Company also elected to combine its lease and non-lease components and to keep leases with an initial term of 12 months or less off the condensed consolidated balance sheet and recognize the associated lease payments in the consolidated statements of operations on a straight-line bases over the lease term.

NOTE 1 — DESCRIPTION OF THE BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES (Continued)

Adoption of the new standard resulted in the recording of right of use assets and operating lease liabilities of $406,551 and $464,291, respectively, as of January 1, 2022. Additionally, upon adoption of the new standard, the Company reclassified the equipment of $2,349,591 related to capital leases to right of use assets. Finance lease liabilities of $1,826,973 were reclassified from capital lease obligation. The transition did not have a material impact on the Company's condensed consolidated results of operations, cash flows or liquidity measures.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, as amended, which requires the early recognition of credit losses on financing receivables and other financial assets in scope. ASU 2016-13 requires the use of a transition model that will result in the earlier recognition of allowances for losses. The new standard is effective for fiscal years beginning after December 15, 2022. Management is currently evaluating the new standard and its possible impact on the Company's condensed consolidated financial statements.

NOTE 2 — PROPERTY AND EQUIPMENT

Property and equipment consisted of the following:

	September 30, 2022	December 31, 2021
Manufacturing equipment	$ 1,966,443	$ 4,420,281
Computers and software	667,871	1,547,549
Furniture	27,587	27,587
Leasehold Improvements	441,956	295,471
	3,103,857	6,290,888
Less: accumulated depreciation	(2,068,804)	(2,934,293)
Total property and equipment, net	$ 1,035,053	$ 3,356,595

Depreciation expense for the three and nine months ended September 30, 2022 was $94,560 and $302,932 respectively. Depreciation expense for the three and nine months ended September 30, 2021 was $211,695 and $605,943, respectively.

NOTE 3 — INVENTORY

Inventory consisted of the following:

	September 30, 2022	December 31, 2021
Raw Materials	$ 299,675	$ 323,989
Work in progress	106,030	54,780
	$ 405,705	$ 378,769

There is no inventory reserve recorded at September 30, 2022 and December 31, 2021.

NOTE 4 — ACCRUED COMPENSATION AND OTHER ACCRUED EXPENSES

Accrued compensation consisted of the following:

	September 30, 2022	December 31, 2021
Bonus	$ 1,056,968	$ 831,601
Wages	329,597	140,962
Vacation	749,325	569,777
401k matching contributions	133,696	100,134
	$ 2,269,586	$ 1,642,474

Other accrued expenses consisted of the following:

	September 30, 2022	December 31, 2021
Rebates	$ 453,982	$ 499,219
Warranty	293,537	217,244
Other	248,310	242,533
Consulting	196,463	-
Travel	96,558	-
Interest	73,160	28,750
Credit card fees	36,424	34,424
Professional fees	-	72,611
Marketing expenses	-	45,000
Freight	-	22,000
	$ 1,398,434	$ 1,161,781

NOTE 5 — LEASES

Prior to the adoption of ASC 842, rent expense on operating leases was recognized on a straight-line basis over the term of the lease. In addition, certain of the Company's operating lease agreements for office space also include rent holidays and scheduled rent escalations during the initial lease term. The Company recorded the rent holidays as deferred rent within other liabilities on the condensed consolidated balance sheets. The Company recognized the deferred rent liability and scheduled rent increase on a straight-line basis into rent expense over the lease term commencing on the date the Company took possession of the leased space.

The Company's operating leases consists of a lease for corporate office and product and has a remaining term of approximately fifteen months as of September 30, 2022. The Company's operating lease agreement does not contain any material residual value guarantees or material restrictive covenants. The Company recognized right-of-use assets and lease liabilities for such leases in connection with its adoption of ASC 842 as of January 1, 2022. The Company reports operating lease right-of-use assets and the current and non-current portions of its operating lease liabilities on the condensed consolidated balance sheet.

On May 17, 2022, the Company signed a ten-year lease for the Company's corporate headquarters. The lease will commence on the later of 15 days after substantial completion of the tenant improvements or December 15, 2022. The monthly payment will be approximately $68,000, with stated annual escalation, up to approximately $88,000. The Company received 5 months free rent.

The Company provided a $200,000 security deposit, which is recorded in other assets on the accompanying condensed consolidated balance sheet. The Company's largest investor provided an initial two-year guaranty of $1,700,000 for the benefit of the lessor, followed by a one-year rolling guaranty of the lease performance. The Company can replace the guaranty with a letter of credit for $700,000.

The Company's finance leases consist of various machinery, equipment, computer-related equipment, or software and have remaining terms from less than one year to five years. The Company reports assets obtained under finance leases in right-of-use assets and the current and non-current portions of its finance leases on the condensed consolidated balance sheet.

NOTE 5 — LEASES (Continued)

During June 2022, two finance leases were extended for an additional ten months. The Company evaluated the terms of the extension and determined that a lease modification occurred. The modification did not meet the requirements to be considered a separate contract. The additional amount of the commitments of approximately $239,000 have been recorded in right-of-use assets and finance lease liabilities on the condensed consolidated balance sheets.

The components of the Company's lease cost, weighted average lease terms and discount rates are presented in the tables below:

	For the three months ended September 30, 2022	For the nine months ended September 30, 2022
Lease Cost:		
Operating lease cost	$ 68,709	$ 206,126
Finance lease cost:		
Amortization of assets obtained under finance leases	$ 274,712	$ 597,904
Interest on lease liabilities	104,409	223,263
Total finance lease cost	$ 379,121	$ 821,167

Lease term and discount rate	As of September 30, 2022
Weighted average remaining lease term:	
Operating leases	1.2 years
Finance leases	2.0 years
Weighted average discount rate:	
Operating leases	20.0%
Finance leases	8.72%

Cash paid for amounts included in the measurement of lease liabilities:	For the nine months ended September 30, 2022
Operating cash flows from operating leases	$ (148,486)
Operating cash flows from finance leases	$ 597,904
Financing cash flows from finance leases	$ (822,315)
Right-of-use assets obtained in exchange for lease liabilities:	
Acquisition of property and equipment through finance leases	$ 1,560,520
Addition of ROU assets from financing lease modification	$ 239,000
	$ 1,799,520

NOTE 5 — LEASES (Continued)

Right-of-use assets consisted of the following as of September 30, 2022:

Manufacturing equipment	$ 3,640,645
Computers and software	507,999
Total	4,148,644
Less accumulated amortization	(597,904)
Right-of-use assets for finance leases	3,550,740
Right-of-use assets for operating leases	270,030
Total right-of-use assets	$ 3,820,770

At September 30, 2022, the following table presents maturities of the Company's finance lease liabilities:

Years ending December 31	**Total**
Remainder of 2022	$ 393,583
2023	1,042,094
2024	629,214
2025	572,377
2026 and thereafter	535,859
Total minimum lease payments	3,173,127
Less amount representing interest	(423,739)
Present value of minimum lease payments	2,749,388
Less current portion	(1,160,737)
Finance lease liabilities, less current portion	$ 1,588,651

At September 30, 2022, the following table presents maturities of the Company's operating lease liabilities:

Year ending December 31	Total
Remainder of 2022	$ 68,709
2023	283,895
Total minimum lease payments	352,604
Less: Amount representing interest	(43,089)
Present value of minimum lease payments	309,515
Less: Current portion	(224,904)
Operating lease liabilities, less current portion	$ 84,611

Total rent expense for the three months ended September 30, 2021 was $62,624. Total rent expense for the nine months ended September 30, 2021 was $187,871.

NOTE 6 — DEBT

Equipment Financing Obligation

In September 2018, the Company entered into two equipment financing arrangements to purchase capital equipment totaling $255,845. The first equipment financing arrangement entered into by the Company was for $43,560 repayable over 5 years with an annual interest rate of 9.41%.

The second equipment financing arrangement entered into by the Company was for $212,285 repayable over 5 years with an annual interest rate of 5.82%. In October 2020, the Company refinanced the second equipment financing arrangement and entered into a new agreement for $329,048. The agreement is repayable over 6 years with an annual interest rate of 11.2%. The financed balance of the equipment under the old agreement was $150,690 at the refinancing date. The amount of the new equipment financed was $178,358.

The equipment financing arrangements are guaranteed by the Company's primary stockholder. The balance of these notes was $259,016 and $299,950 at September 30, 2022 and December 31, 2021, respectively. Interest expense on the notes totaled $7,442 and $23,439 for the three and nine months ended September 30, 2022, respectively. Interest expense on the notes totaled $8,879 and $27,633 for the three and nine months ended September 30, 2021, respectively.

At September 30, 2022, the Company's future principal maturities under the equipment financing obligation are summarized as follows:

Years ending December 31	Total
Remainder of 2022	$ 14,399
2023	58,973
2024	56,995
2025	63,698
2026	64,951
Total principal maturities	259,016
Less current portion	(60,008)
Equipment financing obligation, net of current portion	$ 199,008

Line of Credit

The Company entered into a Loan and Security Agreement in November 2018 with a financial institution. Under the Loan and Security Agreement, the Company may draw funds equal to the lesser of (a) $1,500,000 or (b) 85% of Eligible Accounts Receivable, as defined in the agreement, and is collateralized by all of the Company's assets with the exception of the assets under capital lease. The annual interest rate is the greater of the prime rate plus 2.00% or 5.00% (8.25% at September 30, 2022 and 6.75% at December 31, 2021, respectively). The line of credit has an amended maturity date of November 30, 2022 and has an annual facility fee of $15,000.

On June 30, 2022, the Company entered into an amendment to the Loan and Security Agreement originally negotiated with a financial institution in November 2018. The amended agreement increases the limit for the line of credit from $1,500,000 to $2,000,000. Additionally, if the line of credit is terminated prior to the maturity date under certain scenarios, the Company will pay a termination fee of approximately $20,000. The line of credit has an amended annual facility fee of $20,000 on the closing date as defined in the agreement, and $20,000 due on every anniversary thereafter of the closing date as defined by the agreement. The Company paid a $5,000 commitment fee upon the signing of the amended agreement.

NOTE 6 — DEBT (Continued)

Line of Credit (continued)

The amounts borrowed under the line of credit was $1,759,377 and $587,816 at September 30, 2022 and December 31, 2021, respectively. Interest expense on the line of credit totaled $74,661 and $156,038 for the three and nine months ended September 30, 2022, respectively. Interest expense on the line of credit totaled $37,126 and $88,537 for the three and nine months ended September 30, 2021, respectively. As of September 30, 2022, the borrowing availability under the line of credit was $123,922.

Subordinated Notes

Prior to January 2020, the Company received advances under unsecured subordinated promissory note agreements for gross proceeds of $2,208,299, net of issuance costs of $76,701. The Company received advances under unsecured subordinated promissory note agreements for total proceeds of $0 and $375,000 during the three and nine months ended September 30, 2022, respectively. The Company received advances under unsecured subordinated promissory note agreements for total proceeds of $780,000 and $830,000 during the three and nine months ended September 30, 2021, respectively. No issuance costs were incurred during the three and nine months ended September 30, 2022 and 2021.

These advances are subordinate to the line of credit and Subordinated Loan and Security Agreement. $3,935,000 and $3,760,000 of these advances were made by the Company's stockholders, directors, and employees as of September 30, 2022 and December 31, 2021, respectively, of which, the Company repaid $75,000 during the nine months ended September 30, 2022. $1,230,000 and $1,230,000 of these advances were made by the Company's customers as of September 30, 2022 and December 31, 2021, respectively.

Amortization of the issuance costs totaled $4,546 and $13,638 for the three and nine months ended September 30, 2022, respectively. Amortization of the issuance costs totaled $4,546 and $13,727 for the three and nine months ended September 30, 2021, respectively.

On May 4, 2022, the Company's Board of Directors approved a resolution to amend the terms of the unsecured subordinated promissory note agreements to provide for the automatic conversion of the outstanding loan amounts (including principal, interest and prepayment and change of control premiums, as well as a 5% equity kicker to incentivize lenders to agree to the amendment) into shares of Series A Redeemable Convertible Preferred Stock of the Company immediately prior to the closing of the proposed merger transaction so that such lenders will receive shares of the Purchaser's common stock issuable at the closing.

The maturity date of the notes are 5 years after the date they are funded. Noteholders had the option to elect between two forms of the agreement:

1. Interest is received as a cash payment ("Cash Notes") and paid on a quarterly basis every January 1, April 1, July 1 and October 1. The annual interest rate on these notes is 15% per annum based on a 360-day year. $750,000 of the proceeds related to the Cash Notes. Interest expense totaled $23,946 and $80,509 for the three and nine months ended September 30, 2022, respectively, for the Cash Notes. Interest expense totaled $28,749 and $85,312 for the three and nine months ended September 30, 2021, respectively, for the Cash Notes.

2. Interest is accrued and added to the principal balance ("PIK Notes") at the commencement of each new calendar year (January 1). The annual interest rate on these notes is 20% per annum based on a 360-day year. $5,740,000 of the proceeds related to the PIK Notes. Interest expense totaled $358,020 and $1,051,358 for the three and nine months ended September 30, 2022, respectively, for the PIK Notes. Interest expense totaled $167,825 and $490,036 for the three and nine months ended September 30, 2021, respectively, for the PIK Notes.

NOTE 6 — DEBT (Continued)

Both the Cash Notes and PIK Notes have a prepayment penalty that is calculated on the principal and all accrued but unpaid interest at the following rates:

Less than one (1) year from the funding date	3%
One (1) year to less than two (2) years from the funding date	2%
Two (2) years to less than three (3) years from the funding date	1%
A change in control event	5%

Bridge Loan (Unsecured Subordinated Promissory Notes)

During February and March 2022, the Company received proceeds of $3,000,000 from unsecured subordinated promissory notes ("the Bridge Loans"). Interest accrues at 15% per annum, and all accrued but unpaid interest is applied and added quarterly to the principal balance (the "Base Amount"). The maturity date is two years from the date of funding or upon a change in control of the Company. The interest is increased to an amount equal to 103% of the Base Amount if the Bridge Loans are repaid upon the closing of a change of control in the Company. The Bridge Loans are subordinate to the line of credit and Subordinated Loan and Security Agreement.

During March 2022, $500,000 of the Bridge Loans were repaid. The primary stockholder of the Company was the borrower on this Bridge Loan, and a representative of this primary stockholder is a member of the Company's Board of Directors.

During April 2022, the Company received proceeds of $150,000 from additional Bridge Loans.

On May 4, 2022, the Company's Board of Directors approved a resolution to amend the terms of the Bridge Loans to grant an additional 5% of the Base Amount (the "Bridge Loan Kicker") to each bridge lender who exercises its option to convert its bridge loan, which Bridge Loan Kicker will be payable in shares of Series A Redeemable Convertible Preferred Stock so that such exercising lenders will receive shares of the Purchaser's common stock issuable at the closing thereof.

During May and June 2022, the Company and certain holders of the Bridge Loans executed a conversion addendum. Upon notice of the Business Combination Agreement, the holders of the Bridge Loans had up to 10 days to elect to convert into Series A Redeemable Convertible Preferred Stock. Immediately prior to the closing of the Business Combination, the Bridge Loans will automatically convert into the number of Series A Redeemable Convertible Preferred Stock as equal to the repayment amount of the Bridge Loans divided by the Conversion Price. The Conversion Price is defined as the quotient of the aggregate consideration to be paid to all holders of the Series A Redeemable Convertible Preferred Stock divided by the outstanding number of Series A Redeemable Convertible Preferred Stock, including the shares into which the Bridge Loans convert. Holders of Bridge Loans totaling $2,550,000 have elected to convert.

Bridge Loan (Secured subordinated loan)

On June 29, 2022, the Company entered into the Second Amendment and Loan Security Agreement ("Second Amendment") to the subordinated loan and security agreement effective in April 2021 (See Note 6 — Debt — Subordinated Loan and Security Agreement). The Second Amendment established a convertible bridge loan advance of up to $2,000,000 to the Company from the lender ("Convertible Bridge Loan Advance"). The interest rate of the Convertible Bridge Loan Advance is 14% and the maturity date is the earlier of the date of the bridge loan conversion event or June 29, 2023. The bridge loan conversion event is the termination of the Merger Agreement (see Note 1) or the occurrence of any event that would result in the termination of the Merger Agreement as defined in the Merger Agreement. If the bridge loan conversion has not occurred, and the Convertible Bridge Loan Advance is not repaid in full on the maturity date, the default interest will bear additional 6.0% per annum. Interest is paid in arrears at December 29, 2022 and at the maturity date. Prepayment of the Convertible Bridge Loan Advance is permitted in increments of $100,000 at any time, and the prepayment requires the payment of all accrued and unpaid interest as well as a prepayment premium. The prepayment premium is the incremental amount of interest that would have been paid for the term of the convertible bridge advance and has not yet been paid.

NOTE 6 — DEBT (Continued)

The Company recorded the amendment of the subordinated loan and security agreement in accordance with ASC 470-50, *Debt-Modifications and Extinguishments*, and recorded a loss on extinguishment of debt of $192,731 in the condensed consolidated statements of operations.

Upon the occurrence of a bridge loan conversion event, the bridge loan advance balance is calculated at the amount of the principal outstanding plus a 14% premium and is considered to have been outstanding since the first amendment date of April 5, 2021. Additionally, the balance of the additional advance is set at $2,000,000, and the Company is required to issue an additional common stock warrant to the lender in an amount to be calculated based on the bridge loan advance balance at that future date. The Company determined that the accounting value of the proposed additional common stock warrant at the date of the Second Amendment is not significant and has not recorded that accounting value.

The total balance of the Bridge Loans and the convertible bridge loan advance was $4,734,699, net of issuance costs of $22,408, of which, $1,700,000 of proceeds were received from the Company's stockholder as of September 30, 2022. Interest expense from the Bridge Loans totaled $154,200 and $270,349 for the three and nine months ended September 30, 2022, respectively. The maturity dates of the Bridge loans ranges from February 2024 to March 2024.

Subordinated Loan and Security Agreement

In January 2020, the Company entered into a loan and security agreement with a lender and borrowed $3,800,000. The loan is subordinate to the line of credit. The loan is secured by substantially all assets of the Company, contains certain financial and non-financial covenants, and has a four-year term. The loan is repayable monthly starting February 2021 at an amount equal to 4% of net revenues of the Company until the Company has paid an amount equal to the return cap of $9,500,000. The return cap is subject to a reduction of 30% if fully repaid within 12 months, 22% if fully repaid within 24 months and 11.85% if fully repaid within 36 months. During the three and nine months ended September 30, 2022, the Company made revenue share payments totaling $197,002 and $537,134, respectively. During the three and nine months ended September 30, 2021, the Company made revenue share payments totaling $143,861 and $334,725, respectively.

In April 2021, the Company entered into a second loan and security agreement with the same lender and borrowed an additional $2,000,000. The loan is subordinate to the line of credit. The loan is secured by substantially all assets of the Company, contains certain financial and non-financial covenants, and has a four-year term. The loan is repayable monthly starting May 2021 at an amount initially equal to 1.0526% of net revenues of the Company and increasing to 2.105% in the second year of the agreement, until the Company has paid an amount equal to the return cap of $3,902,800. The return cap is subject to a reduction of 22% if fully repaid within 12 months and 11.85% if fully repaid within 24 months. During the three and nine months ended September 30, 2022, the Company made revenue share payments totaling $103,672 and $226,238, respectively. During the three and nine months ended September 30, 2021, the Company made revenue share payments totaling $37,871 and $61,460, respectively.

The effective interest rates on the subordinated loan and security agreement ranged from 25.8% – 27.2% and 25.7% – 27.1 % for the nine months ended September 30, 2022 and 2021, respectively. The effective interest rate is adjusted to reflect the actual cash flows paid to date and the revised estimate of future cash flows for revenue share payments. The Company records the impact of the change in the cash flows in the current and future periods.

The outstanding balances of the subordinated loan and security agreements were $4,492,310 and $4,876,497 as of September 30, 2022 and December 31, 2021, respectively.

NOTE 6 — DEBT (Continued)

At September 30, 2022, the Company has estimated future revenue share payments under this subordinated loan agreement as follows:

Years ending December 31	Total
Remainder of 2022	$ 351,451
2023	1,577,922
2024	10,107,417
Total estimated future revenue share payments	$ 12,036,790

As of September 30, 2022 and December 31, 2021, the Company had a compensating balance arrangement under the loan and security agreement which requires a minimum cash deposit to be maintained in the amount of $500,000.

In connection with the loan and security agreement, the Company issued a warrant to the lender for the purchase of 211,112 shares of Series B redeemable convertible preferred stock, with an exercise price of $1.80 per share (subject to a valuation cap of $150,000,000 in the event of a liquidation defined as a deemed liquidation event or a liquidation, dissolution or winding up of the Company) and a term of ten years ("2020 preferred Series B warrants"). The fair value of the warrant at issuance was $228,000. The fair value of such warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: redeemable convertible preferred share price on date of grant of $1.80, expected dividend yield 0%, expected volatility 26%, risk-free interest rate 0.93% and contractual life of ten years.

In connection with the second loan and security agreement, the Company issued warrants to the lender for the purchase of 111,111 shares of Series B redeemable convertible preferred stock, with an exercise price of $1.80 per share (subject to a valuation cap of $150,000,000 in the event of a liquidation event defined as a deemed liquidation event or a liquidation, dissolution or winding up of the Company) and a term of ten years ("2021 preferred Series B warrants"). The fair value of the warrant at issuance was $143,333. The fair value of such warrant was estimated using the Black-Scholes Model based on the following weighted average assumptions: redeemable convertible preferred share price on date of grant of $1.80, expected dividend yield 0%, expected volatility 27%, risk-free interest rate 1.73% and contractual life of ten years.

The fair value of the warrants was recorded within noncurrent liabilities as a debt discount and a warrant liability, with changes in fair value each reporting period recognized in the consolidated statements of operations. During the three and nine months ended September 30, 2022, the Company recognized interest expense of $85,398 and $135,444, respectively, upon amortization of the debt discount. During the three and nine months ended September 30, 2021, the Company recognized interest expense of $24,303 and $60,623, respectively, upon amortization of the debt discount. The balance of the debt discount is $85,398 and $242,777 as of September 30, 2022 and December 31, 2021, respectively.

The change in fair value of the outstanding warrants classified as liabilities for the nine months ended September 30, 2022 and 2021 were as follows:

Warrant Issuance	Warrant liability, January 1, 2022	Fair value of warrants granted	Fair value of warrants exercised	Change in fair value of warrants	Warrant liability, September 30, 2022
2020 preferred Series B warrants and 2021 preferred Series B warrants	$ 562,244	$ -	$ -	$ 20,756	$ 583,000

Warrant Issuance	Warrant liability, January 1, 2021	Fair value of warrants granted	Fair value of warrants exercised	Change in fair value of warrants	Warrant liability, September 30, 2021
2020 preferred Series B warrants	$ 228,000	$ 143,333	$ -	$ 44,334	$ 415,667

NOTE 6 — DEBT (Continued)

The fair value of the outstanding warrants accounted for as liabilities at September 30, 2022 are calculated using the Black-Scholes option pricing model with the following assumptions:

		Black-Scholes Fair Value Assumptions			
Warrant Issuance	Fair Value of Series B Redeemable Convertible Preferred Stock	Dividend Yield	Expected Volatility	Risk-Free Interest Rate	Expected Life
2021 preferred Series B warrants	$ 3.60	0%	46%	3.33%	0.25 years
2020 preferred Series B warrants	$ 3.60	0%	46%	3.33%	0.25 years

The fair value of the outstanding warrants accounted for as liabilities at December 31, 2021 are calculated using the Black-Scholes option pricing model with the following assumptions:

		Black-Scholes Fair Value Assumptions			
Warrant Issuance	Fair Value of Series B Redeemable Convertible Preferred Stock	Dividend Yield	Expected Volatility	Risk-Free Interest Rate	Expected Life
2021 preferred Series B warrants	$ 2.89	0%	20%	1.52%	9.26 years
2020 preferred Series B warrants	$ 2.89	0%	20%	1.52%	8.10 years

For the Subordinated Loan and Security Agreement, the Company must prepay the loans upon the occurrence of a liquidation event. A liquidation event is defined in the agreement as the consummation of a sale or other disposition of all or a majority of all the assets of the Company or subsidiary, winding up or dissolution of the Company or subsidiary, the consummation of a merger, consolidation, or similar transaction involving, directly or indirectly, the Company or subsidiary. The Company must immediately pay the lender any unpaid portion of the return cap, as adjusted for early payments, together with any unpaid portion of the obligations.

Paycheck Protection Program Loan

The Paycheck Protection Program ("PPP") was established under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and is administered by the U.S. Small Business Administration ("SBA"). On May 6, 2020, the Company entered into a promissory note evidencing an unsecured loan in the aggregate amount of $1,278,150 made to the Company under the PPP ("PPP Loan 1"). On February 2, 2021, the Company entered into a second unsecured promissory note in the aggregate amount of $1,003,112 made to the Company under the PPP ("PPP Loan 2").

The PPP Loans to the Company were made through Home Loan Investment Bank FSB. The interest rate on the PPP Loans were 1% and the terms are two years. In accordance with the updated Small Business guidance, the PPP Loan was modified so that, beginning ten months from the date of the PPP Loan, the Company was required to make monthly payments of principal and interest. The promissory note evidencing the PPP Loan contained customary events of default relating to, among other things, payment defaults or breaching the terms of the PPP Loan documents. The occurrence of an event of default may result in the repayment of all amounts outstanding, collection of all amounts owing from the Company, or filing suit and obtaining judgment against the Company.

On June 16, 2021, the Company submitted an application for forgiveness of $1,278,150 due on the PPP Loan 1. On June 30, 2021, the Company was notified that the principal balance of the PPP Loan 1 and accrued interest were fully forgiven. On September 16, 2021, the Company submitted an application for forgiveness of $1,003,112 due on the PPP Loan 2. On September 28, 2021, the Company was notified that the principal balance of the PPP Loan 2 and accrued interest were fully forgiven.

As a result, the Company recorded a gain of $1,003,112 and $2,281,262, in other income in the accompanying condensed consolidated statement of operations during the three and nine months ended September 30, 2021, respectively. As of September 30, 2022 and December 31, 2021, the Company had no outstanding balance under the PPP Loans.

NOTE 6 — DEBT (Continued)

Convertible Debt Agreements

On August 26, 2022, the Company executed convertible debt agreements with various institutional investors to provide funds to support the Merger Agreement. The closing of the convertible debt financing is conditioned upon, among other things, the closing of the business combination prior to December 10, 2022.

The debt being issued to various institutional parties consists of $30 million of debt comprised of two tranches: $15 million of senior secured convertible notes with warrants to purchase 166,665 shares of common stock and a maturity of 36 months; and $15 million of junior secured convertible notes with warrants to purchase 1,714,348 shares of common stock with a maturity of 40 months, respectively. The senior debt has an initial conversion price of $13.00, to be reset at 5% premium to market price six and twelve months after closing, subject to a floor. The subordinated debt has an initial conversion price of $11.50, to be reset to a 5% premium to the market price six and twelve months after close and subject to a floor.

NOTE 7 — REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT

Common Stock

The Company was authorized to issue 36,038,535 shares of all classes of common stock at a par value of $0.0001 per share as of September 30, 2022 and December 31, 2021.

At September 30, 2022, common stock consisted of the following:

	Shares Authorized	Shares issued and outstanding	Liquidation Amount
Series A	30,415,100	20,179,645	$ 5,355,678
Series B	1,675,600	1,673,092	977,755
Series C	3,947,835	2,929,185*	1,287,084
Total	36,038,535	24,781,922	$ 7,620,517

At December 31, 2021, common stock consisted of the following:

	Shares Authorized	Shares issued and outstanding	Liquidation Amount
Series A	30,415,100	20,179,645	$ 5,355,678
Series B	1,675,600	1,673,092	977,755
Series C	3,947,835	2,713,649*	1,192,377
Total	36,038,535	24,566,386	$ 7,525,810

* Represents fully vested Series C Shares

Liability from subscription agreements

During September 2022, the Company received proceeds of $1,225,000 from executed subscription agreements for the purchase of the future common stock of PubCo as part of the Merger Agreement. The Company has recorded the proceeds from the subscription agreements as a current liability in the condensed consolidated financial statements because the proceeds will be returned to the subscribers if the Merger Agreement fails to close.

Redeemable Convertible Preferred Stock

The Company was authorized to issue 7,654,285 and 7,636,950 shares of all classes of preferred stock at a par value of $0.0001 per share as of September 30, 2022 and December 31, 2021.

NOTE 7 — REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT (Continued)

At September 30, 2022, the redeemable convertible preferred stock consisted of the following:

	Shares Authorized	Shares issued and outstanding	Liquidation amount
Series B Redeemable Convertible Preferred Stock	7,610,700	7,288,333	$ 26,237,999
Series A Redeemable Convertible Preferred Stock	43,585	26,245	26,245,000
Total	7,654,285	7,314,578	$ 52,482,999

At December 31, 2021, the redeemable convertible preferred stock consisted of the following:

	Shares Authorized	Shares issued and outstanding	Liquidation amount
Series B Redeemable Convertible Preferred Stock	7,610,700	7,288,333	$ 26,237,999
Series A Redeemable Convertible Preferred Stock	26,250	26,245	26,245,000
Total	7,636,950	7,314,578	$ 52,482,999

The rights, preferences, privileges, and restrictions of holders of Series A preferred, Series B preferred, Series A common, Series B common and Series C common are set forth in the Company's amended and restated articles of incorporation and are summarized below:

Conversion

Each share of Series A Redeemable Convertible Preferred Stock shall be convertible, at least 30 days prior to the closing of an Initial Public Offering ("IPO"), at the option of the holder thereof, at any time and, from time to time, without the payment of additional consideration by the holder thereof, into shares of Series A common stock using a conversion ratio of 160.58 Shares of Series A common stock for each share of Series A Redeemable Convertible Preferred Stock. The conversion ratio shall be subject to adjustment, if any, in the event of certain dividend or distributions, recapitalization, merger, or reorganization of the Company.

Each share of Series B Redeemable Convertible Preferred Stock shall be convertible, at least 30 days prior to the closing of an IPO, at the option of the holder thereof, at any time and, from time to time, without the payment of additional consideration by the holder thereof, into shares of Series A common stock as determined by dividing $1.80 by the Series B Conversion Price in effect on the date such shares are surrendered for conversion. The conversion ratio shall be subject to adjustment, if any, in the event of certain dividend or distributions, recapitalization, merger, or reorganization of the Company.

Liquidation

The Series B Redeemable Convertible Preferred Stock has a liquidation preference of $3.60 per share (the "Series B Preferred Liquidation Amount"). In the event of a liquidation event, the Series B Redeemable Convertible Preferred Stock has priority prior to any distribution to Series A Redeemable Convertible Preferred stock, Series A, Series B and Series C common stockholders. If there are insufficient funds at the time of a liquidation event, the holders of the Series B Redeemable Convertible Preferred Stock will ratably share in the distribution of available assets.

NOTE 7 — REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT (Continued)

A liquidation event is defined as a voluntary or involuntary liquidation, dissolution or winding up of the Company, including an initial public offering and deemed liquidation events such as certain mergers and consolidations or the sale or transfer of assets.

The Series A Redeemable Convertible Preferred Stock has a liquidation preference value of $1,000 per share (the "Series A Preferred Liquidation Amount"). In the event of a liquidation event, the Series A Redeemable Convertible Preferred Stock has priority prior to any distribution to Series A, Series B and Series C common stockholders. If there are insufficient funds at the time of a liquidation event, the holders of the Series A Redeemable Convertible Preferred Stock will ratably share in the distribution of available assets.

The Series A common stock has a liquidation preference value of $0.2654 per share. In the event of a liquidation event, the Series A common stock has priority prior to any distribution to Series B and Series C common stockholders. If there are insufficient funds at the time of a liquidation event, the holders of the Series A common stock will ratably share in the distribution of available assets.

The Series B common stock and Series C common stock have a liquidation preference value of $0.5844 and $0.4394 per share, respectively. In the event of a liquidation event, the Series A common stock and Series C common stock together has priority prior to any distribution to Series B common stockholders. If there are insufficient funds at the time of a liquidation event, the holders of the Series A common stock and Series C common stock together will ratably share on a pari passu basis in the distribution of available assets.

Any remaining assets will be distributed pro rata between Series B Redeemable Convertible Preferred Stock, Series A, Series B and Series C common stockholders based on the number of shares of common stock held by each such holder on an as-converted, fully diluted basis. Any amount to be distributed to holders of shares of Preferred B Stock shall be reduced, but not below zero, by an amount equal to (a) $1.80 multiplied by (b) the total number of shares of Preferred B Stock multiplied by (c) the Adjustment Factor. The "Adjustment Factor" means (x) one minus a fraction (y) the numerator of which is the total number of shares of common stock held by holders of Series B Preferred Stock on an as-converted basis, and the denominator of which is (z) the total number of shares of common stock held by holders of Series B Preferred Stock, Series A Common Stock, Series B Common Stock and Series C Common Stock on an as-converted basis.

The distributions to be made to holders of shares of Series A Common Stock and Series B Common Stock pursuant to this subsection are collectively referred to herein as the "Remaining Series A/B Common Distribution". Notwithstanding any contrary provision set forth herein, no redemption of shares of Preferred Stock by the Corporation shall result in a decrease in the amount of the Remaining Series A/B Common Distribution otherwise payable to the holders of shares of Series A Common Stock.

Distributions of assets to the Series A and Series B common stockholders known as "Remaining Series A/B Common Distribution" will be as follows: An amount equal to $3.777 per share ("Remaining Series A Common Liquidation Amount") shall be paid to each holder of Series A common stock prior to any payment being made to Series B common stockholders. Any Remaining Series A/B Common Distribution shall be payable as follows: 96.68% to holders of Series A common stock and 3.32% to holders of Series B common stock.

Redemption

Upon the earlier to occur of a deemed liquidation or an IPO, shares of Series A and B Redeemable Convertible Preferred Stock shall automatically be redeemed by payment of the Preferred Liquidation Amount. In the event of an IPO, all or part of the Preferred Liquidation Amount may be paid in non- voting shares of undesignated common stock of the Company upon the vote of not less than 51% of the outstanding Series A, Series B, and Series C common stock of the Company, voting together as a single class.

NOTE 7 — REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT (Continued)

Additionally, upon the approval of not less than 51% of the holders of the issued and outstanding shares of Series A Redeemable Convertible Preferred Stock, the Company, to the extent it has funds available for distribution, may redeem the shares of Series A Redeemable Convertible Preferred Stock by payment in cash of the liquidation amount.

Dividends and Voting

Dividends shall be payable on shares of common stock and/or preferred stock outstanding when and if declared by the Company's Board of Directors. No such dividends were declared during the three and nine months ended September 30, 2022 and 2021. Each holder of Series A common stock is entitled to one vote for each share held. Unless required by law, all shares of Series B common stock, Series C common stock, Series A preferred stock and Series B preferred stock are non-voting.

Common Shares Reserved

The Company has reserved shares of common stock for the following as of September 30, 2022:

Series A and B Redeemable Convertible Preferred Stock upon conversion	11,824,978
Unvested restricted common C stock	638,972
Total	12,463,950

NOTE 8 — STOCK-BASED COMPENSATION

The Company issued no shares of restricted common C shares during the three and nine months ended September 30, 2022. The Company issued no shares and 65,000 shares during the three and nine months ended September 30, 2021, respectively. 600,000 shares of the 2019 restricted common C shares will only vest upon a change in control transaction, as defined in the amended and restated certificate of incorporation of the Company. 378,789 shares of the 2019 restricted common C shares grants have a 1-year cliff vest, upon which they vest quarterly thereafter. The 2018 restricted common C shares grants totaling 175,085 shares have a 2-year cliff vest, upon which they vest quarterly thereafter. Upon a change in control event, all unvested shares will immediately become fully vested.

A summary of non-vested restricted common C shares as of September 30, 2022 and changes during the nine months then ended is presented below:

	Shares	Weighted-Average Grant Date Fair Value per Share
Non-vested restricted common C shares as of January 1, 2022	912,692	$ 0.01
Granted	—	—
Vested	(215,536)	$ 0.01
Forfeited	(58,184)	$ 0.02
Non-vested restricted common C shares as of September 30, 2022 (1)	638,972	$ 0.02

(1) As of September 30, 2022, there was $3,000 of total unrecognized compensation cost related to non-vested restricted common C shares that is expected to be recognized over a weighted-average period of approximately 2.0 years. The estimated forfeiture rate for restricted common C shares was 0% as of September 30, 2022.

The fair value of the 215,536 shares that vested during the nine months ended September 30, 2022 was approximately $3,000.

NOTE 8 — STOCK-BASED COMPENSATION (Continued)

A summary of non-vested restricted common C shares as of September 30, 2021 and changes during the nine months then ended is presented below:

	Shares	Weighted Average Grant Date Fair Value per Share
Non-vested restricted common C shares as of January 1, 2021	1,370,391	$ 0.01
Granted	65,000	$ 0.02
Vested	(237,316)	$ 0.01
Forfeited	—	—
Non-vested restricted common C shares as of September 30, 2021[(2)]	1,198,075	$ 0.01

(2) As of September 30, 2021, there was approximately $11,000 of total unrecognized compensation cost related to non-vested restricted common C shares that is expected to be recognized over a weighted- average period of 2.0 years. The estimated forfeiture rate for restricted common C share was 0% as of September 30, 2021.

The fair value of the 237,316 shares that vested during the six months ended September 30, 2021 was approximately $3,000.

Stock compensation expense related to the restricted common C shares was $1,000 and $5,000 for the three and nine months ended September 30, 2022, respectively. Stock compensation expense related to the restricted common C shares was $1,000 and $3,000 for the three and nine months ended September 30 2021, respectively.

The fair values of the shares of the Company's restricted common C stock is estimated on each grant date by the Board of Directors. In order to determine the fair value, the Board of Directors considered, among other things, valuations prepared by an independent third-party valuation firm.

The fair value of the Company's restricted common C stock was estimated using a two-step process. First, the Company's enterprise value was established using generally accepted valuation methodologies, such as guideline public company and guideline company transactions. The enterprise value was allocated among the securities that comprise the capital structure of the Company using the option-pricing method. The option-pricing method treats all levels of the capital structure as call options on the enterprise's value, with exercise price based on the "breakpoints" between each of the different claims on the securities. The inputs necessary for the option-pricing model include the current equity value (the enterprise value as previously calculated), breakpoints (the various characteristics for each class of equity, including liquidation preferences and priority distributions, in accordance with the Company's certificate of incorporation, as amended and restated), term, risk-free rate, and volatility.

NOTE 9 — COMMITMENTS AND CONTINGENCIES

Commission Agreement

The Company had an agreement in which it paid commission to an individual for promotional consideration. The agreement required commissions of 15% of sales of the MICRO2 Sleep and Snore Device and the MICRO2 Night Time Orthotic devices.

In December 2017, the Company notified this individual that the individual was in material breach of the contract and in 2018, the Company terminated the contract. In January 2019, the Company settled the dispute and agreed to pay the individual $1,600,000. $400,000 was paid in January 2019 and sixteen (16) quarterly payments of $75,000 are required and commenced in April 2019. The Company recorded the net present value of this obligation in these consolidated financial statements totaling $1,284,825 using the Company's incremental borrowing rate of 15.04% as the originating event for the settlement occurred in 2018. The balance of the remaining settlement totaled $147,249 and $274,323 as of September 30, 2022 and December 31, 2021, respectively. The future payments under this commission agreement, including interest, total $150,000 as of September 30, 2022 and are due in full in 2022.

Legal Proceedings

In the ordinary course of business, the Company is engaged in routine legal proceedings. Management believes that any ultimate liability arising from these actions will not have a material effect on the Company's financial position, operating results or cash flows.

Invoice Fee Deferral

During 2018, the Company reached an agreement with a vendor allowing the Company to pay less than 100% of the invoiced amounts for legal services in anticipation of a business combination. Only upon the sale or merger of the Company or upon a public financing would the remaining portion of the invoices become due. As of September 30, 2022 and December 31, 2021, the Company has accrued $1,331,552 and $291,479, respectively, related to the deferred portion in accounts payable, accrued expenses, and in other assets.

Professional Services

During January 2022, the Company entered into an agreement with an external consulting firm to provide investor and public relations consulting services. The monthly fee is approximately $20,000 prior to the business combination. Additionally, upon completion of a successful business combination (See Note 1), the vendor will receive a payment of $200,000 as well as $200,000 in the form of common stock. The Company will pay a fee of $17,000 per month after the business combination. The agreement terminates on the last date of the month following the second anniversary of the date that the Company completes its business combination with a special purpose acquisition company.

On June 21, 2022, the Company entered into an agreement, effective January 1, 2022, with the chairman of the Board of Directors to provide consulting services. The consultant receives approximately $10,000 per month. Upon completion of a successful business combination (See Note 1), the consultant will become a full-time employee of the Company. As of September 30, 2022, the amount owed to the chairman was $90,000.

During March 2021, the Company entered into an agreement with an external consulting firm to provide consulting and advisory services. Upon completion of a successful business combination transaction (See Note 1), the consulting firm will be paid cash compensation of approximately $1,200,000 or alternatively partially in common stock of the new public entity, with at least fifteen percent of the payment as cash compensation. The agreement terminates on March 15, 2023.

NOTE 10 — INCOME TAXES

The current income tax expense for the three and nine months ended September 30, 2022 was $0 and $6,480, respectively. The current tax expense for the three and nine months ended September 30, 2021 was $0 and $7,652, respectively. These amounts consisted of state and franchise tax expense, and have been included in the accompanying condensed consolidated statements of operations.

The Company did not record a tax provision for the federal income taxes for the three and nine months ended September 30, 2022 and 2021, respectively, due to the Company's history of losses, and accordingly, has recorded a valuation allowance against substantially all of the Company's net deferred tax assets. The Company provides for a valuation allowance when it is more likely than not that some portion of, or all of the Company's deferred tax assets will not be realized.

NOTE 11 — POST-RETIREMENT BENEFITS

The Company offers a 401(k) plan to employees and has historically matched employee contributions to the plan up to 3% of the employee's salary. The matching contributions accrued as of September 30, 2022 and December 31, 2021 were $133,696 and $100,134, respectively.

NOTE 12 — SEGMENT REPORTING

Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by the Chief Operating Decision Maker ("CODM") in deciding how to allocate resources to an individual segment and in assessing performance. The Company's CODMs are its Chief Executive Officer and Chief Financial Officer. The Company has determined that it operates in one operating segment and one reportable segment, as the CODM reviews financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance.

NOTE 13 — NET LOSS ATTRIBUTABLE TO COMMON STOCKHOLDERS

The following table sets forth the computation of the basic and diluted net loss per share attributable to common stockholders during the three and nine months ended September 30, 2022 and 2021:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Numerator:				
Net loss attributable to common stockholders	$ (3,548,962)	$ (1,121,344)	$ (9,353,340)	$ (3,794,910)
Denominator:				
Weighted-average common shares outstanding	24,713,218	24,433,747	24,611,666	24,269,187
Net loss per share attributable to common stockholders, basic and diluted	(0.14)	(0.05)	(0.38)	(0.16)

The potential shares of common stock that were excluded from the computation of diluted net loss per share attributable to common stockholders for the nine months ended September 30, 2022 and 2021 because including them would have been antidilutive are as follows:

	September 30,	
	2022	2021
Series A common stock upon conversion of redeemable convertible preferred stock A	4,214,422	4,214,422
Series A common stock upon conversion of redeemable convertible preferred stock B	7,288,333	7,288,333
Non-vested shares of Series C common stock	638,972	1,198,075
Shares subject to warrants to purchase common stock	322,223	322,223
Total	12,463,950	13,023,053

NOTE 14 — SUBSEQUENT EVENTS

As of December 12, 2022, the Company received $7,225,000 from the issuance of subscription purchase agreements for common stock of the Company. Proceeds of $6,200,000 of the issuances were received from by the Company's stockholders, directors, and employees.

On December 6, 2022, Lakeshore consummated a series of transactions that resulted in the business combination of Lakeshore with the Company pursuant to the previously announced Merger Agreement, dated May 9, 2022, by and among Lakeshore, LAAA Merger Sub, Inc. ("Merger Sub"), RedOne Investment Limited ("Sponsor"), as purchaser representative, HGP II, LLC, as representative of ProSomnus' stockholders, and ProSomnus Holdings, following the approval at the extraordinary general meeting of the shareholders of Lakeshore held on December 2, 2022 (the "Special Meeting"). Pursuant to the Merger Agreement, Lakeshore merged with and into LAAA Merger Corp. ("Surviving Pubco"), Merger Sub merged with and into ProSomnus Holdings, and Surviving Pubco changed its name to ProSomnus, Inc., which commenced trading on the Nasdaq Global Market under the symbol "OSA" on Dec. 7, 2022.

Simultaneous with the closing, Prosomnus, Inc. also completed a series of private financings, issuing and selling 1,025,000 shares of its common stock in a private placement to certain investors to investors for gross proceeds of $10,250,000. In connection with the PIPE financing, ProSomnus, Inc. issued 571,183 additional shares to the PIPE investors.

Additionally, ProSomnus, Inc. issued an aggregate of $16.96 million principal value senior secured convertible notes and an aggregate of $17.45 million principal value subordinated secured convertible notes to certain investors pursuant to previously announced Senior Securities Purchase Agreement and Subordinated Securities Purchase Agreement, each dated August 26, 2022 (the "Convertible Notes").

In addition, in connection with the Convertible Notes, Surviving Pubco issued to the holders of Convertible Notes warrants to purchase an aggregate of 1.91 million shares of Surviving Pubco Common Stock at an exercise price of $11.50 per share, issued an aggregate of 250,000 bonus shares, 26,713 PIPE fee shares, and 50,000 commitment fee shares.

The Company has evaluated subsequent events for recognition or disclosure through December 12, 2022, which is the date that the interim unaudited consolidated financial statements were available to be issued.

Exhibit 99.2

UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

The unaudited pro forma condensed combined financial statements are based on Lakeshore's historical financial statements for the nine months ended September 30, 2022 and for the period from January 6, 2021 (inception) through December 31, 2021 and ProSomnus's historical consolidated financial statements for the nine months ended September 30, 2022 and for the year ended December 31, 2021, adjusted to give effect to the Business Combination, equity investments in the form of non-redeeming public shares and PIPE investments, and the convertible notes facilities.

The unaudited pro forma condensed combined balance sheet as of September 30, 2022 combines the unaudited condensed historical balance sheet of Lakeshore as of September 30, 2022 with the unaudited historical condensed consolidated balance sheet of ProSomnus as of September 30, 2022, giving effect to the Business Combination, equity investments in the form of non-redeeming public shares and PIPE investments, and the convertible notes facilities, as if they had been consummated as of that date.

The unaudited pro forma condensed combined statements of operations for the nine months ended September 30, 2022 and for the year ended December 31, 2021 combines the unaudited historical condensed statement of operations of Lakeshore for the nine months ended September 30, 2022 and the audited historical statement of operations of Lakeshore for the period from January 6, 2021 (inception) through December 31, 2021 with the unaudited historical condensed consolidated statement of operations of ProSomnus for the nine months ended September 30, 2022 and the audited historical consolidated statement of operations of ProSomnus for the year ended December 31, 2021, giving effect to the Business Combination, equity investments in the form of non-redeeming public shares and PIPE investments, and the convertible notes facilities, as if they had occurred as of January 1, 2021.

Notwithstanding the legal form of the Business Combination, the Business Combination will be accounted for as a reverse recapitalization in accordance with US GAAP. Under this method of accounting, Lakeshore will be treated as the acquired company and ProSomnus will be treated as the acquirer for financial statement reporting purposes.

The historical financial information has been adjusted to give pro forma effect to events that relate to material financing transactions consummated after September 30, 2022 through the date hereof. The pro forma adjustments that are directly attributable to the Business Combination, equity investments in the form of non-redeeming public shares and PIPE investments, and convertible notes facilities are factually supportable and, with respect to the unaudited pro forma condensed combined statement of operations, are expected to have a continuing impact on the results of the combined company.

The adjustments presented on the unaudited pro forma condensed combined financial statements have been identified and presented to provide relevant information necessary for an accurate understanding of the combined company upon consummation of the Business Combination, equity investments in the form of non-redeeming public shares and PIPE investments, and the convertible notes facilities.

The unaudited pro forma condensed combined financial information is for illustrative purposes only.

The financial results may have been different had the companies always been combined. You should not rely on the unaudited pro forma condensed combined financial information as being indicative of the historical results that would have been achieved had the companies always been combined or the future results that the combined company will experience. Lakeshore and ProSomnus have not had any historical relationship prior to the Business Combination. Accordingly, no pro forma adjustments were required to eliminate activities between the companies.

The unaudited pro forma condensed combined financial information has been prepared based on the latest information upon the Closing of the Business Combination:

- Non-redeeming shareholders retained an aggregate of 480,637 shares, and non-redeeming shareholders that entered into agreements with Lakeshore and ProSomnus to not redeem received an aggregate of 340,085 bonus shares;
- New PIPE investors received 1,025,000 shares at $10.00 per share, and received an aggregate of 805,133 bonus shares;
- 574,035 founder shares were transferred to non-redeeming shareholders that entered into agreements with Lakeshore and ProSomnus to not redeem and new PIPE investors, as a source of bonus shares.
- Underwriters, advisors and convertible notes placement agents totally forfeited $1,640,010 of compensation in exchange of new issuance of 164,010 shares as a source of bonus shares, to be issued to non-redeeming shareholders that entered into agreements with Lakeshore and ProSomnus to not redeem and new PIPE investors.
- Source of bonus shares also include new issuance of shares up to 410,025 shares.

Based on the above, the pro forma outstanding shares of PubCo ordinary shares immediately after the Business Combination is as follows:

	Pro Forma Combined	
	Number of Shares	**%**
Non-redeeming public shareholders	820,722	5.1%
New PIPE investors	1,830,133	11.4%
Sponsor shares and private placement shareholders	1,054,390	6.6%
Former ProSomnus shareholders	11,300,000	70.5%
Shares issued to underwriters and debt placement agents	719,235	4.5%
Cohanzick Management, LLC (for senior notes backstopping)	50,000	0.3%
Bonus shares for Junior Notes buyers	250,000	1.6%
Total shares outstanding	**16,024,480**	**100.0%**

The historical financial information of Lakeshore was derived from the unaudited condensed financial statements of Lakeshore as of and for the nine months ended September 30, 2022 and the audited condensed financial statements of Lakeshore as of December 31, 2021 and for the period from January 6, 2021 (inception) through December 31, 2021. The historical financial information of ProSomnus was derived from the unaudited condensed consolidated financial statements of ProSomnus for the nine months ended September 30, 2022 and the audited consolidated financial statements of ProSomnus for the year ended December 31, 2021.

The unaudited pro forma condensed combined financial information is for illustrative purposes only. The financial results may have been different had the companies always been combined. You should not rely on the unaudited pro forma condensed combined financial information as being indicative of the historical results that would have been achieved had the companies always been combined or the future results that the combined company will experience.

Unaudited Pro Forma Condensed Combined Balance Sheet

As of September 30, 2022

	ProSomnus (September 30, 2022)	Lakeshore (September 30, 2022)	Transaction Accounting Adjustments (Note 2)		Pro Forma Combined
ASSETS					
Cash and cash equivalents	$ 2,160,803	$ 150,923	$ 29,144,536	A	$ 24,274,803
			(24,223,710)	C	
			30,000,000	D	
			(8,693,831)	E	
			(200,000)	F	
			(310,000)	G	
			(1,759,377)	H	
			(4,471,165)	I	
			(147,249)	J	
			(110,959)	K	
			(1,977,592)	L	
			(5,487,576)	M	
			10,250,000	T	
Accounts receivable	2,341,057	-	-		2,341,057
Inventory	405,705	-	-		405,705
Prepaid expenses and other current assets	421,105	135,000	-		556,105
Marketable securities held in Trust Account	-	29,144,536	(29,144,536)	A	-
Total current assets	**5,328,670**	**29,430,459**	**(7,181,459)**		**27,627,670**
Property and equipment, net	1,035,053	-	-		1,035,053
Right-of-use assets, net	3,820,770	-	-		3,820,770
Deferred financing costs	1,807,626	-	-		1,807,626
Other assets	262,914	-	-		262,914
Total assets	**$ 12,255,033**	**$ 29,430,459**	**$ (7,131,459)**		**$ 34,554,033**
LIABILITIES AND STOCKHOLDERS' DEFICIT					
Accounts payable	$ 3,150,787	$ -	$ -		$ 3,150,787
Note payable to related party	-	200,000	(200,000)	F	-
Note payable to third party	-	310,000	(310,000)	G	-
Accrued compensation	2,269,586	-	-		2,269,586
Other accrued expenses	1,398,434	32,538	-		1,430,972
Revolving line of credit	1,759,377	-	(1,759,377)	H	-
Current portion of subordinated loan and security agreement	1,454,914	-	(1,454,914)	I	-
Current portion of equipment financing obligation	60,008	-	-		60,008
Current portion of finance lease liabilities	1,160,737	-	-		1,160,737
Current portion of operating lease liabilities	224,904	-	-		224,904
Commission settlement	147,249	-	(147,249)	J	-
Liability for subscription agreement	1,225,000	-	(1,225,000)	P	-
Total current liabilities	**12,850,996**	**542,538**	**(5,096,540)**		**8,296,994**
Senior-Junior Convertible notes	-	-	30,000,000	D	21,005,336
			(1,800,000)	W	
			(2,500,000)	Y	
			(500,000)	Z	
			(4,194,664)	A-A	
Subordinated loan and security agreement, net of current portion	3,016,251	-	(3,016,251)	I	-
Equipment financing obligation, net of current portion	199,008	-	-		199,008
Finance lease liabilities, net of current portion	1,588,652	-	-		1,588,652
Operating lease liabilities, net of current portion	84,611	-	-		84,611
Subordinated notes	7,644,892	-	(7,644,892)	R	-
Unsecured subordinated promissory notes (Bridge loan)	2,757,107	-	(2,757,107)	K, Q	-
Secured subordinated loans (Bridge loan)	1,977,592	-	(1,977,592)	L	-
Accrued interest	5,487,576	-	(5,487,576)	M	-
Warrant liability	583,000	-	(583,000)	N	-
Total liabilities	**36,189,685**	**542,538**	**(5,557,622)**		**31,174,601**
Commitments and contingencies					
Preferred stock	38,634,547	-	(38,634,547)	O	-
Common stock subject to possible redemption	-	29,144,536	(29,144,536)	B	-
Stockholders' deficit					
Ordinary shares, $0.0001 par value	-	163	-		163
New issuance of ordinary shares, 0.0001 par value	-	-	286	B	1,438
			(238)	C	
			6	N	
			607	O	
			12	P	
			26	Q	
			76	R	

			402	**S**	
			103	**T**	
			16	**U**	
			38	**V**	
			18	**W**	
			16	**X**	
			25	**Y**	
			5	**Z**	
			41	**A-B**	
ProSomnus common stock, $ 0.0001 par value	2,477	-	(2,477)	**P**	-
Additional paid-in capital	150,430,939	132,444	29,144,250	**B**	221,838,209
			(24,223,472)	**C**	
			(4,876,167)	**E**	
			582,994	**N**	
			38,633,940	**O**	
			1,224,988	**P**	
			2,646,122	**Q**	
			7,644,816	**R**	
			2,075	**S**	
			10,249,897	**T**	
			1,640,084	**U**	
			3,752,212	**V**	
			(3,752,250)	**V**	
			1,799,982	**W**	
			1,640,084	**X**	
			(1,640,100)	**X**	
			2,499,975	**Y**	
			499,995	**Z**	
			4,194,664	**A-A**	
			4,051,689	**A-B**	
			(4,051,730)	**A-B**	
			544,240	**A-C**	
			(544,240)	**A-C**	
			(389,222)	**A-D**	
Accumulated deficit	(213,002,615)	(389,222)	389,222	**A-D**	(218,460,379)
			(3,817,664)	**E**	
			(1,640,100)	**U**	
Total stockholders’ deficit	(62,569,199)	(256,615)	66,205,246		3,379,432
Total liabilities and stockholders' deficit	**$ 12,255,033**	**$ 29,430,459**	**$ (7,131,459)**		**$ 34,554,033**

See accompanying notes to the unaudited pro forma condensed combined financial information.

Unaudited Pro Forma Condensed Combined Statement of Operations

For the Nine Months Ended September 30, 2022

	ProSomnus (Historical)	Lakeshore (Historical	Transaction Accounting Adjustments (Note 2)		Pro Forma Combined
Revenue					
Revenue, net	$ 13,601,031	$ -	$ -		$ 13,601,031
Cost of Revenue	6,440,475	-	-		6,440,475
Gross Profit	7,160,556	-	-		7,160,556
Operating Expenses					
Research and development	1,915,521	-	-		1,915,521
Sales and marketing	6,450,173	-	-		6,450,173
General and administrative	4,213,458	376,626	-		4,590,084
Total operating expenses	12,579,152	376,626	-		12,955,778
Operating loss	**(5,418,596)**	**(376,626)**	**-**		**(5,795,222)**
Other income (expense)					
Interest expense/income	(3,714,777)	287,029	3,415,020	**AA**	(5,074,239)
			(287,029)	**CC**	
			(1,124,989)	**DD**	
			(1,671,491)	**EE**	
			(1,978,002)	**FF**	
Change in fair value of warrant liability	(20,756)	-	20,756	**BB**	-
Loss on extinguishment of debt	(192,731)	-	-		(192,731)
Total other income (expense)	(3,928,264)	287,029	(1,625,735)		(5,266,970)
Loss before income taxes	**(9,346,860)**	**(89,597)**	**(1,625,735)**		**(11,062,192)**
Provision for income taxes	(6,480)	-	-		(6,480)
Net loss	**$ (9,353,340)**	**$ (89,597)**	**$ (1,625,735)**		**$ (11,068,672)**
Net loss per share, basic and diluted	**$ (0.38)**				**$ (0.68)**
Weighted average shares outstanding, basic and diluted	24,611,666		14,396,055	**GG**	16,330,921
			306,441	**FF**	
Net income per share, redeemable ordinary shares-basic and diluted		**$ 0.02**			
Weighted average shares outstanding, redeemable ordinary shares-basic and diluted		5,314,261			
Net loss per share, non-redeemable ordinary shares-basic and diluted		**$ (0.11)**			
Weighted average shares outstanding, non-redeemable ordinary shares-basic and diluted		1,628,425			

See accompanying notes to the unaudited pro forma condensed combined financial information.

Unaudited Pro Forma Condensed Combined Statement of Operations

For the Year Ended December 31, 2021

	ProSomnus (Historical)	Lakeshore (Historical)	Transaction Accounting Adjustments (Note 2)		Pro Forma Combined
Revenue					
Revenue, net	$ 14,074,649	$ -	$ -		$ 14,074,649
Cost of Revenue	6,764,319	-	-		6,764,319
Gross Profit	7,310,330	-	-		7,310,330
Operating Expenses					
Research and development	1,889,208	-	-		1,889,208
Sales and marketing	5,776,084	-	-		5,776,084
General and administrative	4,459,924	301,591	5,457,764	HH	10,219,279
Total operating expenses	12,125,216	301,591	5,457,764		17,884,571
Operating loss	**(4,814,886)**	**(301,591)**	**(5,457,764)**		**(10,574,241)**
Other income (expense)					
Interest expense/income	(3,245,220)	1,966	2,910,303	AA	(8,019,562)
			(1,966)	CC	
			(1,499,985)	DD	
			(2,228,655)	EE	
			(3,956,005)	FF	
Forgiveness of PPP loans	2,281,262	-	-		2,281,262
Change in fair value of warrant liability	(190,911)	-	190,911	BB	-
Total other income (expense)	(1,154,869)	1,966	(4,585,397)		(5,738,300)
Loss before income taxes	**(5,969,755)**	**(299,625)**	**(10,043,161)**		**(16,312,541)**
Provision for income taxes	(7,652)	-	-		(7,652)
Net loss	**$ (5,977,407)**	**$ (299,625)**	**$ (10,043,161)**		**$ (16,320,193)**
Net loss per share, basic and diluted	**$ (0.24)**				**$ (1.02)**
Weighted average shares outstanding, basic and diluted	24,404,871		14,396,055	GG	15,956,142
			111,433	FF	
Net income per share, redeemable ordinary shares-basic and diluted		**$ 0.38**			
Weighted average shares outstanding, redeemable ordinary shares-basic and diluted		3,020,358			
Net loss per share, non-redeemable ordinary shares-basic and diluted		**$ (1.01)**			
Weighted average shares outstanding, non-redeemable ordinary shares-basic and diluted		1,448,654			

See accompanying notes to the unaudited pro forma condensed combined financial information.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

1. Basis of Presentation

The Business Combination will be accounted for as a reverse recapitalization under U.S. GAAP. Under this method of accounting, Lakeshore will be treated as the "acquired" company for financial reporting purposes. This determination is primarily based on ProSomnus's stockholders being expected to comprise 70.5% of the voting power of PubCo under the most likely (up-to-date) scenario, directors appointed by ProSomnus constituting seven of the seven members of the PubCo's board of directors, ProSomnus's operations prior to the acquisition comprising the only ongoing operations of PubCo, and ProSomnus's senior management comprising all of the senior management of PubCo.

Accordingly, for accounting purposes, the financial statements of PubCo will represent a continuation of the financial statements of ProSomnus with the Business Combination treated as the equivalent of ProSomnus issuing stock for the net assets of Lakeshore, accompanied by a recapitalization. The net assets of Lakeshore will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be presented as those of ProSomnus in future reports of PubCo.

The unaudited pro forma condensed combined balance sheet as of September 30, 2022 gives pro forma effect to the Business Combination and the other events contemplated by the Merger Agreement as if they had been consummated on September 30, 2022. The unaudited pro forma condensed combined statements of operations for the year ended December 31, 2021 and for the nine months ended September 30, 2022 give pro forma effect to the Business Combination and the other transactions contemplated by the Merger Agreement as if they had been consummated on January 1, 2021.

As the unaudited pro forma condensed combined financial information has been prepared based on these preliminary estimates, the final amounts recorded may differ materially from the information presented as additional information becomes available. Management considers this basis of presentation to be reasonable under the circumstances.

One-time direct and incremental transaction costs anticipated to be incurred prior to, or concurrent with, the closing of the Business Combination are reflected in the unaudited pro forma condensed combined balance sheet as a direct reduction to PubCo's additional paid-in capital or accumulated deficit, and are assumed to be either cash settled or in the form of receiving new equities of PubCo.

2. Adjustments to Unaudited Pro Forma Condensed Combined Financial Information

Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2022

The adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2022 are as follows:

(A) Reflects the liquidation and reclassification of $29,144,536 of cash and marketable securities held in the Trust Account to cash and cash equivalents that becomes available for general use by PubCo following the Closing.

(B) Reflects the reclassification of Lakeshore ordinary shares subject to possible redemption to permanent equity immediately prior to the Closing.

(C) Reflects the combined effect of (1) redemption of an aggregate of 2,380,246 ordinary shares at $10.238 per share as of December 2, 2022 and (2) interest earned for non-redeeming shareholders. As a result, funds released to PubCo from the trust account was $4,920,826 at the Closing of the Business Combination, and the amount was decreased by $24,223,710 compared with the balance in trust account as of September 30, 2022.

(D) Reflects the net cash proceeds from Senior and Junior convertible notes facilities totaling $30,000,000.

(E) Represents the total preliminary estimated direct and incremental transaction costs that will be paid in cash of $8,693,831 prior to, or concurrent with, the Closing. The estimated transaction costs that will be paid in cash include $2,557,650 investment banking fee of ProSomnus, $1,395,000 completion bonus of ProSomnus, $433,854 Directors and Officers Insurance for Lakeshore, and the remaining for legal counsel, auditor, SEC registration, Trust account, proxy services, and printing fees, etc. An aggregate of $3,817,664, which include $2,442,664 transaction costs that directly related to Lakeshore and $1,395,000 completion bonus of ProSomnus are recorded as a reduction of accumulated deficit. An aggregate of $4,876,167 are recorded as a reduction of additional paid-in capital.

(F) Reflects the repayment and settlement of the principal amount outstanding for Lakeshore's promissory note payable to its sponsor, RedOne Investment Limited.

(G) Reflects the repayment and settlement of the principal amount outstanding for Lakeshore's promissory note payable to a third party.

(H) Reflects the repayment and settlement of the principal amount outstanding for ProSomnus's debt under "Revolving Line of Credit" prior to the Closing, assuming the settlement amount is the same as the outstanding amount as of September 30, 2022.

(I) Reflects the repayment and settlement of the principal amount outstanding for ProSomnus's debt under "Subordinated Loan and Security Agreement" prior to the Closing, assuming the settlement amount is the same as the outstanding amount as of September 30, 2022.

(J) Reflects the repayment and settlement of the principal amount outstanding for ProSomnus's debt under "Commission Settlement" prior to the Closing, assuming the settlement amount is the same as the outstanding amount as of September 30, 2022.

(K) Reflects the cash repayment of part of "Unsecured Subordinated Promissory Notes" (bridge loan), including accrued interest and kicker fee, which amounts to $110,959. The remaining balance of this loan will be converted to ordinary shares of PubCo at $10.00 per share. Please also refer to Note 2 (Q).

(L) Reflects the cash repayment of part of Secured Subordinated Loan" (bridge loan) prior to the Closing, assuming the settlement amount is the same as the outstanding amount as of September 30, 2022.

(M) Reflects the repayment and settlement of ProSomnus's accrued interest prior to the Closing, assuming the repayment amount is the same as the outstanding amount as of September 30, 2022.

(N) Reflects the settlement of ProSomnus's warrant liability by converting the outstanding amount of $583,000 as of September 30, 2022 to 58,300 shares of PubCo's new-issued ordinary shares at $10.00 per share.

(O) Reflects the issuance of 6,070,171 shares of PubCo's ordinary shares at $10.00 per share in exchange of ProSomnus's preferred stocks pursuant to the conversion rate effective immediately prior to the Closing.

(P) Reflects the issuance of 122,500 shares of PubCo's ordinary shares as settlement of the debt under "Liability for Subscription Agreement" (bridge loan) at $10.00 per ordinary share of PubCo.

(Q) Reflects the issuance of 264,615 shares of PubCo's ordinary shares as settlement of the majority of "Unsecured Subordinated Promissory Notes" (bridge loan) at $10.00 per ordinary share of PubCo. The outstanding amount will initially be converted to ProSomnus's series A preferred shares at $1,000 per share, and then the Series A Preferred Shares of ProSomnus will then be converted to ordinary shares of PubCo. Please also refer to Note 2 (K).

(R) Reflects the issuance of 764,489 shares of PubCo's ordinary shares at $10.00 per share, as settlement of ProSomnus's debt under "Subordinated Notes". Based on agreed terms with the lender, a kicker fee ranging from 10% – 13% of outstanding amount as penalty of pre-repayment will be paid, and this amount is not adjusted for in the unaudited pro forma condensed combined statements.

(S) Reflects the issuance of 4,019,925 shares of PubCo's ordinary shares at $10.00 per share in exchange for ProSomnus's common stock at the Closing. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. The total issuance of PubCo's new shares for the settlement of ProSomnus's warrant liability, bridge loan conversion, subordinated notes conversion, preferred stock conversion and common stock conversion will be 11,300,000 shares at $10.00 per share.

(T) Reflects the issuance of 1,025,000 shares of PubCo's ordinary shares at $10.00 per share to the new PIPE investors in exchange of an aggregate amount of $10,250,000.

(U) Reflects the settlement of $1,640,100 underwriters' commission to Craig-Hallum Capital Group and Roth Capital Partners under the Business Combination Marketing Agreement (BCMA), which accounts for 3% of total proceeds of Lakeshore's initial public offering, by issuing 164,010 of PubCo's new shares at $10.00 per share. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This amount is also deemed general expenses and causes a direct reduction of accumulated deficit. Please refer to Note 2 (V) and (HH).

(V) Reflects the settlement of an aggregate of $3,752,250 underwriters' and advisors' commission regarding the Business Combination advisory between ProSomnus and Lakeshore other than the amount paid in cash, by issuing 375,225 shares of PubCo's new shares at $10.00 per share. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This amount is deemed a transaction cost and causes a direct reduction of additional paid-in capital. This amount excludes $1,800,000 for debt placement, $1,640,010 for commission under BCMA, and a total forfeiture of $1,640,010 by underwriters and advisors in the form of 119,775 shares at $10.00 per share, and $442,350 in cash, in exchange of new issuance of 164,010 shares as a source of bonus shares, to be issued to non-redeeming shareholders and new PIPE investors. Please refer to Note 2 (U), (W) ~ (X).

Underwriters' Shares or Cash Commission	Total Amount	Shares	Cash
Commission under BCMA	*$ 1,640,100*	*164,010*	*$ -*
M&A advisory	*3,750,000*	*375,000*	-
Debt placement	*1,800,000*	*180,000*	-
Craig-Hallum Capital Group and Roth Capital Partners-Subtotal	7,190,100	719,010	-
Gordon Pointe Capital	1,200,000	120,000	-
Solomon Partners, etc.	3,000,000	-	3,000,000
Total forfeiture	(1,640,100)	(119,775)	(442,350)
Subtotal	$ 9,750,000	719,235	$ 2,557,650

(W) Reflects the settlement of $1,800,000 commission to Craig-Hallum Capital Group and Roth Capital Partners for Senior and Junior convertible notes placement agent by issuing 180,000 of PubCo's new shares at $10.00 per share, in the case that the full amount of Senior and Junior notes are placed by placement agent. Up to 90,000 shares would be issued to Cohanzick Management LLC based on the amount of Junior notes backstopped by it. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This amount is also deemed as a reduction of net debt under Senior and Junior convertible notes and will be amortized period by period before maturity.

(X) Reflects the issuance of 164,010 shares of PubCo's new shares in order to retain public shareholders not redeeming their shares or attract new PIPE investments. This amount represents the forfeiture of $1,640,010 by underwriters, advisors and debt placement agents. The issuing price is deemed as $10.00 per share and the amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This total amount of $1,640,010 is also deemed a transaction cost and causes a direct reduction of additional paid-in capital.

(Y) Reflects the settlement of $2,500,000 commission to Junior convertible notes purchaser by issuing 250,000 of PubCo's new shares at $10.00 per share. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This amount is also deemed as a reduction of net debt under Junior convertible notes and will be amortized period by period before maturity.

(Z) Reflects the settlement of $500,000 commission to Cohanzick Management LLC together with the issuing of Senior convertible notes, by issuing 50,000 of PubCo's new shares at $10.00 per share. The amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This amount is also deemed as a deduction of net debt under Senior convertible notes, and will be amortized period by period before maturity.

(A-A) Reflects the issuance of 1,881,015 warrants as a commission under Senior and Junior convertible notes. These warrants are valued at $4,194,664 in total, and are booked as permanent equity in additional paid-in capital. 166,665 warrants for Senior notes are based on 10% coverage to its face value; 1,714,350 warrants for Junior notes are based on 100% coverage to its face value. The warrants are valued at $2.23 per warrant, with $11.50 strike price, 5 years to maturity and assuming 25% annual volatility. $371,663 and $3,823,001 are deducted from net debt under Senior and Junior convertible notes, respectively, and will be amortized period by period before their maturities. Please refer to Note 2 (FF).

(A-B) Reflects the issuance of 405,173 PubCo's new shares in order to retain public shareholders not redeeming their shares or attract new PIPE investments. The issuing price is deemed as $10.00 per share and the amount is allocated to ordinary shares at $0.0001 per share and the rest to additional paid-in capital. This total amount of $4,051,730 is also deemed a transaction cost and causes a direct reduction of additional paid-in capital. The total number of shares that can be issued is up to 410,025 shares, and 4,852 shares are not determined by the date hereof.

(A-C) Reflects the issuance of 300,685 PubCo's warrants for compensating founder share transfers. These warrants are identical to Lakeshore's public and private warrants, with $11.50 strike price, 5 years to maturity and redeemable at $18.00. They are valued at $1.81 each and $544,240 in total, and booked as permanent equity in additional paid-in capital. This total amount of $544,240 is also deemed a transaction cost and causes a direct reduction of additional paid-in capital.

(A-D) Reflects the elimination of Lakeshore's historical retained earnings.

Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations for the Year Ended December 31, 2021

The adjustments included in the unaudited pro forma condensed combined statement of operations for the year ended December 31, 2021 are as follows:

(AA) Reflects the elimination of interest expense on ProSomnus's debts that are repaid and settled as if the Business Combination closed, and the indebtedness was settled, on January 1, 2021, as described in adjustment Note 2 (H)~(M) and (P)~(R).

(BB) Reflects the elimination of the change in fair value of ProSomnus's warrant liability that is converted to PubCo's ordinary shares prior to the Closing as described in adjustment Note 2 (N).

(CC) Represents the elimination of investment income related to the investments held in the Lakeshore Trust Account.

(DD) Represents the increase in interest expense for Senior convertible notes as if the notes were executed on January 1, 2021. This amount is calculated as face value multiplied by Senior notes interest rate of 9% per annum, and will be paid monthly in cash.

(EE) Represents the increase in interest expense for Junior convertible notes as if the notes were executed on January 1, 2021. This amount is calculated as face value multiplied by Junior notes interest rate of Prime rate + 9% per annum, and the prevailing Prime rate applied is 4%. This amount will be settled in PubCo's common stock period by period, and the weighted average shares outstanding will also increase accordingly.

(FF) Represents the increase in interest expense for the amortization of the difference between the face amount and net amount of Senior and Junior convertible notes, as if the notes were executed on January 1, 2021. The face amount of Senior notes is $16,666,500; the net amount of Senior notes before the deduction of transaction costs is $15,000,000; transaction costs for Senior convertible totaled $1,771,663; and the resulting difference of $3,438,163 will be amortized during 36 months of its maturity. The face amount of Junior notes is $17,143,500; the net amount of Junior notes before deduction of transaction costs is $15,000,000; transaction costs for Junior convertible notes totaled $7,223,001; and the resulting difference of $9,366,501 will be amortized over it's maturity of 40 months. Please refer to Note 2 (D), (X), (Z) and (A-A). In addition, if the net cash after payment of outstanding fees & expenses is below $30,000,000, the discount calculated based on net proceed relative to face amount (OID adjustment) of Senior and Junior notes will increase by 0.1666667% per $1,000,000 of cash gap, but the increase shall not exceed 2.0% in the aggregate. Under such circumstances, the face value of Senior and Junior notes will increase, and the warrants that will be issued and interest of each period will increase as a result. This effect is not adjusted in the unaudited pro forma condensed consolidated financial statements.

(GG) Represents the increase in the weighted average shares in connection with the issuance for the following transactions, which are weighted as if they had been issued for the entire period:

Increase of ordinary shares	**No. of shares**
Non-redeeming public shareholders and new equity investors	2,076,820
Former ProSomnus shareholders	11,300,000
Shares issued to underwriters and debt placement agents	719,235
Cohanzick Management, LLC (for senior notes backstopping)	50,000
Bonus shares for Junior Notes buyers	250,000
Total	**14,396,055**

(HH) Represents the increase in general expenses caused by (1) transaction costs paid in cash that directly related to Lakeshore, which amount to $2,442,664; (2) completion bonus of ProSomnus, which amount to $1,395,000 and (3) the settlement of $1,640,100 underwriters' commission to Craig-Hallum Capital Group and Roth Capital Partners under the Business Combination Marketing Agreement. Please refer to Note 2 (E) and (U).

Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations for the Nine months Ended September 30, 2022

The adjustments included in the unaudited pro forma condensed combined statement of operations for the six months ended September 30, 2022 are as follows:

(AA) Reflects the elimination of interest expense on ProSomnus's debts that are repaid and settled as if the Business Combination closed, and the indebtedness was settled, on January 1, 2021. Refer to adjustment Note 2 (H)~(M) and (P)~(R).

(BB) Reflects the elimination of Change in fair value of ProSomnus's of warrant liability that are converted to PubCo's ordinary shares prior to the Closing as described in adjustment Note 2 (N).

(CC) Represents the elimination of investment income related to the investments held in the Lakeshore Trust Account.

(DD) Represents the increase in interest expense for Senior convertible notes as if the notes were executed on January 1, 2021. This amount is calculated as face value multiplied by Senior notes interest rate of 9% per annum, and will be paid monthly in cash.

(EE) Represents the increase in interest expense for Junior convertible notes as if the notes were executed on January 1, 2021. This amount is calculated as face value multiplied by Junior notes interest rate of Prime rate +9% per annum, and the prevailing Prime rate applied is 4%. This amount will be settled in PubCo's common stock period by period, and the weighted average shares outstanding will also increase accordingly.

(FF) Represents the increase in interest expense for amortization of difference between face amount and net amount of Senior and junior convertible notes as if the notes were executed on January 1, 2021. The face amount of Senior notes is $16,666,500; the net amount of Senior convertible notes before deduction of transaction costs is $15,000,000; transaction costs for Senior convertible totaled $1,771,663; and the resulting difference of $3,438,163 will be amortized during 36 months of its maturity. The face amount of Junior notes is $17,143,500; the net amount of Junior convertible notes before deduction of transaction costs is $15,000,000; transaction costs for Junior convertible totaled $7,223,001; and the resulting difference of $9,366,501 will be amortized during 40 months of its maturity. Please refer to Note 2 (D), (X), (Z) and (A-A). In addition, if the net cash to the balance sheet after pay down of debt, fees & expenses is below $30,000,000, the discount calculated based on net proceed relative to face amount (OID adjustment) of Senior notes will increase by 0.1666667% per $1,000,000 of cash gap, but the increase shall not exceed 2.0% in the aggregate. Under such circumstances, the face value of Senior and Junior notes will increase, and the warrants that will be issued and interest of each period will increase as a result. This effect is not adjusted in the Pro Forma statements.

(GG) Represents the increase in the weighted average shares in connection with the issuance for the following transactions, which are weighted as if they had been issued for the entire period:

Increase of ordinary shares	**No. of shares**
Non-redeeming public shareholders and new equity investors	2,076,820
Former ProSomnus shareholders	11,300,000
Shares issued to underwriters and debt placement agents	719,235
Cohanzick Management, LLC (for senior notes backstopping)	50,000
Bonus shares for Junior Notes buyers	250,000
Total	**14,396,055**

3. **Net Loss per Share**

Net loss per share is calculated using the historical weighted average shares outstanding and the issuance of additional shares in connection with the Business Combination and other related events, assuming such additional shares were outstanding since January 1, 2021. As the Business Combination is being reflected as if it had occurred as of January 1, 2021, the calculation of weighted average shares outstanding for basic and diluted net loss per share assumes the shares issued in connection with the Business Combination have been outstanding for the entire periods presented.

Following the Closing, the Eligible ProSomnus Equity holders will have the right to receive up to 3,000,000 Earn-out Shares, issuable upon the occurrence of the Earn-out Triggering Event during the Earn-out Period. Because the Earn-out Shares are contingently issuable based upon PubCo reaching specified thresholds that have not been achieved, the Earn-out Shares have been excluded from basic and diluted pro forma net loss per share.

The unaudited pro forma condensed combined financial information has been prepared based on the latest information upon the Closing of the Business Combination:

- Non-redeeming shareholders retained an aggregate of 480,637 shares, and non-redeeming shareholders that entered into agreements with Lakeshore and ProSomnus to not redeem received an aggregate of 340,085 bonus shares;
- New PIPE investors received 1,025,000 shares at $10.00 per share, and received an aggregate of 805,133 bonus shares;
- 574,035 founder shares were transferred to non-redeeming shareholders that entered into agreements to not redeem with Lakeshore and ProSomnus and new PIPE investors, as a source of bonus shares.
- Underwriters, advisors and convertible notes placement agents totally forfeited $1,640,010 of compensation in exchange of new issuance of 164,010 shares as a source of bonus shares, to be issued to non-redeeming shareholders that entered into agreements with Lakeshore and ProSomnus to not redeem and new PIPE investors.
- Source of bonus shares also include new issuance of shares up to 410,025 shares.

	Year Ended December 31, 2021	**Nine months Ended September 30, 2022**
Pro forma net loss	$ (16,320,193)	$ (11,068,672)
Weighted average shares outstanding – basic and diluted	15,956,142	16,330,921
Net loss per share – basic and diluted	$ (1.02)	$ (0.68)
Weighted average shares outstanding – basic and diluted		
Non-redeeming public shareholders	820,722	820,722
New PIPE investors	1,830,133	1,830,133
Sponsor shares and private shares holders	874,619	1,054,390
Former ProSomnus shareholders	11,300,000	11,300,000
Shares issued to underwriters and debt placement agents	719,235	719,235
Cohanzick Management, LLC (for senior notes backstopping)	50,000	50,000
Bonus shares for Junior Notes buyers	250,000	250,000
New shares for Junior Notes' interests	111,433	306,441
Total	**15,956,142**	**16,330,921**

PROSOMNUS'S MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of the financial condition and results of operations of ProSomnus Holdings, Inc. and its subsidiary prior to the Business Combination (for purposes of this section, collectively referred to as the "ProSomnus," "Company," "we," "us" and "our") should be read together with ProSomnus's unaudited condensed consolidated financial statements as of and for the three and nine months ended September 30, 2022 and 2021 and the audited consolidated financial statements as of and for the years ended December 31, 2021 and 2020, together with the related notes thereto, included in this proxy statement/prospectus. The discussion and analysis should also be read together with the section titled "Selected Historical Combined Financial Information of ProSomnus" and the pro forma financial information as of and for the three and nine months ended September 30, 2022 and the year ended December 31, 2021 included in this proxy statement/prospectus. See "Unaudited Pro Forma Condensed Financial Information." This discussion contains forward-looking statements based upon current beliefs, plans, and expectations that involve numerous risks, uncertainties and assumptions, including, but not limited to, those described under the heading "Risk Factors." Actual results may differ materially from those contained in any forward-looking statements.

Proposed Business Combination Transaction

On May 9, 2022, Lakeshore and ProSomnus executed the Merger Agreement. Pursuant to the Merger Agreement, the business combination will be effected in two steps: (i) subject to the approval and adoption of the Merger Agreement by the shareholders of Lakeshore, Lakeshore will reincorporate to the State of Delaware by merging with and into LAAA Merger Corp., a Delaware corporation and wholly-owned subsidiary of Lakeshore ("**PubCo**"), with PubCo surviving as the publicly traded entity (the "**Reincorporation Merger**"); and (ii) immediately after the Reincorporation Merger, LAAA Merger Sub Inc., a Delaware corporation and wholly-owned subsidiary of PubCo ("**Merger Sub**"), will be merged with and into ProSomnus, with ProSomnus surviving as a wholly-owned subsidiary of PubCo (the "**Acquisition Merger**"). The Merger Agreement is by and among Lakeshore, PubCo, Merger Sub, ProSomnus and HGP II, LLC, as the representative of the stockholders of ProSomnus ("**Stockholders' Representative**"), and RedOne Investment Limited, as the representative of the shareholders of Lakeshore. The Reincorporation Merger and the Acquisition Merger are collectively referred to herein as the "**Business Combination**."

Upon closing of the Acquisition Merger, PubCo will acquire 100% of the equity securities of ProSomnus. In exchange for their equity securities, the stockholders of ProSomnus (the "**ProSomnus Stockholders**") will receive an aggregate number of shares of PubCo Common Stock (the "**Merger Consideration**") with an aggregate value equal to: (a) one hundred thirteen million U.S. dollars ($113,000,000), minus (b) the amount by which the Closing Net Indebtedness (as defined in the Merger Agreement) exceeds twelve million U.S. dollars ($12,000,000). Additionally, Lakeshore shall make available to ProSomnus no less than $40,000,000, prior to the payment of expenses incurred in connection with the Business Combination and any outstanding debt of ProSomnus, in cash and cash equivalents (the "**Minimum Cash Amount**") immediately after the closing of the transactions contemplated by the Merger Agreement (the "**Closing**"), including the net proceeds from the trust account established by Lakeshore with the proceeds from its initial public offering (the "**Trust Account**") after giving effect to any redemptions by Lakeshore shareholders, and the net proceeds from the Transaction Financing (as defined below).

Additionally, ProSomnus stockholders (other than holders of ProSomnus Subordinated Debt) may be entitled to receive up to 3.0 million earn-out shares in three tranches:

- the first tranche of 1.0 million earn-out shares will be issued when the volume-weighted average price per share of PubCo Common Stock is $12.50 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing;

- the second tranche of 1.0 million earn-out shares will be issued when the volume-weighted average price per share of PubCo Common Stock is $15.00 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing; and

- the third tranche of 1.0 million earn-out shares will be issued when the volume-weighted average price per share of PubCo Common Stock is $17.50 or greater for 20 trading days in any consecutive 30 trading day period commencing 6 months after the Closing and ending at the third anniversary of the Closing.

The earn-out shares will be allocated among ProSomnus's stockholders in proportion to the number of shares issued to them at the Closing that continue to be held by them.

Concurrently with the execution of the Merger Agreement, in May and September 2022, the Company and certain holders of the Bridge Loans executed a conversion addendum. Upon notice of the Business Combination Agreement, the holders of the Bridge Loans had up to 10 days to elect to convert into Series A Redeemable Convertible Preferred Stock. Immediately prior to the closing of the Business Combination, the Bridge Loans will automatically convert into the number of Series A Redeemable Convertible Preferred Stock as equal to the repayment amount of the Bridge Loans divided by the Conversion Price. The Conversion Price is defined as the quotient of the aggregate consideration to be paid to all holders of the Series A Redeemable Convertible Preferred Stock divided by the outstanding number of Series A Redeemable Convertible Preferred Stock, including the shares into which the Bridge Loans convert. Holders of Bridge Loans totaling $2,550,000 elected to convert, immediately prior to the Acquisition Merger. The remaining $100,000 principal amount of the Bridge Loan and accrued and unpaid interest thereon was paid in cash at closing of the Acquisition Merger. In addition, the indebtedness arising under ProSomnus's loan agreement dated August 9, 2019, by and among ProSomnus Sleep Technologies, Inc. and the lenders signatory thereto, in the aggregate principal amount of $6,490,000 (collectively with the Bridge Loan, the "ProSomnus Subordinated Debt"), will also convert into shares of ProSomnus Common Stock immediately prior to the Acquisition Merger.

On September 29, 2022, ProSomnus entered into the Second Amendment and Loan Security Agreement ("Second Amendment") to the subordinated loan and security agreement effective in April 2021. The Second Amendment established a convertible bridge loan advance of up to $2,000,000 to ProSomnus from the lender ("Convertible Bridge Loan Advance"). The interest rate of the Convertible Bridge Loan Advance is 14% and the maturity date is the earlier of the date of the bridge loan conversion event or September 29, 2023. The bridge loan conversion event is the termination of the Merger Agreement or the occurrence of any event that would result in the termination of the Merger Agreement as defined in the Merger Agreement. If the bridge loan conversion has not occurred, and the Convertible Bridge Loan Advance is not repaid in full on the maturity date, the default interest will bear additional 6.0% per annum. Interest is paid in arrears at December 29, 2022 and at the maturity date. Prepayment of the Convertible Bridge Loan Advance is permitted in increments of $100,000 at any time, and the prepayment requires the payment of all accrued and unpaid interest as well as a prepayment premium. The prepayment premium is the incremental amount of interest that would have been paid for the term of the convertible bridge advance and has not yet been paid. ProSomnus received $500,000 from the Convertible Bridge Loan Advance on September 29, 2022. After September 30, 2022, ProSomnus has received $1,500,000 from the Convertible Bridge Loan Advance. Also, see the Subsequent Events footnote of the consolidated financial statements, which discloses closing of $30,000,000 Convertible Notes.

While the legal acquirer in the Merger Agreement is Lakeshore, for financial accounting and reporting purposes under GAAP, PubCo will be the accounting acquirer and the Business Combination will be accounted for as a "reverse recapitalization." A reverse recapitalization does not result in a new basis of accounting, and the financial statements of the combined entity represent the continuation of the financial statements of ProSomnus in many respects. Accordingly, for accounting purposes, the financial statements of PubCo will represent a continuation of the financial statements of ProSomnus with the Business Combination treated as the equivalent of ProSomnus issuing stock for the net assets of Lakeshore, accompanied by a recapitalization. The net assets of Lakeshore will be stated at historical cost, with no goodwill or other intangible assets recorded. Operations prior to the Business Combination will be presented as those of ProSomnus in future reports of PubCo.

Overview

We are a medical technology company focused on the development, manufacturing and marketing of precision intraoral medical devices, a new option for treating and managing patients with mild to moderate Obstructive Sleep Apnea ("**OSA**"). Each ProSomnus precision intraoral device is personalized based on the anatomy and treatment plan for each patient. Our patented precision devices are engineered to create unique, consistent and predictable biomechanical advantages that lead to effective, comfortable, economical and patient preferred treatment outcomes for patients with OSA.

Our ProSomnus precision intraoral devices are classified by the U.S. Food and Drug Administration (the "**FDA**") as Class II medical devices for the treatment of snoring and mild to moderate OSA. We received pre-market notification and FDA clearance pursuant to Section 510(k) of the Federal Food, Drug, and Cosmetic Act ("**FDCA**") for our first intraoral device in July 2014 and our devices have been commercially available in the United States since August 2014. To date, over 150,000 ProSomnus precision devices have been prescribed for patients.

Sleep apnea is a serious and chronic respiratory disease that negatively impacts a patient's sleep, health, and quality of life. OSA is the most common form of sleep apnea. OSA is a medical condition characterized by a cessation of breathing when the tongue, soft palate, and other related tissues in the back of the throat collapse and block the upper airway during sleep, temporarily decreasing the oxygen concentration in the blood. During an OSA episode, the diaphragm and chest muscles must work harder to overcome the obstruction and open the airway. These episodes disrupt the sleep cycle, reduce airflow to vital organs, stress the body, and create a negative feedback loop. If untreated, OSA increases the risk of high blood pressure, hypertension, heart failure, stroke, coronary artery disease and other life-threatening diseases. OSA is associated with a reduction in quality-of-life factors including a higher risk of motor vehicle and operator accidents, workplace errors, absenteeism and more.

Until ProSomnus, there have been few alternatives for OSA patients who refuse or fail CPAP. Historically, treatment alternatives to CPAP have consisted of surgical procedures or legacy oral appliances. Surgical procedures, such as hypoglossal nerve stimulation and maxillomandibular advancement, can be invasive, irreversible, expensive, and only suitable for a narrow range of patient types. Legacy oral appliances, historically, have been associated with inconsistent and unreliable performance. We believe that there is both an urgent clinical need and a strong market opportunity for a treatment alternative that is effective, non-surgical, convenient, and more economical.

ProSomnus therapy is covered by most private insurance payers, Medicare, and by a growing number of public health insurance programs offered in many countries around the world. In the United States an estimated 70% of treatments are paid for by private insurance, 25% are covered by Medicare and the remaining 5% are paid out of pocket by the patient.

Dentists are typically reimbursed by private medical insurance in the range of approximately $2,000 to $3,500 per patient for intraoral appliance therapy and by Medicare in the range of approximately $1,250 to $1,800 per patient for intraoral appliance therapy. The average amount varies by insurance provider and Medicare jurisdiction. At these reimbursement levels, we believe that intraoral appliance therapy offers dentists an attractive ratio of revenue per chair time in comparison to other dental procedures.

We market and sell our precision intraoral devices to dental sleep medicine providers in the United States and in select countries around the world through a direct sales force. We currently have 11 direct sales representatives in the United States and three in Europe. Our direct sales force focuses their education, promotional and sales efforts on dentists who have developed a specialty in dental sleep medicine, and the physicians who are actively treating OSA.

We generated revenue of $14.1 million, with a gross margin of 51.9% and a net loss of $6.0 million, for the fiscal year ended December 31, 2021, compared to revenue of $8.3 million, with a gross margin of 49.7% and a net loss of $6.2 million, for the fiscal year ended December 31, 2020. ProSomnus is the sole surviving division remaining after the sale of MicroDental Laboratories in October 2016. Accumulated deficit incurred from October 2016, after separating from MicroDental Laboratories, to December 31, 2021 was $30.8 million. Including the accumulated deficit incurred by MicroDental Laboratories prior to the sale of that entity in October 2016, accumulated deficit as of December 31, 2021 was $203.6 million.

COVID-19

In March 2020, the World Health Organization declared the global outbreak of COVID-19 to be a pandemic. We continue to closely monitor the recent developments surrounding the continued spread and potential resurgence of COVID-19. The COVID-19 pandemic has had, and is expected to continue to have, an adverse impact on our operations, particularly as a result of preventive and precautionary measures that we, other businesses, and governments are taking. Demand may shift over time, as the impacts of the COVID-19 pandemic may go through several phases of varying severity and duration.

Please refer to the section titled; “Risk Factors” included elsewhere in this proxy statement/prospectus for more information. We are unable to predict the full impact that the COVID-19 pandemic will have on our future results of operations, liquidity and financial condition due to numerous uncertainties, including the duration of the pandemic and actions that may be taken by government authorities across the United States. We will continue to monitor the performance of our business and reassess the impacts of COVID-19.

Factors Affecting Results of Operations

The following factors have been important to our business, and we expect them to impact our results of operations and financial condition in future periods:

Expansion of North American direct sales organization and international expansion

The core focus of our sales initiative is to expand our direct sales organization in North America. With representatives located in high-value metropolitan areas, the direct sales organization will focus primarily on dentists and physicians who are practicing sleep medicine. The main purpose of this initiative is to increase case volume from these dentists and physicians by facilitating a referral relationship between dentists and physicians, helping them expand the dental sleep medicine aspect of their practices and educating them on the advantages of the ProSomnus intraoral devices. We also intend to further expand our sales to integrated health systems and hospital networks. We are currently initiating the marketing and sales of our ProSomnus intraoral devices in several European countries and intend to further expand our marketing and direct sales into international markets.

Product line extensions and remote monitoring services

We intend for product line extensions to focus on enabling ProSomnus to capture a larger share of treatments for patients with OSA, snoring and other related sleep disordered breathing conditions. We expect that each product line extension will be designed to optimize ProSomnus products for a wider range of case types, treatment philosophies, and indications. We expect that each product line extension will utilize our unique manufacturing platform and potentially create additional opportunities for intellectual property.

We received FDA clearance for an intraoral device that enables remote patient monitoring services in November 2020, which we intend to start marketing during the fourth quarter of 2022. The sales of such remote monitoring services in connection with our intraoral devices could result in an additional recurring revenue stream that is reimbursable by insurance. Our remote patient monitoring services will be based on the incorporation of a sensor into the ProSomnus intraoral devices that provides continuous monitoring of physiological health data that physicians want and cannot typically obtain from CPAP or other intraoral appliance therapy devices. Our market research indicates that our remote monitoring services could be a significant driver of greater market acceptance and expansion and result in significant future revenues.

Description of Certain Components of Financial Data

Revenue, net

We derive primarily all of our revenue from the sale of our customized precision milled intra oral medical devices that dentists use to treat patients diagnosed with Obstructive Sleep Apnea. Our revenue recognition policies are discussed in more detail in Note 1 to our consolidated financial statements and notes thereto for the years ended December 31, 2021 and 2020 included elsewhere in this proxy statement/ prospectus.

Cost of Revenue

Cost of revenue consists primarily of materials and the costs related to the production of the intraoral device, including employee compensation, other employee-related expenses, inbound shipping and allocable manufacturing overhead costs. ProSomnus has a policy to classify initial recruiting and training costs of new manufacturing employees as part of research and development expenses in the consolidated statements of operations.

Research and development

Research and development costs consist of production costs for prototypes, test and pre-production units, supplies, consulting, and personnel costs, including salaries, bonuses and benefit costs. Most of our research and development expenses are related to developing new products and services. Consulting expenses are related to research and development activities as well as clinical and regulatory activities and certain third-party engineering costs. Research and development expenses are expensed as incurred. We expect to continue to make substantial investments in product development. As a result, research and development expenses are expected to increase in absolute dollars as the research and development efforts increase.

Sales and marketing

Sales and marketing costs primarily consist of salaries, bonuses, benefits and travel costs for employees engaged in sales and marketing activities, as well as website, advertising, conferences and other promotional costs.

General and administrative

General and administrative expenses primarily consist of labor, bonuses, benefits, general insurance, office expenses and outside services. Outside services consist of audit, tax, legal and other professional fees. We expect that general and administrative expenses will increase in absolute dollars as a result of operating as a public company.

Other income (expense), net

Other income (expense), net primarily relates to interest expense as well as a gain from forgiveness of Paycheck Protection Program ("PPP") loans, a change in fair value of warrants classified as liabilities and a loss on the extinguishment of debt related to the Second Amendment and the Convertible Bridge Loan Advance.

The components of interest expense include interest expense payable under our subordinated notes, subordinated loan and security agreements, unsecured subordinated promissory notes, equipment financing and capital lease obligations.

Provision for income taxes

We account for income taxes under an asset and liability approach. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes as well as net operating loss carryforwards and tax credit carryforwards. Valuation allowances are provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

Significant judgment may be required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, we consider all available evidence, including past operating results, estimates of future taxable income and the feasibility of tax planning strategies. In the event that we change our determination as to the amount of deferred tax assets that is more likely than not to be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

We recorded a full valuation allowance as of December 31, 2021 and December 31, 2020. Based on available evidence, we believe that it is more likely than not that we will be unable to utilize all our deferred tax assets in the future.

Results of Operations

The following is a discussion of our results of operations for the periods shown below, and our accounting policies are described in Note 1 in our consolidated financial statements for the years ended December 31, 2021 and 2020 included elsewhere in this proxy statement/prospectus.

	Three Months Ended September 30,		Change		Nine Months Ended September 30,		Change	
	2022	2021	$	%	2022	2021	$	%
Revenue, net	$ 4,997,979	$ 3,702,539	$ 1,295,440	35.0%	$ 13,601,031	$ 9,671,675	$ 3,929,356	40.6%
Cost of Revenue	2,540,288	1,758,698	781,590	44.4%	6,440,475	4,626,103	1,814,372	39.2%
Gross profit	2,457,691	1,943,841	513,850	26.4%	7,160,556	5,045,572	2,114,984	41.9%
Gross profit %	*49.2%*	*52.5%*			*52.6%*	*52.2%*		
Operating expenses								
Research and development	688,540	569,983	118,557	20.8%	1,915,521	1,429,485	486,036	34.0%
Sales and marketing	2,319,362	1,508,299	811,063	53.8%	6,450,173	4,108,089	2,342,084	57.0%
General and administrative	1,577,049	1,129,069	447,980	39.7%	4,213,458	3,226,766	986,692	30.6%
Total operating expenses	4,584,951	3,207,351	1,377,600	43.0%	12,579,152	8,764,340	3,814,812	43.5%
Other (expense) income								
Interest expense	(1,421,702)	(860,946)	(560,756)	65.1%	(3,714,777)	(2,305,418)	(1,409,359)	61.1%
Forgiveness of PPP loans	-	1,003,112	(1,003,112)	n/m	-	2,281,262	(2,281,262)	n/m
Change in fair value of warrant liability	-	-	-	n/m	(20,756)	(44,334)	23,578	n/m
Loss on extinguishment of debt	-	-	-	n/m	(192,731)	-	(192,731)	n/m
Total other (expense) income	(1,421,702)	142,166	(1,563,868)	(1,100.0)%	(3,928,264)	(68,490)	(3,859,774)	5,635.5%
Net loss before income taxes	(3,548,962)	(1,121,344)	(2,427,618)	216.5%	(9,346,860)	(3,787,258)	(5,559,602)	146.8%
Provision for income taxes	-	-	-	0.0%	(6,480)	(7,652)	1,172	(15.3)%
Net loss	$ (3,548,962)	$ (1,121,344)	$ (2,427,618)	216.5%	$ (9,353,340)	$ (3,794,910)	$ (5,558,430)	146.5%

(n/m = not meaningful)

Comparison of the Three Months ended September 30, 2022 and 2021

Revenues increased by $1.3 million, or 35%, for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. This increase was primarily driven by increased unit volume due to increased sales and marketing investments and mix shift to the new EVO Product.

Revenue from the Company's largest customer was 5.6% for the three months ended September 30, 2022, and 5.8% for the three months ended September 30, 2021.

Total cost of revenue increased by $0.8 million, or 44.4 %, for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. The increase was primarily due to product costs associated with higher sales volume of our devices and an increase in the cost of materials and supplies.

Gross profit increased by $0.5 million, or 26.4% for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. The increase was attributable to an increase in Net Revenue of $1.3 million as discussed above, partially offset by an increase in Cost of Revenue of $0.8 million.

Gross profit decreased to 49.2% for the three months ended September 30, 2022, compared to 52.5% for the three months ended September 30, 2021, primarily driven by an increase in the cost of materials and supplies.

Research and development expenses increased by $0.1 million, or 20.8%, for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. This increase was primarily driven by an increase in headcount-related personnel and consulting costs of $0.2 million and offset by nominal changes in research and development.

Sales and marketing expenses increased by $0.8 million, or 53.8%, for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. This increase was primarily driven by an increase in personnel and consulting related expenses of $0.3 million due to expansion of the sales team. Sales and marketing events increased $0.2 million, and travel and in-person events increased $0.1 million.

General and administrative expenses increased by $0.4 million, or 39.7%, for the three months ended September 30, 2022, compared to the three months ended September 30, 2021. This increase was driven primarily by $0.4 million increase in costs that scale with revenue including credit card fees, recruiting, software, utilities, and depreciation.

Total other expense increased by $1.6 million, or 1074%, from an income of $0.1 million for the three months ended September 30, 2021, to an expense of $1.4 million for three months ended September 30, 2022. This increase was primarily driven by a $0.4 million increase in interest expense and Payroll Protection Program loan forgiven in Q3 2021 of $1.0 million.

Comparison of the Nine Months ended September 30, 2022 and 2021

Revenues increased by $3.9 million, or 40.6%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. This increase was primarily driven by increased unit volume due to increased sales and marketing investments and mix shift to the new EVO Product.

Total cost of revenue increased by $1.8 million, or 39.2%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. The increase was primarily due to product costs associated with higher sales volume of our devices.

Gross profit increased to 52.6% for the nine months ended September 30, 2022, compared to 52.2% for the nine months ended September 30, 2021, primarily driven favorably by a continued mix shift to our new EVO Product which has a higher average selling price and partially offset by a decrease in materials and supplies costs.

Research and development expenses increased by $0.5 million, or 34%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. This increase was primarily driven by an increase in headcount-related personnel costs of $0.4 million and nominal increases in new product development.

Sales and marketing expenses increased by $2.3 million, or 57%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. This increase was primarily driven by an increase in personnel and consulting-related expenses of $1.4 million due to International and North American expansion of the sales team. With COVID-19 restrictions being lifted, we saw $0.5 million of increased costs related to travel and in-person marketing events. Marketing programs and samples accounted for $0.4 million and outbound shipping costs accounted for $0.1 million of the increase.

General and administrative expenses increased by $1.0 million, or 30.6%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. This increase was driven primarily by a $0.8 million increase in costs that scale with revenue including credit card fees, recruiting, software, utilities, and depreciation. Investor relations and compensation plan services increased $0.2 million as the Company prepared for public company readiness.

Total other expense, net increased by $3.9 million, or 5635.6%, for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021. This increase was primarily driven by an increase in interest expense of $1.4 million as a result of additional borrowing and finance leases. This was offset by the Payroll Protection Program loan forgiven in Q3 2021 which led to a $2.5 million gain.

LIQUIDITY AND CAPITAL RESOURCES

Going Concern and Management's Plans

ProSomnus is the sole surviving division remaining after the sale of MicroDental Laboratories in October 2016. Since spinning off from MicroDental Laboratories, we have funded our operations primarily with proceeds from equity offerings, borrowings, and product sales. We have incurred significant cash burn and recurring net losses, which include a net loss of $3.6 million and $9.3 million for the three and nine months ended September 30, 2022, respectively, and have incurred an accumulated deficit of $36.0 million from the date spinning off from MicroDental Laboratories to September 30, 2022. Including the accumulated deficit of MicroDental Laboratories prior to the sale in October 2016, accumulated deficit as of September 30, 2022 is $213 million. As we continue to invest in the development of new products and sales and marketing, we expect to continue to incur cash burn and recurring net losses for the foreseeable future until such time that our product and services sales generate enough gross profit to cover our operating expenses. Our spending forecasts require additional financing or financial support to fund our future planned operations, and we will likely raise additional capital through the issuance of equity or borrowings. Our plans to increase liquidity also include obtaining financial support, if necessary, during the next 12 months from the issuance date of the consolidated financial statements, from our primary stockholder of the Company, who has indicated their willingness and ability to provide additional financial support to the Company.

If the proposed Business Combination is successfully completed, we expect to have sufficient cash to cover operations for the next 12 months from the issuance date of the consolidated financial statements and to fund the strategies set forth in additional detail in "*Business of ProSomnus — Our Strategy*."

Cash and Cash equivalents

As of September 30, 2022, we had cash and cash equivalents of $2.1 million, of which $500,000 is subject to a compensating balance requirement for a loan agreement. Our future capital requirements may vary from those currently planned and will depend on various factors including further development costs, commercialization strategy, international expansion, and regulatory costs. If we need additional funds and are unable to obtain funding on a timely basis, we may need to significantly curtail our product development and commercialization efforts to provide sufficient funds to continue our operations, which could adversely affect our business prospects.

Cash flows

The following table summarizes our cash flows for the periods indicated:

	Nine Months Ended September 30,	
	2022	**2021**
Net cash provided by (used in):		
Operating activities	$ (4,762,394)	$ (3,573,251)
Investing activities	(331,373)	(188,463)
Financing activities	5,753,988	3,450,563
Net increase (decrease) in cash and cash equivalents	$ 660,221	$ (311,151)

Net cash used in operating activities

For the nine months ended September 30, 2022, net cash used in operating activities of $4.8 million was due primarily to a net loss of $9.4 million, changes in operating assets and liabilities of $0.2 million, offset by non-cash items of $4.4 million. Changes in operating assets and liabilities were driven primarily by $1.8 million of deferred financing costs, prepaid expenses, and other current assets of $0.6 million and an increase in other assets of $0.1 million, offset by an increase in accounts payable of $2.2 million, and an increase in accrued compensation and other accrued expenses of $0.6 million. Non-cash items primarily consisted of depreciation, amortization, and non-cash interest expense.

For the nine months ended September 30, 2021, net cash used in operating activities of $3.6 million was due primarily to a net loss of $3.8 million, changes in operating assets and liabilities of $0.1 million, offset by non-cash items of $0.3 million. Changes in operating assets and liabilities were driven primarily by an increase in accounts receivable and other current assets of $0.9 million, offset by an increase in accrued compensation and other current liabilities of $0.7 million. Non-cash items primarily consisted of $2.3 million Payroll Protection Program loan forgiveness and balance for non-cash interest expense, and depreciation.

Net cash used in investing activities

For the nine months ended September 30, 2022, net cash used in investing activities of $0.3 million was due primarily to purchases of property and equipment.

For the nine months ended September 30, 2021, net cash used in investing activities of $0.2 million was due primarily to purchases of property and equipment.

Net cash provided by financing activities

For the nine months ended September 30, 2022, net cash provided by financing activities of $5.7 million was due primarily due to proceeds of $18.8 million from under the line of credit, $5.1 million of unsecured subordinated promissory notes, and $0.4 million from proceeds of subordinated notes. The company also received $1.2 million from issuance of subscription agreements. Financing cash inflows were partially offset by repayments of $17.6 million on the line of credit, repayment of unsecured subordinated promissory notes of $0.5 million, principal payments under finance lease and equipment financing obligations of $0.8 million, repayments of subordinated loan and security agreements of $0.7 million, and repayments of subordinated notes of $0.1 million.

For the nine months ended September 30, 2021, net cash provided by financing activities of $3.4 million was due primarily to proceeds of $5.1 million from under the line of credit, $2.0 million from subordinated loan and security agreement, $1.0 million from the Payroll Protection Program loan, and $0.8 million from proceeds of subordinated notes. Financing cash inflows were partially offset by repayments of $4.5 million on the line of credit, principal payments under capital lease and equipment financing obligations of $0.5 million and repayments of subordinated loan and security agreements of $0.5 million.

Contractual obligations

Below is a summary of short-term and long-term anticipated cash requirements under contractual obligations existing as of September 30, 2022.

	As of September 30, 2022		
	Total	**Remainder of 2022**	**After 2022**
Recorded contractual obligations:			
Subordinated loan and security agreement	$ 4,471,165	$ 1,454,914	$ 3,016,251
Subordinated notes	7,644,892	-	7,644,892
Other (1)	3,465,169	1,592,898	1,872,271
Bridge Loan (Unsecured subordinated promissory notes)	2,757,107	-	2,757,107
Bridge Loan (Secured subordinated loan)	1,977,592	-	1,977,592
Liability from subscription agreements	1,225,000	1,225,000	-
Total	$ 21,540,925	$ 4,272,812	$ 17,268,113

**(1) Represents finance and operating lease liabilities, equipment financing obligations and payable under commission settlement*

During September 2022, we entered into an agreement with an effective date of January 1, 2022, with the chairman of our Board of Directors to provide consulting services. The consultant receives approximately $10,000 per month. Upon completion of a successful business combination, the consultant will become our full-time employee. As of September 30, 2022, the amount we owed to the chairman was $90,000.

During January 2022, we entered into an agreement with an external consulting firm to provide investor and public relations consulting services. The monthly fee is approximately $20,000 prior to business combination. Additionally, upon completion of a successful business combination, the vendor will receive a payment of $200,000 as well as $200,000 in the form of common stock. We will pay a fee of $17,000 per month after the business combination. The agreement terminates on the last date of the month following the second anniversary of the business combination completion date.

During November 2021, we entered into an agreement with an external consulting firm to act as the placement agent for a future business combination. Upon completion of a successful transaction, the consulting firm will earn approximately nine percent of the gross proceeds raised in the transaction, payable in common stock of the new public entity.

During March 2021, we entered into an agreement with an external consulting firm to provide consulting and advisory services. Upon completion of a successful business combination transaction, the consulting firm will be paid cash compensation of $1,200,000, payable in common stock of the new public entity.

As of September 30, 2022, we did not have any off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our consolidated financial condition, results of operations, liquidity, capital expenditures or capital resources.

Critical Accounting Policies and Significant Judgments and Estimates

Our consolidated financial statements are prepared in accordance with U.S. GAAP. The preparation of our consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect certain reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. While our significant accounting policies are described in more detail in Note 1 in our consolidated financial statements for the years ended December 31, 2021 and 2020 included elsewhere in this proxy statement/prospectus, we believe that the following accounting policies are those most critical to the judgments and estimates used in the preparation of our consolidated financial statements.

Emerging Growth Company

ProSomnus is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "**JOBS Act**"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirements of Section 404 of the Sarbanes- Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards.

The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies, but any such election to opt out is irrevocable. ProSomnus has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, ProSomnus, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of ProSomnus's financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Inventory

Inventory is recorded at the lower of cost or net realizable value under the first-in, first-out method of accounting. Inventories primarily consist of purchased raw materials. We regularly review whether the net realizable value of inventory is lower than its carrying value. If the valuation shows that the net realizable value is lower than the carrying value, we take a charge to cost of sales and directly reduce the carrying value of the inventory. Indicators that could result in inventory write-downs include damaged or slow-moving materials and supplies.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Estimated useful lives are as follows:

Manufacturing equipment	3 to 7 years
Computers and software	3 years
Furniture	7 years
Leasehold Improvements	Shorter of remaining lease term or estimated useful life

Maintenance and repairs are charged to operations as incurred.

Through December 31, 2021, equipment capitalized under capital lease obligations was included in property and equipment. Property and equipment capitalized under capital lease obligations were amortized using a straight-line method over the shorter of the life of the lease or the useful life of the asset, which ranges from 3 to 7 years, and was included in depreciation expense in the condensed consolidated statements of operations. On January 1, 2022 the Company adopted Accounting Standards Update ("ASU") 2016-02, Leases ("ASC 842"), which impacted the classification of equipment formerly capitalized under capital lease obligations. The equipment related to capital leases, now finance leases, have been reclassified from property and equipment to right-of-use assets on the condensed consolidated balance sheet.

Redeemable Convertible Preferred Stock

We record all shares of redeemable convertible preferred stock at their respective issuance price, less issuance costs on the dates of issuance. Under certain circumstances we may be required to redeem the Series A and Series B redeemable convertible preferred stock. The redeemable convertible preferred stock is presented outside of stockholders' deficit in the consolidated balance sheets. When redeemable convertible preferred stock is considered either currently redeemable or probable of becoming redeemable, we have selected a policy to recognize changes in the redemption value immediately, as they occur and adjust the carrying value of redeemable convertible preferred stock to the greater of the redemption value at the end of each reporting period or the initial carrying amount.

Warrants for Redeemable Convertible Preferred Stock

We account for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in Financial Accounting Standards Board ("**FASB**") Accounting Standards Codification ("**ASC**") 480, Distinguishing Liabilities from Equity ("**ASC 480**") and ASC 815, Derivatives and Hedging ("**ASC 815**"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to our own common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent reporting period end date while the warrants are outstanding.

For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash other income or expense on the consolidated statements of operations.

Revenue Recognition

The Company creates customized precision milled intra oral devices. When devices are sold, they include an assurance-type warranty guaranteeing the manufacture of the product in accordance with the prescription for a period of 3 years from the date of sale.

In accordance with ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)," the Company recognizes revenue upon meeting the following criteria:

- Identifying the contract with a customer: Customers submit authorized prescriptions and dental impressions to the Company. Authorized prescriptions constitute the contract with customers.

- Identifying the performance obligations within the contract: The sole performance obligation is the shipment of a completed customized intraoral device.

- Determining the transaction price: Prices are determined by standardized pricing sheets and adjusted for estimated returns, discounts, allowances and rebates.

- Allocating the transaction price to the performance obligations: The full transaction price is allocated to the shipment of the completed intraoral device as it is the only element in the transaction.

- Recognize revenue as the performance obligation is satisfied: revenue is recognized upon transfer of control which occurs upon shipment of the product.

The Company does not require collateral or any other form of security from customers. Inbound shipping and handling costs related to sales are billed to customers. Outbound shipping costs are not billed to customers and are included in sales and marketing expenses. Taxes collected from customers and remitted to governmental authorities are excluded from revenue.

Standalone selling price for the various intraoral device models are determined using the Company's standard pricing sheet. The Company invoices customers upon shipment of the product and invoices are due within 30 days. Amounts that have been invoiced are recorded in accounts receivable and revenue as all revenue recognition criteria have been met. Given the nominal value of each transaction, the Company does not offer a financing component related to its sales arrangements.

We utilize the practical expedient which permits expensing of costs to obtain a contract when the expected amortization period is one year or less, which typically results in expensing commissions paid to employees. We expense sales commissions paid to employees as sales are recognized.

ProSomnus markets its products at American Academy of Sleep Medicine ("AASM"), American Academy of Dental Sleep Medicine ("AADSM"), and other similar professional sleep medicine events. These events may include annual meetings, continuing education seminars, and webinars. The purposes of marketing at these events are to increase awareness of our brand, to educate healthcare providers about our devices, and to generate lead lists of healthcare providers who possess the necessary OSA training. Our sales organization then follows up on the leads generated from these events and activities.

Before each sale, every ProSomnus device is personalized to match the prescription submitted by the healthcare provider for each patient. A prescription includes four components: (1) records of the patient's upper dental anatomy; (2) records for the patient's lower dental anatomy; (3) records for the patient's jaw position; and (4) documentation that includes required information such as the healthcare provider's license number and any additional instructions. The records of the patient's upper dental anatomy are used to personalize the upper splint component for the ProSomnus device to ensure that the upper splint component fits the patient's upper teeth. The records of the patient's lower dental anatomy are used to personalize the lower splint component for the ProSomnus device to ensure that the lower splint component fits the patient's lower teeth. The records of the patient's jaw position are used to personalize the relationship of the ProSomnus device's prescription posts which determine the positional relationship between the upper and lower splint components for the ProSomnus device. The aforementioned description of personalization is included in our regulatory documents such as our FDA 510(k) clearances. After the typical sale we are not required to perform any additional personalization.

Key customer contract terms for intraoral devices include:

- a 3-year warranty from the date of manufacture for all devices, except for Medicare devices, which have a 5-year warranty. Our warranty covers the device against defects in workmanship and materials. ProSomnus will replace or repair any device with unsatisfactory workmanship or materials quality;

- no warranty for device fit if the provided patient records are distorted. ProSomnus will notify the provider if we notice a distorted record during our inbound quality control inspection. ProSomnus will not offer a warranty if the records do not meet basic requirements, such as minimum vertical clearance;

- the warranty is voided if device damage is attributed to patient misuse or if the healthcare provider makes structural changes to the device;

- the healthcare provider must return a defective device, as part of our compliance with our quality management system; and

- our standard turnaround time for manufacturing a device is seven business days plus shipping time.

Our only other performance obligation associated with the sale of our device is our warranty. Device personalization is performed prior to sale. There are no obligations to train sleep dentists, sleep physicians or other providers.

Our transaction prices are our list prices for our products plus the applicable discount schedule

- *List prices*. Our list prices consider competitive reference prices, economic value added relative to competitive products, manufacturing costs, manufacturing capacity dynamics, insurance reimbursement amounts, and our business strategy. We continuously monitor these considerations for the purposes of establishing list prices for new products and for managing the list prices for existing products. We evaluate existing list prices at least annually. However, we also evaluate existing list prices whenever there is a major change in any of these components (for example, a competitor increases their list prices 20%).

- Competitive Reference Prices. We continuously monitor competitive reference prices and weigh the pros and cons of adjusting our list prices when competitors price new products or adjust list prices for existing products.

- Manufacturing Costs. We continuously monitor manufacturing costs. There are, generally, five types of manufacturing costs that we consider when evaluating the list price of a product:
  direct labor, materials, supplies, factory overhead costs and factory overhead labor. We continuously monitor these five types of manufacturing costs and evaluate our list prices accordingly.

- Manufacturing Capacity. We consider our manufacturing capacity when evaluating the merits of a change to our pricing. For example, it might not make sense to lower prices for a specific product if the manufacturing capacity for that product is constrained.

- Insurance Reimbursement Amounts. Payors routinely change the coverage policies and amounts for various products and procedures. We continuously monitor these reimbursement trends and the implications these trends might have on the price sensitivity of our customers.

- Business Strategy. There are certain situations where the company may wish to adjust a list price upward or downward based on business strategy. For example, if the company is launching a new product, the company may wish to adjust list prices downward to stimulate trial orders for the new product.

- *Discount Schedules*. The Company offers discount schedules that are applied to the relevant list price for a product. The discount schedule is based on certain order volume thresholds. The greater the order volume, the higher the discount. The rationale for volume-based discounts is that it is more efficient for our Company to service customers with higher order volumes. Thus, our Company shares these efficiencies with customers in the form of the volume-based discounts with the objective of lower costs to treat patients.

As a result of our list prices and discount schedule being somewhat formulaic, our pricing is consistent for customers who fall within the same order volume level.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in Note 1 to our consolidated financial statements and notes thereto for the years ended December 31, 2021 and 2020 included elsewhere in this proxy statement/prospectus.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risk in the ordinary course of business. Market risk represents the risk of loss that may impact our results of operations or financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates. We do not hold, issue, or enter into any financial instruments for speculative or trading purposes.

Interest rate risk

Our cash and cash equivalents as of September 30, 2022 consisted of $2.1 million in bank accounts. We believe that we do not have any material exposure to changes in the fair value of these assets. We do not believe that a hypothetical 10% change in interest rates would have a material effect on our consolidated cash flows or operating results.

Effects of Inflation

Inflation generally affects us by increasing our cost of labor and research and development expenses. We do not believe inflation has had a material effect on our results of operations during the periods presented in this proxy statement/prospectus/information statement.