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

FORM 8-K

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

Date of Report (Date of earliest event reported): October 4, 2023

VENUS CONCEPT INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-38238**	**06-1681204**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification Number)**

235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8
(Address of principal executive offices, including Zip Code)

Registrant's telephone number, including area code: (877) 848-8430

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

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

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, $0.0001 par value per share	**VERO**	**The Nasdaq Capital Market**

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

Exchange Agreement

On October 4, 2023, Venus Concept Inc. (the "**Company**"), entered into an Exchange Agreement (the "**Exchange Agreement**") with Madryn Health Partners, LP ("**Madryn**") and Madryn Health Partners (Cayman Master), LP ("**Cayman Master**," and together with Madryn, the "**Holders**"). Pursuant to the Exchange Agreement, the Holders agreed to exchange (the "**Exchange**") $26,695,110.58 in aggregate principal amount of outstanding secured convertible notes of the Company (the "**Existing Notes**") for (i) $22,791,748.32 in aggregate principal amount of new secured convertible notes of the Company (the "**New Notes**") and (ii) 248,755 shares of newly-created convertible preferred stock of the Company, par value $0.0001 per share, designated as "Series X Convertible Preferred Stock" (the "**Series X Preferred Stock**"). The Series X Preferred Stock is priced at $20.10 per share (the "**Issuance Price**"), being equal to the "Minimum Price" as set forth in Nasdaq Stock Market LLC Rule 5635(d), multiplied by ten (the "**Multiplication Factor**"). The Exchange closed on October 4, 2023.

The terms of the New Notes are described below under "New Notes."

The terms of the Series X Preferred Stock are described below under Item 5.03 of this Current Report on Form 8-K.

The Exchange Agreement contains customary representations, warranties and agreements by the Company, indemnification obligations of the Company, including for liabilities under the Securities Act, and other obligations of the parties. The representations, warranties, and covenants contained in the Exchange Agreement were made only for purposes of such agreement and are made as of specific dates; are solely for the benefit of the parties (except as specifically set forth therein); may be subject to qualifications and limitations agreed upon by the parties in connection with negotiating the terms of the Exchange Agreement, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties, instead of establishing matters as facts; and may be subject to standards of materiality and knowledge applicable to the contracting parties that differ from those applicable to the investors generally. Investors should not rely on the representations, warranties, and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company.

The New Notes and Series X Preferred Stock issued under the Exchange Agreement, as well as the shares of the Company's common stock, par value $0.0001 per share ("**Common Stock**"), issuable upon conversion of the New Notes and Series X Preferred Stock, have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an exemption therefrom. To consummate the Exchange, the Company relied the registration exemption provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**"). To effectuate conversions of the New Notes and the shares of Series X Preferred Stock, the Company will rely on the private placement provided by Section 4(a)(2) of the Securities Act and by Rule 506 of Registration D, promulgated by the U.S. Securities and Exchange Commission (the "**SEC**").

Subject to the terms and conditions of the Exchange Agreement, the Company is required to include in the proxy materials for the Company's next annual or special meeting of shareholders a proposal for the purpose of eliminating any limitations on the convertibility of the Series X Preferred Stock imposed by the rules and regulations of the Nasdaq Stock Market LLC. On October 4, 2023, the Company secured agreements from certain of its investors, currently holding a majority of the Company's voting securities, to vote their shares in favor of eliminating any such limitations at any shareholder meeting called for such purpose.

The foregoing description of the Exchange Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Exchange Agreement, a copy of which is filed hereto as Exhibit 10.1.

Registration Rights Agreement

On October 4, 2023, as required by the Exchange Agreement, the Company and the Holders entered into a resale registration rights agreement (the "**Registration Rights Agreement**"). Under the Registration Rights Agreement, the Company is required, among other things, to file a shelf resale registration statement with respect to the shares of Common Stock issuable upon conversion of the shares of Series X Preferred Stock with the SEC within 60 days following the closing of the Exchange. The Company also granted a one-time additional demand registration right to the Holders. The Registration Rights Agreement contains terms and conditions customary for a transaction of this type.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which is filed hereto as Exhibit 10.2.

New Notes

On October 4, 2023, pursuant to the Exchange Agreement, the Company issued the New Notes in the aggregate principal amount of $22,791,748.32 to the Holders.

The New Notes accrue interest at a rate of 3-month adjusted term Secured Overnight Financing Rate (SOFR) plus 8.50% per annum. In the case of an event of default under the New Notes, the then-applicable interest rate will increase by four percent (4.00)% per annum. Interest is payable in kind in arrears on the last business day of each calendar quarter of each year after the original issuance date, beginning on December 31, 2023. The New Notes mature on December 9, 2025, unless earlier redeemed or converted.

Like the Existing Notes, the New Notes remain (i) secured pursuant to the Guaranty and Security Agreement, dated as of December 9, 2020 (the "**Madryn Security Agreement**"), by and among the Company, Venus Concept USA Inc. ("**Venus USA**"), Venus Concept Canada Corp. ("**Venus Canada**"), Venus Concept Ltd. ("**Venus Israel**") and Madryn, as collateral agent, pursuant to which the Company granted to Madryn a security interest, in substantially all of its assets, to secure the obligations under the Existing Notes and (ii) subordinated pursuant to the Subordination of Debt Agreement, dated as of December 9, 2020 (the "**Existing Subordination Agreement**"), by and among the Company, the Holders and City National Bank of Florida ("**CNB**"). The obligations of the Company under the New Notes are secured by substantially all of the assets of the Company and its subsidiaries party to the Madryn Security Agreement.

Also on October 4, 2023, Venus Israel entered into a Subordination of Debt Agreement with the Holders, as junior lender, and CNB, as senior lender (the "**New Subordination Agreement**," and together with the Existing Subordination Agreement, the "**CNB Subordination Agreements**"). Under the CNB Subordination Agreements, the obligations of the Company under the New Notes, as well as the security interests and certain liens created by the Madryn Security Agreement, are subordinated to the indebtedness of the Company owing to CNB (including under the Loan and Security Agreement (Main Street Priority Loan Facility), dated as of December 8, 2020, by and between Venus USA and CNB (the "**MSLP Loan Agreement**") and the Third Amended and Restated Loan Agreement, dated as of December 9, 2020, by and among the Company, Venus USA, Venus Canada, and CNB (the "**CNB Loan Agreement**")), in addition to any security interests and liens which secure such indebtedness owing to CNB.

Pursuant to the Madryn Security Agreement, upon the occurrence and during the continuance of an event of default under the New Notes, if the Company is unable to repay all outstanding amounts, the Holders may, subject to the terms of the CNB Subordination Agreements, foreclose on the collateral granted to it to collateralize the indebtedness, including the enforcement of the Madryn Security Agreement, which would significantly affect the Company's ability to operate its business. The security interests and liens granted to the Holders under the Madryn Security Agreement terminate upon the earlier of (i) an assignment of the New Notes (other than to an affiliate of the Holders) pursuant to the terms of the Exchange Agreement and (ii) the first date on which the outstanding principal amount of the New Notes is less than $10,000,000. Additionally, the Madryn Security Agreement contains various covenants that limit the Company's ability to engage in specified types of transactions. Subject to limited exceptions, these covenants limit the Company's ability, without the Holders' consent, to, among other things, incur, create or permit to exist additional indebtedness, or liens, and to make certain changes to its ownership structure. The Madryn Security Agreement also contains a covenant which requires that if the Company or any of its subsidiaries that has guaranteed the New Notes consummates a disposition of material assets the result of which is that less than 50% of the consolidated net tangible assets of such entities secure the New Notes then, within 90 days thereafter, the Company and its subsidiaries party to the Madryn Security Agreement must provide certain additional collateral so that more than 50% of the consolidated net tangible assets of the Company and its subsidiaries which have guaranteed the New Notes will be collateral securing the New Notes.

At any time prior to the maturity date, Holders may convert the New Notes at their option into shares of the Company's common stock at the then-applicable conversion rate. The initial conversion rate is 41.6666667 shares of common stock per $1,000 principal amount of Notes, which represents an initial conversion price of approximately $24 per share of common stock. The conversion rate is subject to customary adjustments upon the occurrence of certain events.

The New Notes are redeemable, in whole and not in part, at the Company's option at any time, at a redemption price equal to the principal amount of the New Notes to be redeemed, plus accrued and unpaid interest, if any, to, the redemption date, plus a redemption premium. The Company' redemption option is subject to satisfaction of the conditions set forth in the New Notes, including that a registration statement covering the resale of the shares of the Company's common stock issuable upon conversion of the New Notes is effective and available for use.

The Holders have certain rights to require a successor entity to assume the New Notes upon certain corporate events that constitute a "Fundamental Transaction" (as defined in the New Notes). The definition of Fundamental Transaction includes certain business combination transactions involving the Company. In the event of a "Change of Control" of the Company (as defined in the New Notes), the New Notes are redeemable at the option of the holder at par plus accrued and unpaid interest on the New Notes subject to redemption (without a premium). A Change of Control includes acquisitions of 50% or more of the voting equity of the Company (other than by certain existing stockholders).
The New Notes have customary provisions relating to the occurrence of "Events of Default" (as defined in the New Notes), which include the following: (i) the Company's failure to deliver the required number of shares of common stock issuable upon conversion of the New Notes within ten trading days after the applicable conversion date; (ii) the Company's failure to pay the holder any principal, interest or any other amount due under any other transaction agreement; (iii) certain defaults under MSLP Loan Agreement or the CNB Loan Agreement; (iv) certain events of bankruptcy, insolvency and reorganization involving any obligor, or any of the Company's subsidiaries; (v) the rendering of certain final judgments against the Company or any guarantor for the payment of more $500,000, where such judgment remains unpaid for a period of thirty (30) consecutive days; (vi) the Company's failure to comply with certain covenants in the New Notes; (vii) any representation or warranty of the Company in any transaction document is incorrect or misleading in any material respect when given; (viii) the failure of any obligor to comply with any covenants in the transaction documents which is not cured within 30 days; (ix) the failure of any material provision of the transaction document to be enforceable against the Company or its subsidiaries party thereto; and (x) the Company's common stock ceases to be quoted on the Nasdaq Capital Market.

If an Event of Default occurs, then, the Holders may, subject to the terms of the CNB Subordination Agreements, (i) declare the outstanding principal amount of the New Notes, all accrued and unpaid interest and all other amounts owing under the New Notes and other transaction documents entered into in connection therewith to be immediately become due and payable without any further action or notice by any person and (ii) exercise all rights and remedies available to it under the New Notes, the Madryn Security Agreement and any other document entered into in connection with the foregoing.

In the case of conversion of the New Notes on the maturity date, any redemption date or any date of any required payment upon any event of default, as applicable, on which the entire outstanding principal of Notes is to be repaid, redeemed or prepaid in full, the Company, at the option of the noteholder, may satisfy its obligation to pay cash by delivering a combination of cash and shares of common stock.

The New Notes are not assignable to a third party (other than to an affiliate of the Holders) without the prior written consent of the Company and subject to certain conditions set forth in the New Notes.

The New Notes constitute the Company's secured, subordinated obligations and are (i) equal in right of payment with the Company's existing and future senior unsecured indebtedness; (ii) senior in right of payment to the Company's existing and future indebtedness that is expressly subordinated to the New Notes; and (iii) subordinated to the Company's existing secured indebtedness in a manner consistent with the CNB Subordination Agreements.

The foregoing description of the New Notes does not purport to be complete and is qualified in its entirety by reference to the full text of the New Note in favor of Madryn and the New Note in favor of Cayman Master, copies of which are filed hereto as Exhibits 10.3 and 10.4, respectively.

The foregoing description of the New Subordination Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the New Subordination Agreement, a copy of which is filed hereto as Exhibits 10.5.

Loan Modification Agreement

On October 4, 2023, the Company, Venus USA, Venus Canada and Venus Israel entered into a Loan Modification Agreement with CNB (the "**MSLP Loan Modification**"), which modified certain terms of the MSLP Loan Agreement (as so modified by the MSLP Loan Modification, the "**MSLP Facility**").

The MSLP Loan Modification modified the MSLP Loan Agreement such that:

1. The principal payment in the amount of 15% of the outstanding principal balance of the loan originally due December 31, 2023 is deferred until maturity, provided, that, if certain specified events of default occur, the deferral will be negated;

2. The principal payment in the amount of 15% of the outstanding principal balance of the loan originally due December 31, 2024 is reduced to 7.5% with the remainder deferred until maturity, provided, that, if certain specified events of default occur, the deferral will be negated;

3. The interest rate of the loan is reset from one-month LIBOR plus three percent (3%) to one-month term Secured Overnight Financing Rate (SOFR) plus three and one-quarter percent (3.25%);

4. The Company has granted a security interest in substantially all of its assets to secure its existing guaranty of the MSLP Facility and the Holders have reaffirmed subordination of their existing debt and liens of the Company in accordance with the CNB Subordination Agreements;

5. Venus Canada has guaranteed the MSLP Facility and granted a security interest in substantially of its assets to secure such guaranty and the Holders have reaffirmed subordination of their existing debt and liens of Venus Canada in accordance with the CNB Subordination Agreements;

6. Venus Israel has granted a security interest in certain of its patents to secure the MSLP Facility and the Holders have agreed to subordinate their existing security interests in such patents in accordance with the CNB Subordination Agreements;

7. Venus USA has assigned certain of its subscription sales contracts to CNB having an aggregate face amount of not less than $12,000,000 (the "**Sales Contract Threshold**"). The assigned sales contracts must continue to satisfy certain specified eligibility criteria or Borrower must designate additional sales contracts for assignment such that the face amount of all assigned sales contracts meeting the eligibility criteria exceeds the Sales Contract Threshold at the end of each fiscal quarter. CNB has the right to increase the Sales Contract Threshold to address increases in the interest rate on the loan or if it reasonably believes that collections from the assigned sales contracts do not generate sufficient cash flow to satisfy monthly interest payment requirements. Venus USA will continue to collect and utilize payments under the assigned sales contracts until an event of default has occurred and CNB elects to exercise remedies with respect to such contracts.

8. Venus USA must maintain an interest reserve account with CNB having a balance of not less than $400,000 at all times (the "**Minimum Balance**"). CNB has the right to increase the Minimum Balance to address increases in the interest rate on the loan or if it reasonably believes that collections from the assigned sales contracts do not generate sufficient cash flow to satisfy monthly interest payment requirements.

9. As of October 24, 2023, Venus USA must have a deposit ledger balance with CNB of not less than $3,000,000. Thereafter, commencing with the month ending November 30. 2023, Borrower must maintain a minimum average daily deposit ledger balance (which may include deposit accounts of its affiliates to the extent maintained with CNB or subject to an account control agreement in favor of CNB) of at least $3,000,000 as of the end of each month. Venus USA has the ability to cure breaches of this covenant which occur on or prior to March 31, 2024 by raising additional capital within 14 days following the applicable test date.

10. Any voluntary termination of employment by Rajiv De Silva, Domenic Della Penna or Hemanth Varghese will result in an event of default unless proper notice is provided to CNB and a replacement acceptable to CNB is hired within 90 days.

11. An event of default will occur if at any time the Company fails to be listed with the Nasdaq Capital Market.

12. Venus USA must ensure that its operating loss for certain specified periods does not exceed certain specified amounts.

13. No later than January 8, 2024, Venus USA must pay to CNB an amendment fee of $65,000.

The foregoing description of the MSLP Loan Modification does not purport to be complete and is qualified in its entirety by reference to the full text of the MSLP Loan Modification, a copy of which is filed hereto as Exhibit 10.6.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in Items 1.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

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

Certificate of Designations of Series X Preferred Stock

On October 4, 2023, the Company filed a Certificate of Designations with respect to the Series X Preferred Stock (the "**Certificate of Designations**") with the Secretary of State of the State of Delaware, thereby creating the Series X Preferred Stock. The Certificate of Designations authorizes the issuance of up to 400,000 shares of Series X Preferred Stock.

The Series X Preferred Stock is convertible into shares of Common Stock on a one-for-ten basis (with ten being equal to the Multiplication Factor used to determine the Issuance Price), in whole or in part, at the option of the holder at any time upon delivery of a valid conversion notice of the Company; provided, however, that the Series X Preferred Stock is subject to limitations on convertibility to the extent necessary to comply with the rules and regulations of the Nasdaq Stock Market LLC.

Each share of Series X Preferred Stock carries a liquidation preference, senior to the Common Stock, the Company's senior voting convertible preferred stock, par value $0.0001 per share (the "**Senior Preferred Stock**"), and the Company's junior voting convertible preferred stock, par value $0.0001 per share (the "**Junior Preferred Stock**"), in an amount equal to the Issuance Price, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or similar recapitalization with respect to the Common Stock.

From the date of issuance until December 31, 2026, each share of Series X Preferred Stock accrues a dividend at a rate of 12.5% per annum. Such dividend is payable on a quarterly basis in cash or additional shares of Series X Preferred Stock, at the Company's election. In addition, each share of Series X Preferred Stock is entitled to participate in dividends and other non-liquidating distributions, if, as and when declared by the Board of Directors of the Company, on a pari passu basis with the Common Stock, Senior Preferred Stock and Junior Preferred Stock.

The Series X Preferred Stock votes with the Common Stock on an as-converted basis; provided, however, that the Series X Preferred Stock is subject to limitations on voting power to the extent necessary to comply with the rules and regulations of the Nasdaq Stock Market LLC. In addition, so long as any shares of Series X Preferred Stock are outstanding, the Company will not, without the affirmative vote of the holders of a majority of the then-outstanding shares of the Series X Preferred Stock, (a) increase the authorized number of shares of Series X Preferred Stock; (b) enter any agreement, contract or understanding or otherwise incur any obligation which by its terms would violate or be in conflict in any material respect with, or significantly and adversely affect, the powers, rights or preferences of the Series X Preferred Stock; (c) amend the certificate of incorporation or bylaws of the Company, if such amendment would significantly and adversely alter, change or affect the powers, preferences or rights of the holders; (d) redeem, repurchase or declare or pay any dividend or other distribution on the Company's capital stock, subject to certain customary exceptions; or (e) amend or waive any provision of the Certificate of Designations applicable to the holders or the Series X Preferred Stock.

The foregoing description of the Certificate of Designations does not purport to be complete and is qualified in its entirety by reference to the full text of the Certificate of Designations, a copy of which is filed hereto as Exhibit 3.1.

Item 7.01. Regulation FD Disclosure.

On October 5, 2023, the Company issued a press release regarding the Exchange, as well as preliminary third quarter 2023 revenue and updated fiscal year 2023 revenue guidance. A copy of the press release is furnished hereto as Exhibit 99.1 and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibit 99.1 incorporated by reference herein, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or otherwise subject to the liabilities of that Section, nor incorporated by reference in any filing under the Securities or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Cautionary Statement Regarding Forward-Looking Statements

This Current Report on Form 8-K contains "forward-looking" statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. Any statements contained herein that are not of historical facts may be deemed to be forward-looking statements. In some cases, readers can identify these statements by words such as such as "anticipates," "believes," "plans," "expects," "projects," "future," "intends," "may," "should," "could," "estimates," "predicts," "potential," "continue," "guidance," and other similar expressions that are predictions of or indicate future events and future trends. These forward-looking statements include, but are not limited to, the Company's ability to manage expenses, the Company's ability to comply with covenants under the MSLP Facility, interest rate fluctuations and general market conditions, and potential conversions of the New Notes or Series X Preferred Stock,. These forward-looking statements are based on current expectations, estimates, forecasts, and projections about the Company's business and the industry in which the Company operates and management's beliefs and assumptions and are not guarantees of future performance or developments and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond the Company's control. As a result, any or all of the Company's forward-looking statements in this Current Report on Form 8-K may turn out to be inaccurate. Factors that could materially affect the Company's business operations and financial performance and condition include, but are not limited to, general economic conditions, including the global economic impact of COVID-19, and involve risks and uncertainties that may cause results to differ materially from those set forth in the statements and those risks and uncertainties described under Part II Item 1A—"Risk Factors" in the Company's Quarterly Reports on Form 10-Q and Part I Item 1A —"Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022. Readers are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on the forward-looking statements. The forward-looking statements are based on information available to the Company as of the date of this Current Report on Form 8-K. Unless required by law, the Company does not intend to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

Item 9.01. Financial Statements and Exhibits.

Exhibit No.	Description
3.1	Certificate of Designations of Series X Convertible Preferred Stock
10.1	Exchange Agreement, dated October 4, 2023, by and among Venus Concept Inc., Madryn Health Partners, LP and Madryn Health Partners (Cayman Master), LP
10.2	Registration Rights Agreement, dated October 4, 2023, by and among Venus Concept Inc., Madryn Health Partners, LP and Madryn Health Partners (Cayman Master), LP
10.3	Secured Subordinated Convertible Note, dated October 4, 2023, by Venus Concept Inc. in favor of Madryn Health Partners, LP
10.4	Secured Subordinated Convertible Note, dated October 4, 2023, by Venus Concept Inc. in favor of and Madryn Health Partners (Cayman Master), LP
10.5	Subordination of Debt Agreement, dated October 4, 2023, by and between Venus Concept Ltd., Madryn Health Partners, LP, Madryn Health Partners (Cayman Master), LP and City National Bank of Florida
10.6	Loan Modification Agreement, dated October 4, 2023, by and between Venus Concept Inc. and City National Bank of Florida
99.1	Press release, dated October 5, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

VENUS CONCEPT INC.

Date: October 5, 2023

By: /s/ Domenic Della Penna
Domenic Della Penna
Chief Financial Officer

Exhibit 3.1

CERTIFICATE OF DESIGNATIONS OF
SERIES X CONVERTIBLE PREFERRED STOCK OF
VENUS CONCEPT INC.

Venus Concept Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**Corporation**"), hereby certifies that the following resolution was adopted on October 4, 2023 by the Board of Directors of the Corporation, as required by Section 151 of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Corporation (the "**Board of Directors**" or the "**Board**") in accordance with the Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of preferred stock, par value $0.001 per share, of the Corporation designated as Series X Convertible Preferred Stock (the "**Series X Preferred**"), and hereby states the designation and number of shares, and fixes the relative rights, preferences and limitations thereof as follows:

ARTICLE I
DEFINITIONS

As used in this Certificate of Designations, the following terms shall have the meanings set forth below:

"**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.

"**Business Day**" means any day other than a Saturday or Sunday, a legal holiday or any other day on which the Securities and Exchange Commission remains closed.

"**Capital Stock**" means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by the Corporation or any of its subsidiaries, but excluding any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

"**Common Stock**" means the common stock of the Corporation, par value $0.0001 per share, or any other capital stock of the Corporation into which such common stock shall be reclassified or changed.

"**Conversion Agent**" means the Transfer Agent acting in its capacity as conversion agent for the shares of the Series X Preferred, and its successors and assigns.

"**Conversion Date**" means, with respect to any share of Series X Preferred, the date on which such share of Series X Preferred has been converted hereunder.

"**Conversion Notice**" means a notice substantially in the form of the "Conversion Notice" set forth in Exhibit A.

"**Conversion Share**" means any share of Common Stock issued or issuable upon conversion of any Series X Preferred.

"**Converted Stock Equivalent Amount**" means, for each share of Series X Preferred, ten (10) shares of Common Stock; provided, however, that if, after issuance of any shares of Series X Preferred, the Corporation subdivides or splits its outstanding Common Stock, including by way of a dividend or distribution of Common Stock, or combines its outstanding Common Stock into a lesser number of shares, the "Converted Stock Equivalent Amount" with respect to such issued and outstanding shares of Series X Preferred shall be adjusted as if such action applied to the shares of Common Stock represented by the Converted Stock Equivalent Amount.

"**Exchange Agreement**" means that certain Exchange Agreement, dated as of October 4, 2023, by and between the Corporation and the parties identified on the signature pages thereto.

"**Holder**" means the Person in whose name shares of the Series X Preferred are registered, which may be treated by the Corporation, Transfer Agent, paying agent and Conversion Agent as the absolute owner of such shares of Series X Preferred for the purpose of making payment and settling the related conversions and for all other purposes.

"**Issuance Date**" means October 4, 2023, being the date on which the Holders initially acquired shares of Series X Preferred under the Exchange Agreement.

"**Issuance Price**" means $20.10, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock.

"**Junior Preferred**" means the voting convertible preferred stock of the Corporation, par value $0.001 per share.

"**Junior Preferred Certificate of Designations**" means the Certificate of Designations with respect to the Junior Preferred, dated November 17, 2022, as amended from time to time.

"**Liquidation Event**" means, whether in a single transaction or series of related transactions, any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation or its subsidiaries, the assets of which constitute all or substantially all of the assets of the business of the Corporation and its subsidiaries, taken as a whole.

"**Liquidation Preference**" means, for any share of Series X Preferred at any time, an amount equal to the Issuance Price; provided, however, that to the extent that the Corporation does not declare and pay a Series X Dividend on a Series X Dividend Payment Date as required hereunder, an amount equal to the Net Series X Dividend shall be added to the Liquidation Preference of such share of Series X Preferred as of such Series X Dividend Payment Date.

"**Organic Change**" means any recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Corporation's assets, exchange or tender offer by the Corporation or any of its subsidiaries, or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation and whether automatically or at their election) stock, securities or assets with respect to or in exchange for Common Stock; provided, however, that an Organic Change shall not include any transaction that constitutes a Change of Control.

"**Person**" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company or trust.

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

"**Senior Preferred**" means the senior convertible preferred stock of the Corporation, par value $0.001 per share.

"**Senior Preferred Certificate of Designations**" means the Certificate of Designations with respect to the Senior Preferred, dated May 15, 2023, as amended from time to time.

"**Senior Stock**" means any class or series of capital stock of the Corporation the terms of which expressly provide that such class or series will rank senior to the Series X Preferred as to dividend rights or as to rights on liquidation, dissolution or winding up of the Corporation (in each case, without regard to whether dividends accrue cumulatively or non-cumulatively).

"**Series X Dividend Payment Date**" means the final day of March, June, September and December of each year, commencing on December 31, 2023; provided, however, that if any such Series X Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Series X Dividend Payment Date shall instead be (and any dividend payable on Series X Preferred on such Series X Dividend Payment Date shall instead be payable on) the immediately succeeding Business Day.

"**Series X Dividend Period**" means the period commencing on and including a Series X Dividend Payment Date and ending on and including the day immediately preceding the next Series X Dividend Payment Date; provided, however, that the initial Series X Dividend Period shall commence on and include the Issuance Date and shall end on and include the day immediately preceding the first Series X Dividend Payment Date.

"**Series X Dividend Rate**" means 12.5% per annum.

"**Trading Market**" means whichever of the NYSE American, New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Capital Market, Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Stock is listed or quoted for trading on the date in question.

"**Transfer Agent**" means the Corporation acting as transfer agent, registrar, paying agent and Conversion Agent for the Series X Preferred and its successors and assigns.

"**Transfer**" means any sale, transfer, assignment or other disposition (including by merger, reorganization, operation of law or otherwise).

"**Unpaid Liquidation Preference**" means, for any share of Series X Preferred at any time, an amount equal to the excess, if any, of (a) the Liquidation Preference with respect to such share of Series X Preferred as of such time, over (b) the aggregate amount of all distributions made in respect of such share of Series X Preferred pursuant to Article II, Section 3(a)(i) as of such time.

"**Voting Securities**" means capital stock of the Corporation that is then entitled to vote generally in the election of directors of the Corporation.

ARTICLE II
SERIES X PREFERRED

1. **Designation and Number of Shares**. There shall be a series of preferred stock designated "Series X Convertible Preferred Stock." The number of authorized shares of Series X Preferred shall be 400,000. The Series X Preferred will initially be issued in book entry form.

2. **Dividends**.

(a) Series X Dividend.

(i) In addition to participation in dividends as set forth in Article II, Section 2(b) below, each Holder shall be entitled to receive, on each share of Series X Preferred and with respect to each Series X Dividend Period, an amount (such amount, the "**Net Series X Dividend**") equal to the Series X Dividend Rate multiplied by the Liquidation Preference (the "**Series X Dividend**"). If and to the extent that the Corporation does not pay the entire Net Series X Dividend on each share of Series X Preferred on the applicable Series X Dividend Payment Date in accordance with Article II, Section 2(a)(ii) below, the unpaid portion of the Net Series X Dividend shall be added to the Liquidation Preference in accordance with the definition thereof. Amounts payable at the Series X Dividend Rate shall begin to accrue on a daily basis, computed on the basis of a 360-day year consisting of twelve 30-day months, and shall be cumulative from and including the Issuance Date until the Expiration Date (as defined below), without compounding. For illustration, assuming no increase in the Liquidation Preference in accordance with the definition thereof, $0.6281 in Series X Dividends shall accrue on each outstanding share of the Series X Preferred during each Series X Dividend Period.

(ii) The Series X Dividend shall be payable, at the Corporation's sole discretion, in additional shares of Series X Preferred (such shares, the "**PIK Dividend**") or in cash; provided, however, that the Corporation shall not pay the Series X Dividend in cash to the extent prohibited by applicable law or agreements governing the Corporation's debts or other liabilities. If the Corporation elects to pay a PIK Dividend, the number of shares of Series X Preferred to be issued in payment of such PIK Dividend with respect to each outstanding share of Series X Preferred shall be determined by dividing (i) the Net Series X Dividend by (2) the Liquidation Preference (including any amounts added to the Liquidation Preference in accordance with the definition thereof); provided, however, that no fractional shares shall be issued upon the payment of the PIK Dividend, and rather the number of shares of Series X Preferred comprising the PIK Dividend shall be rounded to the nearest whole share of Series X Preferred. If the Corporation elects to pay the Series X Dividend in cash, such payments will be made by check (payable in the name of each Holder) or by wire transfer of immediately available funds (in accordance with instructions previously delivered by each Holder).

(iii) Notwithstanding any provision of this Certificate of Designations to the contrary, the Series X Dividend shall cease to accrue on December 31, 2026 (the "**Expiration Date**"), following which the Corporation shall have no further obligation to pay the Series X Dividend; provided, however, that the Corporation shall remain liable to with respect to any other portion of the Net Series X Dividend to the extent accrued and unpaid prior to the Expiration Date.

(b) Participation in Other Dividends. In addition to Series X Dividends as set forth in Article II, Section 2(a) above, each Holder shall be entitled to receive, with respect to the shares of Series X Preferred held by such Holder, if, as and when declared by the Board of Directors or any duly authorized committee thereof, but only out of assets legally available therefor, dividends or distributions of the same amount, in an identical form of consideration and at the same time, as those dividends or distributions that would have been payable on the number of whole shares of Common Stock equal to the product of the Converted Stock Equivalent Amount and the number of such shares of Series X Preferred (rounding any fractional shares resulting from such computation to the nearest whole number) such that no holder of Common Stock shall receive a dividend or distribution unless equivalent dividends or distributions (as described above) are also made to each share of Series X Preferred, taking into account any adjustment to the Converted Stock Equivalent Amount as provided herein; provided, however, that the foregoing shall not apply to any dividend or distribution payable in shares of Common Stock that results in an adjustment in the Converted Stock Equivalent Amount, as set forth in Article I in the definition of "Converted Stock Equivalent Amount." Notwithstanding anything to the contrary set forth in this Article II, Section 2(b), if any dividend or distribution is payable in rights or warrants to subscribe for Common Stock or purchase Common Stock pursuant to a conversion feature in a debt or equity security, the corresponding dividend or distribution payable on the Series X Preferred shall consist of an identical right or warrant, except that such right or warrant shall be a right or warrant to subscribe for a number of shares of Series X Preferred equivalent to the number of shares of Common Stock that would otherwise be subject to such right or warrant (i.e., taking into account the Converted Stock Equivalent Amount). Each declared dividend or distribution under this Article II, Section 2(b) shall be payable to the holders of record of Series X Preferred at the same time as dividends or distributions are payable to the holders of record of Common Stock.

(c) Priority of Dividends.

(iv) All dividends payable on the Series X Preferred, including the Series X Dividend, shall rank junior with regard to dividends on the Senior Stock (if any).

(v) All Series X Dividends payable on the Series X Preferred shall rank senior with regard to dividends on the Common Stock, the Junior Preferred and the Senior Preferred (i.e., no dividends shall be paid on the Common Stock, the Junior Preferred or the Senior Preferred unless the Series X Dividends have been paid in full).

(vi) All dividends payable on the Series X Preferred other than the Series X Dividends shall have the same priority with regard to dividends on the Common Stock, the Junior Preferred and the Senior Preferred (i.e., all such dividends shall be declared and paid in accordance with Article II, Section 2(b) above).

3. **Liquidation Rights**.

(a) Liquidation. In the event of a Liquidation Event, after payment or provision for payment of the debts and other liabilities of the Corporation and after any payment of the prior preferences and other rights of any Senior Stock shall have been made or irrevocably set apart for payment, the assets of the Corporation legally remaining available for distribution to the Corporation's shareholders shall be distributed in accordance with the following priority:

(vii) first, to the Holders, in proportion to the aggregate Unpaid Liquidation Preference in respect of all shares of Series X Preferred held by the Holders, until the aggregate Unpaid Liquidation Preference in respect of all shares of Series X Preferred held by the Holders has been reduced to zero;

(viii) second, to the holders of Senior Preferred, in proportion to the aggregate Unpaid Liquidation Preference (as defined in the Senior Preferred Certificate of Designation) in respect of all shares of Senior Preferred held by such holders, until the aggregate Unpaid Liquidation Preference (as defined in the Senior Preferred Certificate of Designation) in respect of all shares of Senior Preferred held by such holders has been reduced to zero;

(ix) third, to the holders of Junior Preferred, in proportion to the aggregate Unpaid Liquidation Preference (as defined in the Junior Preferred Certificate of Designation) in respect of all shares of Junior Preferred held by such holders, until the aggregate Unpaid Liquidation Preference (as defined in the Junior Preferred Certificate of Designation) in respect of all shares of Junior Preferred held by such holders has been reduced to zero; and

(x) thereafter, pro rata among (A) the holders of Common Stock, in proportion to their holdings of Common Stock, and (B) the holders of any other securities of the Corporation having the right to participate in such distributions upon the occurrence of a Liquidation Event, in accordance with the respective terms thereof.

(b) Change of Control. In the event of (i) a merger or consolidation of the Corporation with any other corporation or other entity that results in the inability of the shareholders of the Corporation immediately preceding such merger or consolidation to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company, including any such merger or consolidation in which the Holders receive cash, securities or other property for their shares, or (ii) the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation to a third party purchaser ((i) or (ii), a "**Change of Control**"), any cash, securities or other property payable to the shareholders of the Corporation in or as a consequence of such Change of Control (including without limitation from release of escrow, earn outs, deferred purchase price or other similar payments following the consummation of the Change of Control) will be apportioned and distributed in accordance with Article II, Section 3(a) above until such time as each preference stated in Article II, Section 3(a) above has been paid in full in the order of priority stated in Article II, Section 3(a) above. For such purposes, any non-cash consideration will be valued at the purchase price that a willing buyer having all relevant knowledge would pay a willing seller for such asset in an arm's length transaction. The Corporation shall not have the power to effect a Change of Control unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the Holders in such Change of Control shall be paid in accordance with this Article II, Section 3(b).

4. **Conversion**.

(a) Conversion. Subject to Section 4(e) below, each Holder may, at any time and in its sole discretion, elect that all, or any whole number of shares that is less than all, of their shares of Series X Preferred be converted, in which case each share of Series X Preferred subject to such conversion shall be converted into a number of Conversion Shares equal to the Converted Stock Equivalent Amount; provided, however, that cash will be paid in lieu of fractional shares pursuant to Article III, Section 7. Effective immediately prior to the close of business on any applicable Conversion Date, such Series X Preferred shall not be deemed outstanding for any purpose, and such converting Holders shall have no rights with respect to such shares of Series X Preferred, rather only the right to receive the applicable Conversion Shares. Notwithstanding the foregoing, a Holder delivering a Conversion Notice hereunder in connection with an Organic Change may specify in such Conversion Notice that its election to effect such conversion is contingent upon the consummation of such Organic Change, in which case such conversion shall not occur until such time as is immediately prior to (and subject to) the consummation of such Organic Change, and if such Organic Change is not consummated, such Conversion Notice shall be deemed to be withdrawn.

(b) Requirements for Conversion. To convert any share of Series X Preferred hereunder, the Holder of such share must (i) complete, sign and deliver to the Corporation a Conversion Notice; (ii) deliver physical certificate(s), if any, representing such Series X Preferred to the Corporation (at which time such conversion will become irrevocable); (iii) furnish any endorsements and transfer documents that the Corporation may require; and (iv) if applicable, pay any documentary or other taxes.

(c) Conversion Procedures. Upon the physical surrender of the certificate representing a share of Series X Preferred converted hereunder, if any, to the Corporation, the Corporation will, or will cause the Transfer Agent to, issue and deliver a new certificate, registered as the converting Holder may request, subject to applicable securities laws, representing the aggregate number of Conversion Shares issued upon conversion of such shares of Series X Preferred (provided, however, that, if the transfer agent for the Conversion Shares is participating in The Depository Trust Corporation ("**DTC**") Fast Automated Securities Transfer Program and the transferee is eligible to receive shares through DTC, such transfer agent shall instead credit such number of full Conversion Shares to such transferee's balance account with DTC through its Deposit/Withdrawal at Custodian system). Promptly following the applicable Conversion Date, but not later than the earlier of (i) two (2) trading days and (ii) the number of trading days comprising the Standard Settlement Period (as defined below) after the Conversion Date (the "**Share Delivery Date**"), the Corporation shall deliver, or cause to be delivered, to the Holders the number of Conversion Shares to be issued upon the conversion of the Series X Preferred. When delivering the Conversion Shares as provided herein, the Corporation shall use commercially reasonable efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Article II, Section 4(c) through the Corporation's transfer agent, unless otherwise agreed to with the Holders. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of trading days, on the Trading Market as of the Conversion Date.

(d) Certificates for Remaining Series X Preferred. In the event that less than all of the shares of Series X Preferred are converted hereunder, the Corporation shall promptly issue a new certificate (if the Series X Preferred are then certificated) registered in the name of the Holder representing such remaining shares of Series X Preferred not subject to such conversion.

(e) Exchange Cap. Notwithstanding any provision of this Certificate of Designations to the contrary, the Corporation shall not issue any shares of Common Stock upon conversion of any shares of Series X Preferred or otherwise pursuant to the terms of this Certificate of Designations if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Corporation may issue upon conversion of the Series X Preferred without breaching the Corporation's obligations as set forth in Nasdaq Rule 5635(b) (or any successor provision thereto) (the maximum number of shares of Common Stock which may be issued without violating such rules and regulations, the "**Exchange Cap**"); provided, however, that the foregoing limitation shall not apply in the event that the Corporation (i) obtains the approval of its shareholders as required by the applicable rules and regulations of the Trading Market for issuances of shares of Common Stock in excess of such amount or (ii) obtains a written opinion from outside counsel to the Corporation that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders (as defined in Article II, Section 5(b)). Until such approval or such written opinion is obtained, no Holder shall be issued in the aggregate, upon conversion of any shares of Series X Preferred, shares of Common Stock in an amount greater than the product of (A) the Exchange Cap, multiplied by (B) the quotient of (1) the aggregate number of shares of Series X Preferred initially acquired by such Holder under the Exchange Agreement, divided by (2) the aggregate number of shares of Series X Preferred initially acquired by all Holders under the Exchange Agreement (with respect to each Holder, the "**Exchange Cap Allocation**"). In the event that any Holder shall sell or otherwise Transfer any of such Holder's shares of Series X Preferred, the Transferee shall be allocated a pro rata portion of such Holder's Exchange Cap Allocation with respect to such portion of such shares of Series X Preferred so Transferred, and the restrictions of the prior sentence shall apply to such Transferee with respect to the portion of the Exchange Cap Allocation so allocated to such Transferee. Upon conversion in full of a Holder's shares of Series X Preferred, the difference (if any) between such Holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such Holder upon such Holder's conversion in full of such shares of Series X Preferred shall be allocated, to the respective Exchange Cap Allocations of the remaining Holders on a pro rata basis in proportion to the shares of Common Stock underlying the shares of Series X Preferred then held by each such Holder.

(f) Legend. Every certificate representing shares of Series X Preferred shall bear a legend on the face thereof providing as follows:

"The shares of Series X Preferred Stock represented by this certificate are subject to provisions with respect to, including requirements for, conversion, sale, assignment or other transfer as set forth in Article II, Section 4 of the Certificate of Designations of Senior Convertible Preferred Stock."

(g) No Responsibility of the Corporation. In connection with any conversion or Transfer of shares of Series X Preferred pursuant to or as permitted hereunder, (i) the Corporation shall be under no obligation to make any investigation of facts, and (ii) except as otherwise required by law, neither the Corporation nor any director, officer, employee or agent of the Corporation shall be liable in any manner for any action taken or omitted in good faith in connection with the registration of the issuance of Conversion Shares in connection with any such conversion or the registration of any such Transfer.

5. **Voting Rights**.

(a) General. Except as otherwise required by applicable law, each Holder shall be entitled to vote on all matters submitted to holders of Common Stock and shall be entitled to a number of votes equal to the Converted Stock Equivalent Amount for each share of Series X Preferred held as of the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, as of the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise required by applicable law or as set forth in Article II, Section 5(b) below, the Holders shall vote together with the holders of Common Stock on all matters and shall not vote as a separate class.

(b) Approval Rights. In addition to the voting rights set forth in Article II, Section 5(a) above and any approval rights that may be required by applicable law, the consent of the Holders representing a majority of the number of shares of Common Stock into which the outstanding shares of Series X Preferred are convertible (assuming for this purpose that each share of Series X Preferred is convertible into the Converted Stock Equivalent Amount) (the "**Required Holders**"), given in person or by proxy, either in writing or by vote, at a special or annual meeting, voting or consenting as a separate class, shall be necessary to: (i) increase the authorized number of shares of Series X Preferred; (ii) enter any agreement, contract or understanding or otherwise incur any obligation which by its terms would violate or be in conflict in any material respect with, or significantly and adversely affect, the powers, rights or preferences of the Series X Preferred designated hereunder; (iii) amend the Certificate of Incorporation or By-laws of the Corporation, if such amendment would significantly and adversely alter, change or affect the powers, preferences or rights of the Holders (for the avoidance of doubt, including any amendment to the Certificate of Incorporation to create any class or series of Senior Stock); (iv) cause the Corporation or any of its subsidiaries to, directly or indirectly, redeem, repurchase or declare or pay any dividend or other distribution (whether in cash, stock, property or otherwise) on any Capital Stock (provided, however, that no consent of the Required Holders shall be required pursuant to this Article II, Section 5(b)(iv) with respect to any redemption, repurchase, payment or other action that the Corporation is required to undertake pursuant to any agreement or instrument in effect on the date hereof and filed by the Corporation with the Securities and Exchange Commission (for the avoidance of doubt, disregarding any amendments or modifications made to any such agreements or instruments after the date hereof)); or (v) amend or waive any provision of this Certificate of Designations applicable to the Holders or the Series X Preferred.

(c) Action by Written Consent. Any action, including any vote required or permitted to be taken at any annual or special meeting of shareholders of the Corporation, that requires a separate vote of the Holders voting as a single class may be taken by such Holders without a meeting, without prior notice and without a vote, if a consent or consents in writing or electronic transmission, setting forth the action so taken, shall be given by such Holders 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 of Series X Preferred entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to the Corporate Secretary of the Corporation at its principal executive office.

(d) Voting Cap. Notwithstanding any provision of this Certificate of Designations to the contrary, in no event shall the shares of Series X Preferred be entitled to vote, in the aggregate, in excess of the voting power of the Corporation permitted under the rules and regulations of the Trading Market (the "**Voting Cap**"); provided, however, that the foregoing limitation shall not apply in the event that the Corporation (i) obtains the approval of its shareholders as required by the applicable rules and regulations of the Trading Market for voting power in excess of the Voting Cap or (ii) obtains a written opinion from outside counsel to the Corporation that such approval is not required, which opinion shall be reasonably satisfactory to the Required Holders. If the number of votes entitled to be cast by all shares of Series X Preferred would otherwise exceed the Voting Cap, the number of votes that each share of Series X Preferred is entitled to cast shall be reduced on a pro rata basis such that the aggregate number of votes entitled to be cast by all shares of Series X Preferred is equal to the Voting Cap.

6. **Subdivision; Stock Splits; Combinations**. The Corporation shall not at any time subdivide (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Series X Preferred into a greater number of shares, or combine (by combination, reverse stock split or otherwise) its outstanding shares of Series X Preferred into a smaller number of shares.

7. **Organic Change**.

(a) Notwithstanding any provision of this Certificate of Designations to the Contrary, if there occurs an Organic Change, as a result of which the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing ("**Reference Property**" and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Organic Change (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**")), then, from and after the effective time of such Organic Change, each share of Series X Preferred will remain outstanding and, thereafter, (i) the consideration due upon conversion of any Series X Preferred will be determined in the same manner as if each reference to any number of shares of Common Stock in this Certificate of Designations, including in any related definitions, were instead a reference to the same number of Reference Property Units, and (ii) if necessary, any other provisions of this Certificate of Designations shall be equitably adjusted by the Board acting in good faith in order to preserve, as nearly the same as practicable, the economic interests of the Holders under this Certificate of Designations. On or before any such Organic Change, the Corporation (and, if applicable, any third party that is party to such Organic Change) will execute supplemental instruments, if any, as the Board reasonably determines are necessary or desirable to give effect of this Article II, Section 7.

(b) In the event that holders of Common Stock have the option to elect the form of consideration to be received in an Organic Change or Change of Control, Holders shall have the same election privileges as the holders of Common Stock.

ARTICLE III
MISCELLANEOUS

1. **Unissued or Reacquired Shares**. Shares of Series X Preferred that have been issued and converted, redeemed or otherwise purchased or acquired by the Corporation shall be retired upon their acquisition, shall not be reissued as shares of Series X Preferred, and, upon the taking of any action required by law, shall be restored to the status of authorized but unissued shares of preferred stock of the Corporation without designation as to series.

2. **No Sinking Fund**. Shares of Series X Preferred are not subject to the operation of a sinking fund.

3. **Reservation of Common Stock**.

(a) Sufficient Shares. The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock or shares acquired by the Corporation, solely for issuance upon the conversion of shares of Series X Preferred as provided in this Certificate of Designations to holders of such Series X Preferred, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series X Preferred then outstanding.

(b) Use of Acquired Shares. Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Series X Preferred, as provided herein, shares of Common Stock acquired by the Corporation and held as treasury shares (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such acquired shares are free and clear of all liens, charges, security interests or encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(c) Free and Clear Delivery. All shares of Common Stock delivered upon conversion of the Series X Preferred, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens, claims, security interests and other encumbrances (other than liens, charges, security interests and other encumbrances created by the Holders).

(d) Compliance with Law. Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series X Preferred, the Corporation shall use its reasonable best efforts to comply with any federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(e) Listing. The Corporation hereby covenants and agrees that, if at any time the Common Stock shall be traded on the Nasdaq Global Market, Nasdaq Capital Market or any other national securities exchange, the Corporation will, if permitted by the rules of such exchange, list and keep listed, so long as the Common Stock shall be so listed on such exchange, all the Common Stock issuable upon conversion of the Series X Preferred; provided, however, that if the rules of such exchange require the Corporation to defer the listing of such Common Stock until the first conversion of Series X Preferred into Common Stock in accordance with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Series X Preferred in accordance with the requirements of such exchange at such time.

4. **Transfer Agent, Conversion Agent and Paying Agent**. The duly appointed Transfer Agent, Conversion Agent and paying agent for the Series X Preferred shall be the Corporation. The Corporation may appoint a successor transfer agent that shall accept such appointment prior to the effectiveness of such removal. Upon any such appointment, the Corporation shall send notice thereof to the Holders.

5. **Mutilated, Destroyed, Stolen and Lost Certificates**. If physical certificates are issued, the Corporation shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Transfer Agent. The Corporation shall replace any certificate that becomes destroyed, stolen or lost, at the Holder's expense, upon delivery to the Corporation and the Transfer Agent of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity and bond that may be required by the Transfer Agent or the Corporation.

6. **No Closing of Books; Cooperation**. The Corporation shall not close its books against the transfer of Series X Preferred or of Common Stock issued or issuable upon conversion of Series X Preferred in any manner which interferes with the timely conversion of Series X Preferred. The Corporation shall assist and cooperate with any Holder required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of Series X Preferred hereunder (including, without limitation, making any governmental filings required to be made by the Corporation).

7. **Cash In Lieu of Fractional Interests**. If any fractional interest in a share of capital stock would, except for the provisions of this Article III, Section 7, be delivered upon any conversion of the Series X Preferred, the Corporation, in lieu of delivering the fractional share therefor, shall pay an amount to the holder thereof equal to the market value of such fractional interest as of the date of conversion.

8. **Taxes**.

(a) Transfer Taxes. The Corporation shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Series X Preferred or shares of Common Stock or other securities issued on account of Series X Preferred pursuant hereto or certificates representing such shares or securities; provided, however, that the Corporation shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series X Preferred, shares of Common Stock or other securities in a name other than that in which the shares of Series X Preferred with respect to which such shares or other securities are issued or delivered were registered, or in respect of any payment to any Person other than a payment to the registered holder thereof, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been, or will be, paid or is not payable.

(b) Withholding. All payments and distributions (or deemed distributions) on the shares of Series X Preferred (and on the shares of Common Stock received upon their conversion) shall be subject to withholding and backup withholding of tax to the extent required by law, subject to applicable exemptions, and amounts withheld, if any, shall be treated as received by the Holders.

9. **Notices**. All notices referred to in this Certificate of Designations shall be in writing, and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given: (a) upon receipt, when delivered personally; (b) one Business Day after deposit with an overnight courier service; or (c) three Business Days after the mailing thereof if sent by registered or certified mail (unless first class mail shall be specifically permitted for such notice under the terms of this Certificate of Designations) with postage prepaid, in each case addressed: (i) if to the Corporation, to its office at 235 Yorkland Blvd., Suite 900, Toronto, Ontario, Canada, M2J 4Y8 (Attention: General Counsel and Corporate Secretary), or (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Corporation (which may include the records of the Transfer Agent) or (iii) to such other address as the Corporation or any such Holder, as the case may be, shall have designated by notice similarly given.

[no further text on this page]

IN WITNESS WHEREOF, Venus Concept Inc. has caused this Certificate of Designations to be executed by its duly authorized officer on and as of this 4th day of October, 2023.

VENUS CONCEPT INC.

By: /s/ Rajiv De Silva
Name: Rajiv De Silva
Title: Chief Executive Officer

[Certificate of Designations of Series X Convertible Preferred Stock of Venus Concept Inc.]

Exhibit A

CONVERSION NOTICE

Venus Concept Inc.
Series X Convertible Preferred Stock

Subject to the terms of the Certificate of Designations, by executing and delivering this Conversion Notice, the undersigned Holder of the Series X Convertible Preferred Stock identified below directs the Corporation to convert (check one):

☐ all of the shares of Series X Convertible Preferred Stock
☐ *_____shares of Series X Convertible Preferred Stock

identified by CUSIP No. and Certificate No. (if applicable).

Date: _____

_____
(Legal Name of Holder)

By: _____
Name:
Title:

* Must be a whole number.

Exhibit 10.1

EXCHANGE AGREEMENT

This Exchange Agreement (this "**Agreement**"), dated as of October 4, 2023, is entered into by and among Venus Concept Inc., a Delaware corporation (the "**Company**"), Madryn Health Partners, LP ("**Madryn**") and Madryn Health Partners (Cayman Master), LP ("**Cayman Master**," and together with Madryn, the "**Holders**"). The Company and the Holders are referred to collectively as the "**Parties**."

WHEREAS, pursuant to that certain Securities Exchange Agreement (the "**Existing SEA**"), dated as of December 8, 2020, the Company issued:

- to Madryn a secured subordinated convertible note in the aggregate principal amount of $9,877,190.94 (which has a current balance, including accrued interest, of $10,282,946.92) (the "**Madryn Note**"); and

- to Cayman Master a secured subordinated convertible note in the aggregate principal amount of $ 16,817,919.64 (which has a current balance, including accrued interest, of $17,508,801.44) (the "**Cayman Master Note**," and together with the Madryn Note, the "**Existing Notes**");

WHEREAS, the Company has authorized a new series of convertible preferred stock, par value $0.001 per share, designated as "Series X Convertible Preferred Stock" (the "**Series X Preferred**"), the terms of which are set forth in the Certificate of Designations for the Series X Preferred in the form of **Exhibit A** attached hereto (the "**Certificate of Designations**"); and

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company and the Holders wish to exchange (the "**Exchange**"):

- the Madryn Note in exchange for (a) a new secured subordinated convertible note in the aggregate principal amount of $8,432,946.88 in the form of **Exhibit B-1** attached hereto (the "**New Madryn Note**") and (b) 92,039 shares of Series X Preferred (the "**Madryn Closing Shares**"); and

- the Cayman Master Note in exchange for (a) a new secured subordinated convertible note in the aggregate principal amount of $14,358,801.44 in the form of **Exhibit B-2** attached hereto (the "**New Cayman Master Note**," and together with the New Madryn Note, the "**New Notes**") and (b) 156,716 shares of Series X Preferred (the "**Cayman Master Closing Shares**," and together with the Madryn Closing Shares, the "**Closing Shares**"); and

WHEREAS, the Exchange is being made in reliance upon the exemption from registration provided by Section 3(a)(9) of the Securities Act of 1933, as amended (the "**Securities Act**");

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Holder agree as follows:

ARTICLE I.
DEFINITIONS

1.1. **Definitions**. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Certificate of Designations (as defined herein); and (b) the following terms have the meanings set forth in this Section 1.1:

"**Acquiring Person**" shall have the meaning given to such term in Section 4.8.

"**Affiliate**" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"**Agreement**" shall have the meaning given to such term in the Preamble.

"**Anti-Corruption Laws**" means any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"**Anti-Terrorism Laws**" means any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Holder is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Board Observer**" shall have the meaning given to such term in Section 4.4(a).

"**Board of Directors**" means the board of directors of the Company.

"**Business Day**" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"**Canadian AML Acts**" means applicable Canadian law regarding anti-money laundering, anti-terrorist financing, government sanction and "know your client" matters, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

"**Capped Shares**" means, as of any date, the Preferred Underlying Shares which cannot be issued upon conversion of Series X Preferred as of such date due to the Exchange Cap.

"**Capital Stock**" means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by the Corporation or any of its Subsidiaries, but excluding any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

"**Cayman Master**" shall have the meaning given to such term in the Preamble.

"**Cayman Master Closing Shares**" shall have the meaning given to such term in the Recitals.

"**Cayman Master Note**" shall have the meaning given to such term in the Recitals.

"**Certificate of Designations**" shall have the meaning given to such term in the Recitals.

"**Closing**" shall have the meaning given to such term in Section 2.1(a).

"**Closing Date**" shall have the meaning given to such term in Section 2.1(b).

"**Closing Shares**" shall have the meaning given to such term in the Recitals.

"**CNB**" means City National Bank of Florida.

"**CNB Modification Agreement**" means the Loan Modification Agreement, by and among Venus Concept USA Inc., the Company, Venus Concept Canada Corp., Venus Concept Ltd., CNB, Madryn and Cayman Master in the form of **Exhibit C** attached hereto.

"**Code**" shall have the meaning given to such term in Section 2.3(b)(v).

"**Collateral**" means all property (whether real or personal and whether tangible or intangible) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document, including Collateral as defined in the Guaranty and Security Agreement.

"**Collateral Agent**" means Madryn Health Partners, LP.

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means the common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"**Common Stock Equivalents**" means any securities of the Company 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**" shall have the meaning given to such term in the Preamble.

"**Company Counsel**" means Dorsey & Whitney LLP, with offices located at Brookfield Place, 161 Bay Street, Suite 4310, Toronto, ON M5J 2S1, or such other outside legal counsel reasonable acceptable to the Holders.

"**Company Legal Opinion**" means a legal opinion of Company Counsel, dated as of the Closing Date, in a form acceptable to the Holders.

"**Covered Person**" shall have the meaning given to such term in Section 3.1(v).

"**Designated Jurisdiction**" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"**Disqualification Event**" shall have the meaning given to such term in Section 3.1(v).

"**Effective Date**" means, with respect to any Preferred Underlying Shares, the earliest of the date that (a) the initial Registration Statement covering such Preferred Underlying Shares has been declared effective by the Commission, (b) all of such Preferred Underlying Shares have been sold pursuant to Rule 144 or may be sold pursuant to 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, (c) falls on the one year anniversary of the Closing Date, provided that a holder of Preferred Underlying Shares is not an Affiliate of the Company, or (d) all of such Preferred Underlying Shares may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company Counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of such Preferred Underlying Shares pursuant to such exemption, which opinion shall be in form and substance reasonably acceptable to such holders.

"**Exchange**" shall have the meaning given to such term in the Recitals.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Exchange Act Reports**" shall have the meaning given to such term in Section 3.1(n).

"**Exchange Cap**" means any limitation on the convertibility of the Series X Preferred pursuant to the rules and regulations of the Nasdaq Capital Market, as set forth in the Certificate of Designations.

"**Existing Notes**" shall have the meaning given to such term in the Recitals.

"**FCPA**" means the Foreign Corrupt Practices Act of 1977, as amended.

"**FDA**" means the Food and Drug Administration.

"**Financial Statements**" shall have the meaning given to such term in Section 3.1(g).

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**Governmental Approval**" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body (including, without limitation, the FDA), court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Guarantors**" means, collectively, Venus Concept USA Inc., Venus Concept Canada Corp., and Venus Concept Ltd.

"**Guaranty and Security Agreement**" means that certain Guaranty and Security Agreement, dated as of the December 8, 2020, by and among the Company, the Guarantors from time to time party thereto, and the Holders.

"**HMT**" has the meaning set forth in the definition of "Sanctions."

"**Holders**" shall have the meaning given to such term in the Preamble.

"**Holder Party**" shall have the meaning given to such term in Section 4.11.

"**Intellectual Property**" means any and all U.S. or foreign patents, patent applications, copyrights and copyright registrations and applications, inventions, invention disclosures, protected formulae, formulations or processes, trade secrets and other similar intellectual property rights.

"**Israeli Guarantor**" means each of (a) Venus Concept Ltd. and (b) each Person that joins as a Guarantor from time to time pursuant to the Guaranty and Security Agreement (or pursuant to such other agreement as the Holders may agree) that is organized under the laws of, or is registered or maintains a place of business (including an office for the transfer or registration of shares) in, Israel, together with their respective successors and permitted assigns, in each case, organized under the laws of, or registered or maintaining a place of business (including an office for the transfer or registration of shares) in, Israel.

"**Israeli Penal Law**" means the Israeli Penal Law, 5737-1977.

"**Israeli PMLL**" means the Israeli Prohibition on Money-Laundering Law, 5760-2000.

"**Israeli Trading with the Enemy Ordinance**" means the Israeli Trading with the Enemy Ordinance, 1939.

"**Intended Tax Treatment**" shall have the meaning given to such term in Section 4.18(a).

"**Knowledge**" means, in reference to the Company, the actual knowledge, or the actual knowledge that would be obtained following reasonable investigation, of any of Rajiv De Silva, Hemanth Varghese, Domenic Della Penna, William McGrail, and Michael Mandarello.

"**Liens**" means a lien, charge pledge, security interest, encumbrance, right of first refusal, preemptive right or other similar restriction.

"**Lock-up Period**" shall have the meaning given to such term in Section 4.2(a).

"**Locked-up Securities**" shall have the meaning given to such term in Section 4.2(a).

"**Madryn**" shall have the meaning given to such term in the Preamble.

"**Madryn Master Closing Shares**" shall have the meaning given to such term in the Recitals.

"**Madryn Note**" shall have the meaning given to such term in the Recitals.

"**Material Adverse Effect**" means a material adverse change in (a) the business, operations or condition (financial or otherwise) of the Company and its Subsidiaries, when taken as a whole, (b) the validity or enforceability of this Agreement or any of the other Transaction Documents, (c) the rights or remedies of the Holders hereunder or thereunder or any other agreements or instruments to be entered into in connection herewith or therewith, or (d) the ability of the Company to perform its obligations under any Transaction Document.

"**Material Agreement**" means any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; provided, however, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"**Next Shareholder Meeting**" shall have the meaning given to such term in Section 4.17.

"**New Cayman Master Note**" shall have the meaning given to such term in the Recitals.

"**New Madryn Note**" shall have the meaning given to such term in the Recitals.

"**New Notes**" shall have the meaning given to such term in the Recitals.

"**Note Underlying Shares**" means the shares of Common Stock issuable pursuant to the terms of the New Notes, including upon conversion or otherwise.

"**Notice of Conversion**" shall have the meaning given to such term in Section 4.14.

"**Obligors**" means, collectively, the Company and each Guarantor.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**Open Source Licenses**" shall have the meaning given to such term in Section 3.1(i).

"**Parties**" shall have the meaning given to such term in the Preamble.

"**Permitted Liens**" means any Lien in favor of (a) Madryn, Cayman Master or any of their respective Affiliates or (b) CNB or any of its Affiliates, in the case of clause (b) to the extent in existence as of the date hereof or as contemplated by the CNB Modification Agreement, in effect as of the date hereof.

"**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"**PIK Dividend**" means any and all dividends on the Closing Shares payable in additional shares of Series X Preferred pursuant to the Certificate of Designations.

"**Preferred Securities**" means the Series X Preferred and the Preferred Underlying Shares.

"**Preferred Shareholder Approvals**" means the requisite approvals of the transactions contemplated by this Agreement by the holders of the Company's (a) Senior Convertible Preferred Stock, par value $0.001 per share, and (b) Voting Convertible Preferred Stock, par value $0.001 per share.

"**Preferred Underlying Shares**" means the shares of Common Stock issuable upon conversion of shares of Series X Preferred.

"**Proceeding**" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"**Registration Rights Agreement**" means the Registration Rights Agreement, dated as of the Closing Date, among the Company and the Holders, in the form of **Exhibit D** attached hereto.

"**Registration Statement**" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale by the Holders of the Preferred Underlying Shares.

"**Required Minimum**" means, as of any date, the maximum aggregate number of Preferred Underlying Shares issuable upon conversion in full of all shares of Series X Preferred outstanding as of such date, ignoring any conversion limits set forth therein.

"**Required Shareholders**" means such shareholders of the Company which, collectively, hold as of the Closing Date sufficient voting power of each series of the Company's voting stock necessary to approve the Shareholder Approval.

"**Requirement of Law**" means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Rule 144**" means Rule 144 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.

"**Sanction(s)**" means any sanction administered or enforced by the United States government (including, without limitation, OFAC), the Canadian government, the United Nations Security Council, the European Union, Her Majesty's Treasury ("**HMT**"), the State of Israel or its government or other relevant sanctions authority.

"**Securities**" means the New Notes, the Note Underlying Shares, the Series X Preferred and the Preferred Underlying Shares.

"**Securities Act**" shall have the meaning given to such term in the Recitals.

"**Security Documents**" means, collectively, the Guaranty and Security Agreement and any other security agreement, collateral access agreement, landlord waiver, account control agreement or other agreement or instrument pursuant to or in connection with which the Company or any of the Guarantors grants or perfects a security interest to the Collateral Agent for the benefit of the Holders.

"**Series X Preferred**" shall have the meaning given to such term in the Recitals. For the avoidance of doubt, references herein to "Series X Preferred," as of any date, shall be deemed to include any and all shares of Series X Preferred issued in the form of the PIK Dividend.

"**Shareholder Approval**" shall have the meaning given to such term in Section 4.17(a).

"**Shareholder Resolutions**" shall have the meaning given to such term in Section 4.17(a).

"**Short Sales**" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location or reservation of borrowable shares of Common Stock).

"**Subsidiary**" means any wholly owned subsidiary of the Company.

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

"**Technology**" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"**Trademarks**" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Company and each of its Subsidiaries connected with and symbolized by such trademarks.

"**Trading Day**" means a day on which the principal Trading Market is open for trading.

"**Trading Market**" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

"**Transaction Documents**" means this Agreement, the Certificate of Designations, the Registration Rights Agreement, the Transaction Support Agreements and the New Notes.

"**Treasury Regulations**" means the regulations promulgated under the Code by the Internal Revenue Service and United States Department of Treasury.

"**Transaction Support Agreements**" shall have the meaning given to such term in Section 4.17(b).

"**Transfer Agent**" means Computershare Inc., the current transfer agent of the Company, with a mailing address of 250 Royall Street, Canton, Massachusetts 02021, and any successor transfer agent of the Company.

ARTICLE II.
PURCHASE AND SALE

2.1. **Closing**.

(a) Upon the terms and subject to the conditions set forth herein, and pursuant to Section 3(a)(9) of the Securities Act, the Parties shall consummate the Exchange (the "**Closing**"), pursuant to which:

(i) Madryn shall convey, assign and transfer to the Company the Madryn Note, in exchange for which the Company shall issue to Madryn the New Madryn Note and the Madryn Closing Shares; and

(ii) Cayman Master shall convey, assign and transfer to the Company the Cayman Master Note, in exchange for which the Company shall issue to Cayman Master the New Cayman Master Note and the Cayman Master Closing Shares.

(b) The Closing shall occur remotely on the date hereof (the "**Closing Date**") immediately following satisfaction of the conditions set forth in Section 2.4. Upon the delivery of the New Notes and the Closing Shares to the Holders, the Holders shall relinquish all rights, title and interest in the Existing Notes, including any claims the Holders may have against the Company related thereto, and the Existing Notes shall be deemed cancelled.

2.2. **Calculation of Consideration**. For greater clarity, the Parties have calculated (a) the price per share of the Closing Shares to be equal to the product of (i) the closing price of the Common Stock as reflected on Nasdaq.com on the Trading Day immediately preceding the Closing Date, multiplied by (ii) ten (10) (the "**Per Share Price**"), and (b) the aggregate number of Closing Shares to be equal to the quotient of (i) the difference between the aggregate principal amount of the Existing Notes less the aggregate principal amount of the New Notes, divided by (ii) the Price Per Share.

2.3. **Closing Deliveries**.

(a) Company Deliveries. On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Holder the following:

(i) this Agreement, duly executed by the Company;

(ii) for each Holder, evidence of a book entry transfer evidencing such Holder's Closing Shares, registered in the name of such Holder;

(iii) for each Holder, such Holder's New Note, duly executed by the Company;

(iv) evidence of the filing of the Certificate of Designations with the Secretary of State of the State of Delaware;

(v) the CNB Modification Agreement, duly executed by the Company and CNB;

(vi) the Registration Rights Agreement, duly executed by the Company;

(vii) the Transaction Support Agreements, duly executed by the Company and the Required Shareholders; and

(viii) the Company Legal Opinion, duly executed by Company Counsel.

(b) Holder Deliveries. On or prior to the Closing Date, each Holder shall deliver or cause to be delivered to the Company the following:

(i) this Agreement, duly executed by such Holder;

(ii) such Holder's Existing Note, to be marked cancelled by the Company, or an affidavit of lost note with respect to such Existing Note in a form acceptable to the Company;

(iii) the Registration Rights Agreement, duly executed by such Holder;

(iv) an "accredited investor" questionnaire, in a form acceptable to the Company in its reasonable discretion, duly executed by such Holder;

(v) if such Holder is a "United States person" within the meaning of Section 7701(a)(30) of the United States Internal Revenue Code of 1986, as amended (the "**Code**"), a properly completed and executed IRS Form W-9; and

(vi) if such Holder is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, all of the following that are applicable: (A) a properly completed and executed IRS Form W-8BEN, IRS Form W-8BEN-E or other applicable IRS Form claiming, to the extent applicable, a reduction or exemption from withholding of Taxes under an income Tax treaty to which the United States is a party; (B) a properly completed and executed IRS Form W-8ECI; (C) a certificate in form and substance satisfactory to the Company claiming entitlement to the portfolio interest exemption under Section 881(c) of the Code and certifying that such Holder is not a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulations section 1.881-3, a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Company within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Sections 881(c)(3)(C) and 864(d)(4) of the Code, and (D) if the Holder is not the beneficial owner of amounts paid to it, a properly completed and executed IRS Form W-8IMY accompanied by a withholding statement and an IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-9 or a certificate described in clause (C) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

2.4. **Closing Conditions**.

(a) Company Closing Conditions. The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) of the representations and warranties of each Holder contained herein as of the Closing Date (unless a different date is specified herein, in which case such representations and warranties shall be accurate as of such specified date);

(ii) the performance of all obligations, covenants and agreements of each Holder required to be performed as of or prior to the Closing Date; and

(iii) the delivery by each Holder of the items required to be delivered by such Holder as set forth in Section 2.3(b) of this Agreement.

(b) Holder Closing Conditions. The respective obligations of the Holders hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) of the representations and warranties of the Company contained herein as of the Closing Date (unless a different date is specified herein, in which case such representations and warranties shall be accurate as of such specified date);

(ii) the performance of all obligations, covenants and agreements of the Company required to be performed as of or prior to the Closing Date;

(iii) the delivery by the Company of the items required to be delivered by the Company as set forth in Section 2.3(a) of this Agreement; and

(iv) the receipt by the Company of any and all consents, waivers or authorizations of any Governmental Authority or other Person necessary for the issuance of the Closing Shares, including the Preferred Shareholder Approvals.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1. **Representations and Warranties of the Company**. The Company hereby represents and warrants to the Holders as of the Closing Date (unless a different date is specified herein, in which case such representations and warranties shall be made as of such specified date) as follows:

(a) Due Organization, Authorization, Power and Authority.

(i) The Company and each of its Subsidiaries is duly existing and in good standing in its jurisdictions of organization or formation and the Company and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(ii) The execution, delivery and performance by the Company of the Transaction Documents to which it is a party do not and will not (1) conflict with the Company's or any of its Subsidiaries' organizational documents, including their respective certificate of incorporation and bylaws, (2) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (3) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which the Company, or any of its property or assets may be bound or affected, (4) require any action by, filing, registration, notice to or qualification with, or Governmental Approval from, any Governmental Authority or any other Person (except for such Governmental Approvals which have already been obtained and are in full force and effect), or (5) constitute an event of default or material breach under any Material Agreement by which the Company, any of its Subsidiaries or any of their respective properties, is bound. Neither the Company nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Effect.

(iii) The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of each of this Agreement and the other Transaction Documents by the Company and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and, except for the Shareholder Approval, no further action is required by the Company, the Board of Directors or the Company's shareholders in connection herewith or therewith.

(b) Enforceability. The Transaction Documents have been duly executed by the Company and, upon the consummation of the transactions contemplated by the Transaction Documents, shall constitute the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Valid Issuance.

(i) The New Notes and Closing Shares (1) have been duly authorized by the Company and, upon their issuance pursuant to this Agreement in accordance with Section 2.1, will be validly issued, fully paid and non-assessable, (2) are not subject to any preemptive, participation, rights of first refusal or other similar rights, and (3) assuming the accuracy of each Holder's representations and warranties hereunder, (A) will be issued exempt from the registration requirements of the Securities Act pursuant to Section 3(a)(9) of the Securities Act and (B) will be issued in compliance with all applicable state and federal laws concerning the issuance of the New Notes and Closing Shares.

(ii) The Preferred Underlying Shares have been duly and validly authorized and reserved by the Company and, when issued upon conversion in accordance with this Agreement and the Certificate of Designations, will be validly issued, fully paid and non-assessable shares of Common Stock, and the issuance of such shares of Common Stock shall not be subject to any preemptive or similar rights.

(iii) The Note Underlying Shares have been duly and validly authorized and reserved by the Company and, when issued upon conversion in accordance with this Agreement and the New Notes, will be validly issued, fully paid and non-assessable shares of Common Stock, and the issuance of such shares of Common Stock shall not be subject to any preemptive or similar rights.

(d) Capitalization. The Company's capitalization as disclosed in its filings with the Commission is true and complete, in all material respects, as of the date of such filings.

(e) Material Adverse Effect. Since December 31, 2022, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(f) Subsidiaries' Equity Interests. Except for Venus Concept (HK) Limited, which is owned 49% by minority investors, all of the issued ownership interests of each of the Subsidiaries of the Company are duly authorized and validly issued, fully paid, nonassessable, and directly owned by the Company or its applicable Subsidiary and are free and clear of all Liens, other than Permitted Liens, and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

(g) Financial Statements. The financial statements of the Company included in the Company's filings with the Commission following December 31, 2022 (the "**Financial Statements**") have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, subject, in the case of the interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the audited Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated.

(h) Operations in the Ordinary Course. Except as set forth in or contemplated by the Company's filings with the Commission since June 30, 2023, since June 30, 2023 the Company and its Subsidiaries have conducted their respective businesses in the ordinary course, consistent with past practice in all material respects, and there has been no (i) acquisition or disposition of any material asset by the Company or any of its Subsidiaries, or any contract or arrangement therefor, other than acquisitions or dispositions for fair value in the ordinary course of business or acquisitions or dispositions as disclosed in the Company's filings with the Commission or (ii) material change in the Company's accounting principles, practices or methods.

(i) Intellectual Property.

(i) The Company and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens, other than Permitted Liens, and non-exclusive licenses for off-the-shelf software that is commercially available to the public.

(ii) None of the Company or any of its Subsidiaries has used any software or other materials that are subject to an open-source or similar license (including the General Public License, Lesser General Public License, Mozilla Public License, or Affero License) (collectively, "**Open Source Licenses**") in a manner that would cause any software or other materials owned by the Company or used in any Company products to have to be (1) distributed to third parties at no charge or a minimal charge, (2) licensed to third parties for the purpose of creating modifications or derivative works, or (3) subject to the terms of such Open Source License.

(iii) Each employee and contractor of the Company and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to the Company or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Effect, in each case individually or in the aggregate.

(iv) No settlement or consents, covenants not to sue, non-assertion assurances, or releases have been entered into by the Company or any of its Subsidiaries or exist to which the Company or such Subsidiary is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(j) Litigation. Except as set forth in or contemplated by the Company's filings with the Commission since December 31, 2022, are no actions, suits, investigations, or proceedings pending or, to the Company's Knowledge, threatened in writing by or against the Company or any of its Subsidiaries reasonably expected to result in the payment or award of damages of more than five-hundred thousand dollars ($500,000).

(k) Insurance. The Company and its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged. The Company does not have any reason to believe that it or any Subsidiary will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business in all material respects.

(l) Tax Returns and Payments; Pension Contributions. The Company and each of its Subsidiaries have timely filed all material tax returns and reports (or extensions thereof) required to be filed by them, and the Company and each of its Subsidiaries, have timely paid all foreign, federal, state, and local Taxes owed by the Company and such Subsidiaries in a cumulative amount greater than one-hundred thousand dollars ($100,000), in all jurisdictions in which the Company or any such Subsidiary is subject to Taxes, including the United States, unless such Taxes are being contested in accordance with the next sentence. The Company and each of its Subsidiaries may defer payment of any contested Taxes; provided, however, that the Company or such Subsidiary (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; and (b) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP. Neither the Company nor any of its Subsidiaries is aware of any claims or adjustments proposed by any Governmental Authority in writing for any of the Company's or such Subsidiary's, prior Tax years which could result in additional taxes in a cumulative amount greater than one-hundred thousand dollars ($100,000) becoming due and payable by the Company or its Subsidiaries. The Company and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither the Company nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of the Company or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(m) Regulatory Compliance.

(i) Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither the Company nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). The Company and each of its Subsidiaries complies in all material respects with the Federal Fair Labor Standards Act. Neither the Company nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither the Company nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Effect. Neither the Company's nor any of its Subsidiaries' properties or assets has been used by the Company or such Subsidiary or, to the Company's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. The Company and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

(ii) Neither the Company, nor any Subsidiary, nor, to the Knowledge of the Company and the Guarantors, any director, officer, employee, agent, representative or Affiliate thereof, is an individual or entity that is, or is owned or controlled by, any individual or entity that is (A) the subject or target of any Sanctions, (B) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (C) located, organized or resident in a Designated Jurisdiction.

(iii) The Company and its Subsidiaries have conducted their business in material compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada), the Israeli Penal Law, Chapter 9, Part 5 and other similar anti-corruption legislation in such or other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(iv) To the extent applicable, the Company and each Subsidiary is in compliance, in all material respects, with (A) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (B) the Act, (C) the Canadian AML Acts and (D) the Israeli Trading with the Enemy Ordinance and the Israeli PMLL and other similar legislation in such or other jurisdictions. Notwithstanding the foregoing, the representations in this Section 3.1(m) shall not be made by nor apply to any Person organized under the laws of Canada insofar as such representations would result in a violation of or conflict with the Foreign Extraterritorial Measures Act (Canada) or any similar law.

(n) Listing Rules. Except for the Shareholder Approval, the Company is not required to obtain any consent or approval from its shareholders in connection with the consummation of the transactions contemplated by this Agreement or any of the Transaction Documents pursuant to the rules of any Trading Market on which any of the securities of the Company are listed or designated.

(o) Compliance with Securities Laws. The Company is a reporting issuer in the United States, and is not in default under applicable U.S. federal securities laws, and is in compliance with its timely disclosure obligations under such laws and the requirements of each Trading Market on which the Common Stock is currently listed. No order, ruling or determination having the effect of suspending the sale or ceasing the trading of any securities of the Company has been issued or made by the Commission, any other securities commission, stock exchange or other regulatory authority and no proceedings for that purpose have been instituted or are pending or, to the Company's Knowledge, are contemplated by any such authority. The Company is in material compliance with all applicable requirements of each applicable Trading Market. None of the applicable U.S. securities regulatory authorities or similar regulatory authority, any applicable Trading Market or any other competent authority has issued any order to cease or suspend trading of any securities of the Company, and the Company has not taken any action that is reasonably likely to result in the delisting of any securities of the Company that are listed or designated on any Trading Market (it being understood and agreed that the Company's movement of its securities from one Trading Market to another Trading Market shall not constitute a delisting for purposes of this Section 3.1(o)). For the avoidance of doubt, the representations contained in the third sentence of this Section 3.1(o) are qualified by reference to the Company's failure to satisfy the minimum stockholders' equity requirement as required for continued listing under Nasdaq Listing Rule 5550(b), as disclosed in the Company's filings with the Commission following December 31, 2022.

(p) Exchange Act Compliance. All documents filed with the Commission by the Company under the Exchange Act are hereinafter referred to herein as the "**Exchange Act Reports**". The Exchange Act Reports, when they were or are filed with the Commission, conformed or will conform in all material respects to the applicable requirements of the Exchange Act and the applicable rules and regulations of the Commission thereunder. The Exchange Act Reports did not, when filed with the Commission, contain an untrue statement of material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(q) No Integrated Offering. Assuming the accuracy of the Holders' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(r) No Broker's Fees. Except as provided for the Company's engagement letter with Canaccord Genuity LLC, dated April 6, 2023, as amended from time to time, none of the Company nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or the Holders for a brokerage commission, finder's fee or like payment in connection with the Transaction Documents and the transactions contemplated thereby.

(s) No Registration. Assuming the accuracy of the Holders' representations and warranties set forth in Section 3.2 and their compliance with their agreements contained in the Transaction Documents, no registration under the Securities Act is required for the offer and sale of the Securities by the Obligors to the Holders pursuant to the terms of this Agreement. Subject to limitations contained in the Certificate of Designations and the New Notes, the issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(t) Registration Rights. Other than as set forth in this Agreement and as disclosed in the Company's filings with the Commission, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(u) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered, and may offer, the Securities for sale only to the Holders and other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(v) Disqualification Events. None of the Company, any Subsidiary, any of their respective predecessors, any director, executive officer, other officer of the Company or any Subsidiary participating in the offering contemplated hereby, any beneficial owner (as that term is defined in Rule 13d-3 under the Exchange Act) of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, any "promoter" (as that term is defined in Rule 405 under the Securities Act) connected with the Company or any of the Subsidiaries in any capacity at the time of the Closing, any placement agent or dealer participating in the offering of the New Notes, any of such agents' or dealer's directors, executive officers, other officers participating in the offering of the New Notes (the "**Covered Persons**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"). The Company has exercised reasonable care to determine (i) the identity of each person that is a Covered Person; and (ii) whether any Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e). None of the Obligors is for any other reason disqualified from reliance upon Rule 506 of Regulation D under the Securities Act for purposes of the offer and sale of the Securities.

(w) Acknowledgement Regarding Holders' Purchase of Securities. The Company acknowledges and agrees that each Holder is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby. The Company further acknowledges that none of the Holders are acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by any Holder or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Holder's purchase of the Securities.

(x) Acknowledgement Regarding Holders' Trading Activity. It is understood and acknowledged by the Company that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Holder (including Section 4.3 of this Agreement, which shall control to the extent in conflict with this Section 3.1(x)), (i) following the public disclosure of the transactions contemplated by the Transaction Documents, in accordance with the terms thereof, none of the Holders has been asked by the Company or any of its Subsidiaries to agree, nor has any Holder agreed with the Company or any of its Subsidiaries, to refrain from effecting any transactions in or with respect to (including, without limitation, purchasing or selling, long or short) any securities of the Company, or "derivative" securities based on securities issued by the Company or to hold any of the Securities for any specified term; (ii) no Holder shall be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction; and (iv) each Holder may rely on the Company's obligation to timely deliver Shares upon conversion, exercise or exchange, as applicable, of the Securities as and when required pursuant to the Transaction Documents for purposes of effecting trading in the Common Stock of the Company, subject to the limitations set forth herein. The Company further understands and acknowledges that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Holder, following the public disclosure of the transactions contemplated by the Transaction Documents one or more Holders may engage in hedging or trading activities (including, without limitation, the location or reservation of borrowable shares of Common Stock) at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value or number of the Preferred Underlying Shares deliverable with respect to the Securities are being determined and such hedging or trading activities (including, without limitation, the location or reservation of borrowable shares of Common Stock), if any, can reduce the value of the existing stockholders' equity interest in the Company both at and after the time the hedging or trading activities are being conducted. The Company acknowledges that, except as otherwise specifically set forth in any written agreement between the Company and the applicable Holder, such aforementioned hedging or trading activities do not constitute a breach of this Agreement, the Securities or any other Transaction Document or any of the documents executed in connection herewith or therewith.

(y) Security Interest in Collateral. Prior to any assignment by the Holders of the New Notes, the provisions of this Agreement and the other Transaction Documents (after giving effect to post-closing obligations) create legal, valid and enforceable Liens on, and security interests in, all of the right, title and interest of the Company in and to all the Collateral owned by the Company in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Holders, and upon (i) the making of the filings, recordings and other similar actions specified in the Security Documents, and (ii) the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Liens shall constitute perfected and continuing Liens on, and security interests in, the Collateral, securing the Secured Obligations (as defined in the Guaranty and Security Agreement), enforceable against the Company, the Subsidiary Guarantors and all third parties, and, except as contemplated by the CNB Modification Agreement, having priority over all other Liens on the Collateral.

(z) No Installment Arrangements. No Israeli Guarantor or other Obligor is party to an installment arrangement (*"hesder prisa*") with the Israeli Tax Authority, the National Insurance Institute of Israel ("*Bituach Leumi*") or any municipal authority in Israel, and no obligations of such Obligor to any of such entities will be rescheduled, deferred or otherwise paid in instalments or can or will be classified as "Preferred Debts" ("*hovot be-din kadima*") under Section 234(a)(5) of the Israeli Insolvency and Economic Rehabilitation Law.

(aa) Full Disclosure. No written representation, warranty or other statement of the Company or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to any Holder, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to any Holder, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by the Company in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

3.2. **Representations and Warranties of the Holders**. Each Holder, for itself and for no other Holder, hereby represents and warrants to the Company as of the Closing Date (unless a different date is specified herein, in which case such representations and warranties shall be made as of such specified date) as follows:

(a) Organization; Authority. Such Holder is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Holder of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Holder. Each Transaction Document to which it is a party has been duly executed by such Holder, and when delivered by such Holder in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Holder, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Conflicts. The execution, delivery and performance by such Holder of this Agreement and the consummation by such Holder of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Holder, except in the case of clauses (ii) and (iii) above, for such that are not material and do not otherwise affect the ability of such Holder to consummate the transactions contemplated hereby.

(c) Own Account. Such Holder understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other Persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Holder's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Holder is acquiring the Securities hereunder in the ordinary course of its business.

(d) Holder Status. At the time such Holder was offered the Closing Shares, it was, and as of the date hereof it is, and on each date on which it converts any Series X Preferred, it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(e) Experience of Such Holder. Such Holder, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Holder is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment. Such Holder and its advisors, if any, have been furnished with all materials relating to the business, financial condition and results of operations of the Company, and materials relating to the offer and sale of the Securities, that have been requested by such Holder or its advisors, if any. Such Holder acknowledges and understands that its investment in the Securities involves a significant degree of risk.

(f) General Solicitation. Such Holder is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to such Holder's knowledge, any other general solicitation or general advertisement.

(g) Access to Information. Such Holder acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the Exchange Act Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(h) Short Sales and Confidentiality. Other than consummating the transactions contemplated hereunder, such Holder has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Holder, executed any Short Sale with respect to securities of the Company prior to the date hereof. Notwithstanding the foregoing, in the case of a Holder that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Holder's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Holder'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 Agreement. Other than to other Persons party to this Agreement or to such Holder's representatives (including, without limitation, its officers, directors, partners, legal and other advisors, employees, agents and Affiliates), bound by a duty of confidentiality to such Holder and whom such Holder has taken reasonable actions to cause them to maintain such confidentiality, such Holder has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction).

(i) No Governmental Review. Such Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(j) No Legal, Tax or Investment Advice. Such Holder understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Holders in connection with the purchase of the Securities constitutes legal, tax or investment advice. Such Holder has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1. **Transfer Restrictions**.

(a) The Preferred Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Holder or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of a Holder under this Agreement and the Registration Rights Agreement.

(b) The Holders agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Preferred Securities in the following form:

> "THE SECURITIES REPRESENTED HEREBY HAVE 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, AND, ACCORDINGLY, MAY NOT BE TRANSFERRED UNLESS (I) SUCH SECURITIES HAVE BEEN REGISTERED FOR SALE PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (II) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144, OR (III) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED."

(c) The Company acknowledges and agrees that a Holder may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Preferred Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Holder may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Holder's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Preferred Securities, including, if the Preferred Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Securityholders (as defined in the Registration Rights Agreement) thereunder.

(d) Instruments, whether certificated or uncertificated, evidencing the Preferred Securities shall not contain any legend (including the legend set forth in Section 4.1(b) hereof), (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Securities pursuant to Rule 144, (iii) 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 as to such Securities and without volume or manner-of-sale restrictions, or (iv) 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). Promptly after the Effective Date, the Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any Series X Preferred is converted at a time when there is an effective registration statement to cover the resale of the Preferred Securities, or if such Securities may be sold under Rule 144 and the Company is then in compliance with the current public information required under Rule 144, or if the Preferred Securities may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Securities or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Securities shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(d), it will, as soon as practicable and no later than five Trading Days following the delivery by a Holder to the Company or the Transfer Agent of a certificate or book entry (at the election of such Holder, provided that, absent instructions to the contrary, the default shall be book-entry) representing Securities, as the case may be, issued with a restrictive legend, deliver or cause to be delivered to such Holder an unrestricted book entry representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4.1. Instruments, whether certificated or uncertificated, for Securities subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with the Depository Trust Company System as directed by such Holder.

4.2. **Lock-Up**.

(a) Notwithstanding any provision of this Agreement to the contrary, each Holder hereby agrees that, without the prior written consent of the Company, such Holder will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, (A) any shares of Common Stock or (B) any securities convertible into, or exercisable or exchangeable for, Common Stock (for the avoidance of doubt, including any and all New Notes and Series X Preferred) (collectively, the "**Locked-up Securities**"), or publicly disclose the intention to make any such offer, sale, pledge or disposition of Locked-up Securities, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of Locked-up Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, until April 4, 2024 (the "**Lock-Up Period**"). The Company will direct its transfer agent to place stop transfer restrictions upon any Locked-up Securities for the duration of the Lock-Up Period.

(b) Notwithstanding the foregoing, following reasonable prior notice to the Company, the Holders may transfer the New Notes to (i) any of their respective Affiliates or (ii) to "accredited investors" within the meaning of Rule 501 under the Securities Act who are approved in advance by the Company in writing, such approval not to be unreasonably withheld or delayed; provided, however, that any transferee pursuant to this Section 4.2(b) must first execute and deliver to the Company a lock-up agreement at least as restrictive as this Section 4.2.

(c) For the avoidance of doubt, this Section 4.2 shall not be construed, in and of itself, to limit any conversion of the New Notes or the Series X Preferred.

4.3. **Short Sales**. Notwithstanding any provision of this Agreement to the contrary, each Holder hereby agrees that, without the prior written consent of the Company, such Holder will not, directly or indirectly (including by entering into agreement or understand with any other Person), execute any Short Sale with respect to securities of the Company from and after the date hereof.

4.4. **Board Observer**.

(a) Appointment. So long as the Holders collectively own at least 50% of the Closing Shares or the New Notes (for the avoidance of doubt, disregarding any shares of Series X Preferred issued in the form of the PIK Dividend from and after the Closing), the Holders shall be entitled to appoint one individual to serve as a representative of the Holders to attend, in a nonvoting observer capacity, all meetings of the Board of Directors and any committees thereof (the "**Board Observer**"). The appointment of the Board Observer shall be subject to the prior approval of the Board of Directors, such approval not to be unreasonably withheld, conditioned or delayed.

(b) Procedures. The Company shall invite the Board Observer to attend, in a nonvoting observer capacity, all meetings of the Board of Directors and any committees thereof and shall provide the Board Observer with copies of all notices, minutes, consents, and other materials at the same time and in the same manner as provided to members of the Board of Directors, and the Board Observer shall agree to hold in confidence all discussions and such meetings and all such materials. Notwithstanding the foregoing, the Company may exclude the Board Observer from any meeting or portion thereof and withhold any materials if, in the reasonable judgement of the Company, (i) attendance at such meeting or access to such materials would adversely affect the attorney-client privilege between the Company and its counsel, (ii) attendance at such meeting or access to such materials would result in a conflict of interest or (iii) the subject matter of such meeting or materials is the Holders or their investment in the Company or its Subsidiaries.

(c) Expense Reimbursement. The Company shall reimburse each the Board Observer for his or her reasonable and documented out-of-pocket expenses, including travel, incurred in connection incurred in connection with attendance of meetings of the Board of Directors or any committee thereof.

4.5. **Furnishing of Information; Public Information**. Until no Holder owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act. As long as any Holder owns the Closing Shares, if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to such Holder and make publicly available in accordance with Rule 144(c) such information as is required for such Holder to sell the Closing Shares, including without limitation, under Rule 144. The Company further covenants that it will take such further action as such Holder may reasonably request, to the extent required from time to time to enable such Holder to sell such Closing Shares without registration under the Securities Act, including without limitation, within the requirements of the exemption provided by Rule 144.

4.6. **Integration**. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.7. **Securities Laws Disclosure; Publicity**. The Company shall (a) by 9:30 a.m. (New York City time) on the Trading Day immediately following the date hereof, issue a press release disclosing the material terms of the transactions contemplated hereby, and (b) file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission within the time required by the Exchange Act. From and after the issuance of such press release, the Company represents to the Holders that it shall have publicly disclosed all material, non-public information delivered to any of the Holders by the Company, or any of its officers, directors, employees or agents. The Company and each Holder shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Holder shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Holder, or without the prior consent of each Holder, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing Party shall promptly provide the other Party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not, without the prior written consent of the Holders, or to the extent consistent with past practice, (a) use the name of a Holder or any of its Affiliates (or any other derivative name of a Holder or its Affiliates) in any press releases or other public disclosures (including in any filing with the Commission or any regulatory agency or Trading Market), offering documents, sales materials, brochures or similar publicity or promotional materials, or for promotional purposes, whether orally or in writing, except (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission, and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide Holder with prior notice of such disclosure permitted under this clause (b).

4.8. **Shareholder Rights Plan**. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Holder is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Holder could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Holders.

4.9. **Non-Public Information**. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.7, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Holder or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Holder shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that each Holder shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company delivers any material, non-public information to a Holder without such Holder's consent, the Company hereby covenants and agrees that such Holder shall not have any duty of confidentiality to Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, and of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Holder shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Holder shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.10. **Use of Proceeds**. The Company shall use the net proceeds from the sale of the Existing Notes for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's indebtedness (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

4.11. **Indemnification of Holders**. Subject to the provisions of this Section 4.11, the Company will defend, indemnify and hold each Holder and its directors, officers, shareholders, members, partners, employees and agents (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), each Person who controls such Holder (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or 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 such controlling Persons (each, a "**Holder Party**") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Holder Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Holder Parties in any capacity, or any of them or their respective Affiliates, by any shareholder of the Company who is not an Affiliate of such Holder Parties, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Holder Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Holder Parties may have with any such shareholder or any violations by such Holder Parties of state or federal securities laws or any conduct by such Holder Parties which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Holder Party in respect of which indemnity may be sought pursuant to this Agreement, such Holder Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Holder Party. Any Holder Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Holder Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Holder Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Holder Party under this Agreement (1) for any settlement by a Holder Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (2) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to (A) any Holder Party's breach of any of the representations, warranties, covenants or agreements made by such Holder Party in this Agreement or in the other Transaction Documents, or (B) any conduct by such Holder Party which constitutes gross negligence or willful misconduct. The indemnification required by this Section 4.11 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Holder Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.12. **Reservation and Listing of Securities**. The Company shall maintain and keep available at all times, free of preemptive rights, a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

4.13. **Listing of Common Stock**. The Company hereby agrees to use reasonable best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall apply to list or quote all of the applicable Preferred Underlying Shares on such Trading Market and promptly secure the listing of all of such Preferred Underlying Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Preferred Underlying Shares, and will take such other action as is necessary to cause all of the Preferred Underlying Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all reasonable best efforts necessary to continue the listing or quotation and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.14. **Conversion Procedures**. The form of notice of conversion included in the Certificate of Designations (the "**Notice of Conversion**") sets forth the totality of the procedures required of the Holders in order to convert the Series X Preferred. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Series X Preferred, unless required by the Transfer Agent. No additional legal opinion, other information or instructions shall be required of the Holders to convert their Series X Preferred. The Company shall honor conversions of the Series X Preferred and shall deliver Preferred Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents. Notwithstanding the foregoing, the Parties acknowledge and agree that conversion of the Series X Preferred shall be subject to any limitations on convertibility as set forth in the Certificate of Designations.

4.15. **Certain Transactions and Confidentiality**. Each Holder, severally and not jointly with the other Holders, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.7. Each Holder, severally and not jointly with the other Holders, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.7, such Holder will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Holder makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.7, (ii) no Holder shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.7 and (iii) no Holder shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company after the issuance of the initial press release as described in Section 4.7. Notwithstanding the foregoing, in the case of a Holder that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Holder's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Holder's assets, the covenant 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 Agreement.

4.16. **Form D; Blue Sky Filings**. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Holder. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Holders at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Holder.

4.17. **Shareholder Approval**.

(a) The Company shall include in the proxy materials for the next annual or special meeting of shareholders (the "**Next Shareholder Meeting**"), in a form reasonably acceptable to the Holders, a proposal soliciting the affirmative vote of the Company's shareholders in favor of resolutions ("**Shareholder Resolutions**") to approve the issuance of any and all Capped Shares (the "**Shareholder Approval**"). The Board of Directors shall recommend that the Company's shareholders vote in favor of the Shareholder Resolutions at the Next Shareholder Meeting and the Company shall use commercially reasonable efforts to obtain the Shareholder Approval.

(b) On the Closing Date, the Company will deliver transaction support agreements in form and substance reasonably acceptable to the Holders (the "**Transaction Support Agreements**") signed by the Company and the stockholders party thereto, pursuant to which the Required Shareholders will agree to vote the shares held by such Required Shareholders on the record date for the Next Shareholder Meeting in favor of the Shareholder Resolutions.

4.18. **Intended Tax Treatment**.

(a) The Parties intend that, for U.S. federal (and applicable state and local) income tax purposes, (i) the New Notes be treated as a "significant modification" of the Existing Notes within the meaning of Treasury Regulations Section 1.1001-3(e), (ii) the Exchange be treated as an exchange of the Existing Notes for a combination of the New Notes and the Closing Shares pursuant to a "recapitalization" within the meaning of Section 368(a)(1)(E) of the Code, and (iii) the Company be treated as not recognizing any income from discharge of indebtedness as a result of the Exchange pursuant to Sections 61(a)(11), 108(e)(8), and 108(e)(10) of the Code, or otherwise (the "**Intended Tax Treatment**").

(b) Each Party shall, and shall cause its Affiliates to, unless otherwise required by a final "determination" (within the meaning of Section 1313(a) of the Code (or any analogous or similar provision under applicable state or local income tax law)), (i) prepare and file all applicable tax returns in a manner consistent with the Intended Tax Treatment, and (ii) take no position in any applicable tax return, tax proceeding, or otherwise for applicable tax purposes that is inconsistent with the Intended Tax Treatment.

ARTICLE V.
MISCELLANEOUS

5.1. **Termination**. This Agreement shall terminate upon the earlier to occur of (a) the mutual written agreement of the Parties to terminate this Agreement and (b) the date following the Closing upon which no Holder holds any shares of Series X Preferred or New Notes (the date of such termination, the "**Termination Date**"); provided, however, that the termination of this Agreement will not affect the right of any Party to sue for any breach by any other Party or Parties to the extent such breach occurred prior to the Termination Date.

5.2. **Fees and Expenses**. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any Notice of Conversion delivered by a Holder), stamp taxes and other similar taxes and duties levied in connection with the delivery of any Securities to the Holders. The Company shall pay (a) all reasonable and documented out-of-pocket expenses incurred by the Holders (including the fees, charges and disbursements of one counsel in the aggregate for all Holders and one local counsel if needed), in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents and (ii) any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the administration of this Agreement and the other Transaction Documents and (b) all reasonable and documented out-of-pocket expenses incurred by the Holders (including the fees, charges and disbursements of one counsel in the aggregate for all Holders other than local counsel), in connection with the enforcement or protection of their rights (i) in connection with this Agreement and the other Transaction Documents, including their rights under this Section 5.2 or (ii) in connection with the New Notes, including all such out-of-pocket expenses incurred during any arbitration, dispute resolution, workout, restructuring or negotiations in respect of such New Notes.

5.3. **Entire Agreement**. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into such documents, exhibits and schedules.

5.4. **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the Party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5. **Amendments; Waivers**. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Holders holding a majority of the Series X Preferred then outstanding and the Holders holding a majority of the New Notes then outstanding, or in the case of a waiver, by the Party against whom enforcement of any such waived provision is sought; provided, however, 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 also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any Party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Holder relative to the comparable rights and obligations of the other Holders shall require the prior written consent of such adversely affected Holder. Any amendment effected in accordance with this Section 5.5 shall be binding upon each Holder and holder of Securities and the Company.

5.6. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Holder (other than by merger). Any Holder may assign any or all of its rights under this Agreement to any Person to whom such Holder assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Holders."

5.7. **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the Parties and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.11.

5.8. **Governing Law**. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each Party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a Party or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each Party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Proceeding is improper or is an inconvenient venue for such Proceeding. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such Party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any Party hereto shall commence a Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.11, the prevailing Party in such Proceeding shall be reimbursed by the non-prevailing Party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Proceeding.

5.9. **Survival**. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.10. **Execution**. 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 each other Party, it being understood that the Parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, 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 facsimile or ".pdf" signature page were an original thereof.

5.11. **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 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.

5.12. **Rescission and Withdrawal Right**. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Holder exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Holder may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of a conversion of shares of Series X Preferred, the applicable Holder shall be required to return any Preferred Underlying Shares subject to any such rescinded Notice of Conversion concurrently therewith.

5.13. **Replacement of Securities**. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.14. **Remedies**. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Holders and the Company will be entitled to specific performance under the Transaction Documents. The Parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.15. **Payment Set Aside**. To the extent that the Company makes a payment or payments to any Holder pursuant to any Transaction Document or a Holder enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.16. **Independent Nature of Holders' Obligations and Rights**. The obligations of each Holder under any Transaction Document are several and not joint with the obligations of any other Holder, and no Holder shall be responsible in any way for the performance or non-performance of the obligations of any other Holder under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Holder pursuant hereof or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. Each Holder has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. The Company has elected to provide all Holders with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Holders. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among the Holders.

5.17. **Stock Splits, Etc**. Each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to equitable adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date hereof.

5.18. **Saturdays, Sundays, Holidays, etc**. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.19. **Construction**. The Parties agree that each of them or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. As used in this Agreement, the words "including" or "includes" shall be deemed followed by "without limitation," the word "or" shall be deemed to mean "and / or," and "$" shall refer to United States dollars.

5.20. **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

5.21. **Existing SEA.** The Parties hereby terminate the Existing SEA effective as of, and contingent upon, the Closing, at which time no Party shall have any further rights or obligations under the Existing SEA; provided, however, that the following provisions of the Existing SEA, together with the definitions used therein, shall survive such termination and shall be incorporated into this Agreement, *mutatis mutandis*:

(a) Section 4.1 (Transfer Restrictions)

(b) Article V (Registration Rights)

(c) Article VIII (Collateral Agent)

(d) Section 9.3 (Confidentiality)

(e) Section 9.18 (Interest Rate Limitation)

[no further text on this page]

IN WITNESS WHEREOF, the Parties have caused this Exchange Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

VENUS CONCEPT INC.

By: /s/ Rajiv De Silva

Name: Rajiv De Silva
Title: Chief Executive Officer

Address for Notice:

Venus Concept Inc.
235 Yorkland Blvd., Suite 900
Toronto, Ontario, Canada
M2J 4Y8
Attn: General Counsel and Corporate Secretary
Email: mmandarello@venusconcept.com

With a copy to (which shall not constitute notice):

Dorsey & Whitney LLP
TD Canada Trust Tower
Brookfield Place 161 Bay Street, Suite 4310
Toronto, ON M5J 2S1
Attn: Richard Raymer
Email: raymer.richard@dorsey.com

Signing solely for purposes of Section 5.21 hereof:

VENUS CONCEPT CANADA CORP.

By: /s/ Rajiv De Silva

Name: Rajiv De Silva
Title: Chief Executive Officer

VENUS CONCEPT LTD

By: /s/ Rajiv De Silva

Name: Rajiv De Silva
Title: Chief Executive Officer

VENUS CONCEPT USA INC.

By: /s/ Rajiv De Silva

Name: Rajiv De Silva
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused this Exchange Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

MADRYN HEALTH PARTNERS, LP

By: MADRYN HEALTH ADVISORS, LP
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

Address for Notice:

Madryn Asset Management, LP
330 Madison Avenue, 33rd Floor
New York, NY 10017
Attn: Avanish Amin
Email: aamin@madrynlp.com

With a copy to (which shall not constitute notice):

Moore & Van Allen PLLC
100 North Tyron Street, Suite 4700
Charlotte, NC 28202
Attn: Tripp Monroe
Email: trippmonroe@mvalaw.com

MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP

By: MADRYN HEALTH ADVISORS, LP
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

Address for Notice:

Madryn Asset Management, LP
330 Madison Avenue, 33rd Floor
New York, NY 10017
Attn: Avanish Amin
Email: aamin@madrynlp.com

With a copy to (which shall not constitute notice):

Moore & Van Allen PLLC
100 North Tyron Street, Suite 4700
Charlotte, NC 28202
Attn: Tripp Monroe
Email: trippmonroe@mvalaw.com

Exhibit 10.2

RESALE REGISTRATION RIGHTS AGREEMENT

THIS RESALE REGISTRATION RIGHTS AGREEMENT, dated as of October 4, 2023 (this "**Agreement**"), has been entered into by and among **VENUS CONCEPT INC.**, a Delaware corporation (the "**Company**"), Madryn Health Partners, LP ("**Madryn**") and Madryn Health Partners (Cayman Master), LP ("**Cayman Master**," and together with Madryn, the "**Noteholders**").

BACKGROUND

In connection with the Exchange Agreement, dated as of October 4, 2023 (the "**Exchange Agreement**"), by and among the Company and the Noteholders, (i) the Noteholders have exchanged secured subordinated convertible notes of the Company for new subordinated convertible notes of the Company and an aggregate of 248,755 shares of Series X Preferred Stock of the Company (the "**Preferred Stock**"), and (ii) the Company has agreed to provide to the Noteholders certain resale registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder (together, the "**Securities Act**"), and applicable state securities laws with respect to the Underlying Shares (as defined below).

AGREEMENT

In light of the above, the Company and the Noteholders hereby agree as follows:

1. Definitions.

As used in this Agreement, the following terms will have the respective meanings set forth in this Section 1:

"**Agreement**" has the meaning set forth in the preamble.

"**Advice**" has the meaning set forth in Section 2(d)(iv).

"**Blue Sky**" has the meaning set forth in Section 3(l).

"**Business Day**" means (i) a day on which the Common Stock is traded on a Trading Market, (ii) if the Common Stock is not listed on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices) or (iii) in the event that the Common Stock is not listed or quoted as set forth in (i) and (ii) hereof, any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York are authorized or required by law, regulation or executive order to remain closed.

"**Cayman Master**" has the meaning set forth in the preamble.

"**Claim**" has the meaning set forth in Section 5(b).

"**Commission**" means the Securities and Exchange Commission or any successor agency.

"**Commission Guidance**" means (i) any publicly available written or oral guidance of the staff of the Commission staff, or any comments, requirements or requests of the Commission staff whether formally or informally or publicly or privately, and (ii) the Securities Act.

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

"**Company**" has the meaning set forth in the preamble.

"**Demand Registration Notice**" has the meaning set forth in Section 2(e)(i).

"**Demand Registration Statement**" means each registration statement under the Securities Act that is designated by the Company for the registration, under the Securities Act, of any Demand Offering pursuant to Section 2(e).

"**Demand Offering**" has the meaning set forth in Section 2(e)(i).

"**Demand Offering Holders**" has the meaning set forth in Section 2(e)(iv)(1).

"**Demanding Notice Holders**" has the meaning set forth in Section 2(e)(i).

"**Discontinuance Notice**" has the meaning set forth in Section 3(d).

"**Effective Date**" means, with respect to any Registration Statement, the date on which the Commission first declares effective such Registration Statement.

"**Effectiveness Deadline**" means, with respect to a Registration Statement filed pursuant to Section 2(a), ninety (90) calendar days after the Filing Deadline in the case of a filing on Form S-3 and one hundred twenty (120) calendar days after the Filing Deadline in the case of a filing on Form S-1.

"**Effectiveness Period**" has the meaning set forth in Section 2(a).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Exchange Agreement**" has the meaning set forth in the preamble.

"**Filing Deadline**" means December 4, 2023.

"**FINRA**" means the Financial Industry Regulatory Authority, Inc. or any successor organization performing similar functions.

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

"**Indemnified Party**" has the meaning set forth in Section 5(c).

"**Indemnifying Party**" has the meaning set forth in Section 5(c).

"Initial Registration Statement" has the meaning set forth in the definition of "Registration Statement."

"**Losses**" has the meaning set forth in Section 5(a).

"**Madryn**" has the meaning set forth in the preamble.

"**Majority Holders**" means any one or more Holders holding more than 50% of the Registrable Securities.

"**Maximum Successful Underwritten Offering Size**" means, with respect to any Underwritten Offering, the maximum number of securities that, in the managing underwriter's or underwriters' reasonable good faith opinion, which is provided in writing, may be sold in such Underwritten Offering without adversely affecting the success of such offering.

"**Noteholders**" has the meaning set forth in the preamble.

"**Person**" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "Person" under this Agreement.

"**Plan of Distribution**" has the meaning set forth in Section 2(a).

"**Preferred Stock**" has the meaning set forth in the preamble.

"**Proceeding**" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"**Prospectus**" means the prospectus included in a Registration Statement (including, without limitation, any preliminary prospectus, any free-writing prospectus and any prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement under 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 such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

"**Registrable Securities**" means any Underlying Shares and any shares of capital stock issued or issuable with respect to Underlying Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the Commission has declared a Registration Statement covering such securities effective and such securities have been disposed of pursuant to such effective Registration Statement; (ii) such securities are sold under circumstances in which all of the applicable conditions of Rule 144 under the Securities Act are met and the legend restricting further transfer has been removed from the certificate for such securities; or (iii) such securities are no longer outstanding. For the avoidance of doubt, "**Registrable Securities**" shall not include any Underlying Shares or shares of capital stock issued or issuable with respect to Underlying Shares which cannot be registered for resale on a Registration Statement as of the Filing Deadline under applicable Commission Guidance, including as a result of the associated Preferred Stock not being issued and outstanding as of, or within a sufficient period of time after, the applicable Effective Date, or due to the Underlying Shares constituting Capped Shares (as defined in the Exchange Agreement).

"**Registration Default**" has the meaning set forth in Section 2(c)(iv).

"**Registration Statement**" means a registration statement filed pursuant to the terms hereof and which covers the resale of Registrable Securities by the Holders, including the Prospectus, amendments and supplements to 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) therein. For the avoidance of doubt,

"**Registration Statement**" means the Initial Registration Statement and any additional registration statement or registration statement, if any, that the Company is obligated to file under this Agreement with respect to the Registrable Securities, with the effect that the obligations of the Company under this Agreement also extend to such additional registration statement or registration statements, in all cases, as specified in this Agreement.

"**Rule 144**" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

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

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

"**Securities Act**" has the meaning set forth in the preamble.

"**Selling Holder Questionnaire**" has the meaning set forth in Section 2(d)(i).

"**Selling Securityholders**" has the meaning set forth in Section 3(b).

"**Subsequent Form S-3**" has the meaning set forth in Section 3(m).

"**Suspension Notice**" has the meaning set forth in Section 2(b).

"**Suspension Period**" has the meaning set forth in Section 2(b).

"**Trading Market**" means whichever of the NYSE American, New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Capital Market, Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Stock is listed or quoted for trading on the date in question.

"**Underlying Shares**" means any shares of Common Stock issued or issuable upon conversion of the issued and outstanding Preferred Stock.

"**Underwritten Offering**" shall mean a registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

2. Registration.

(a) Mandatory Registration.

(i) On or prior to the Filing Deadline, the Company will prepare and file with the Commission a Registration Statement covering the resale of the Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. The Registration Statement will 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 will be on Form S-1, and if for any reason the Company is not then eligible to register for resale the Registrable Securities on Form S-1, then another appropriate form for such purpose) and will contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement) a "Plan of Distribution" section, substantially in the form attached hereto as Annex A, as the same may be amended in accordance with the provisions of this Agreement. The Company will use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as soon as possible but, in any event, no later than the Effectiveness Deadline, and will use its reasonable best efforts to keep the Registration Statement (or a Subsequent Form S-3) continuously effective under the Securities Act until such date when the Registrable Securities covered by the Registration Statement cease to be Registrable Securities as determined by the counsel to the Company (the "**Effectiveness Period**").

(ii) Notwithstanding the registration obligations set forth in this 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 reasonable best 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 Form S-1, if Form S-3 is not available) or such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment, the Company shall be obligated to use its reasonable best efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the Commission Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(iii) Notwithstanding any other provision of this Agreement, if the Commission or any Commission 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 its reasonable best 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 by reducing or eliminating any securities to be included other than Registrable Securities. In the event of a cutback under this Section 2(a)(iii), the Company shall give each Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Registration Statement in accordance with the foregoing, the Company will use its reasonable best efforts to file with the Commission, as promptly as allowed by Commission or Commission Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 (or Form S-1, if Form S-3 is not available) 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.

(b) Suspension Periods.

Notwithstanding Section 2(a), the Company may, at any time, delay the filing or delay or suspend the effectiveness of a Registration Statement or, without suspending such effectiveness, deliver a notice (a "**Suspension Notice**") that instructs any selling Holders not to sell any securities included in the Registration Statement or delay the filing of any amendment or supplement pursuant to Section 3, if the board of directors of the Company has determined and promptly notifies the selling Holders in writing that in its reasonable good faith judgment (i) 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 materially detrimental to the Company to allow continued availability of a Registration Statement or Prospectus or (ii) such registration could reasonably be expected to materially interfere with any material financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company (a "**Suspension Period**"), by providing the selling Holders with written notice of such Suspension Period and the reasons therefor. The Company will use its reasonable best efforts to provide such notice at least ten (10) Business Days prior to the commencement of such a Suspension Period; provided, however, that in any event the Company will provide such notice no later than the commencement of such Suspension Period; provided, further, that in no event will a Suspension Period exceed 30 days and in no event shall the total number of days subject to a Suspension Period during any consecutive 12-month period exceed 45 days. Any Suspension Period will not be deemed to end until the Holders have received a notice from the Company stating that such Suspension Period has ended.

(c) Damages. The parties hereto agree that, subject to Section 2(d), the Holders will suffer damages if the Company fails to fulfill its obligations under this Section 2 and that, in such case, it would not be feasible to ascertain the extent of such damages with precision. Accordingly, if:

(i) the Company does not file a Registration Statement by the Filing Deadline;

(ii) a Registration Statement is not declared effective by the Commission on or before the applicable Effectiveness Deadline;

(iii) the Company extends any Suspension Period beyond 45 days during any consecutive 12-month period; or

(iv) a Registration Statement is filed and declared effective but, during the applicable Effectiveness Period, a Registration Statement is not effective for any reason or the Prospectus contained therein is not available for use for any reason, or, other than by reason of a Suspension Period as provided in Section 2(b), will fail to be usable for its intended purpose without such disability being cured within ten (10) Business Days by an effective post-effective amendment to such Registration Statement, a supplement to the Prospectus, a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that cures such failure or the effectiveness of a Subsequent Form S-3, and either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c); or (y) the Company fails to satisfy any condition set forth in Rule 144(i)(2) as a result of which any of the Holders are unable to sell Registrable Securities without restriction under Rule 144 (including, without limitation, volume restrictions) (each such event referred to in foregoing clauses (i) through (iv), a "**Registration Default**"), then in such event as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Registrable Securities and not as a penalty (which remedy will not be exclusive of any other remedies available at law or equity), the Company hereby agrees to make pro rata payments to each Holder, subject to Section 2(d), as liquidated damages and not as a penalty, an additional amount equal to 0.5% of the aggregate amount invested by such Holder and sought to be included on the Registration Statement for each 90-day period (or pro rata for any portion thereof) following the occurrence of any Registration Default and shall be increased by 0.5% during each subsequent 90-day period (or pro rata for any portion thereof), provided that in no event shall the additional amount per 90-day period exceed 2.0% and in no event shall the aggregate additional amount due pursuant to this Section 2(c)(iv) exceed 5.0% of the aggregate amount invested by such Holder and sought to be included on the Registration Statement. Such payments shall constitute the Holder's exclusive monetary remedy for such events, but shall not affect the right of the Holders to seek injunctive relief. The amounts payable as liquidated damages pursuant to this paragraph shall be paid monthly within three (3) Business Days of the last day of each month following the commencement of the payments. Such payments shall be made to each Holder in cash. Interest shall accrue at the rate of 1% per month on any such liquidated damages payments that shall not be paid by the due date until such amount is paid in full. Notwithstanding the foregoing, if the Commission informs the Company that all or any portion of the Registrable Securities cannot, as a result of the application of Rule 415 or applicable Commission Guidance, be registered for resale as a secondary offering on a single registration statement, such notice shall not, in and of itself, constitute or serve as the basis for a Registration Default.

(d) Holders' Agreements. It will be a condition of each Holder's rights under this Agreement, and each Holder agrees, as follows:

(i) Cooperation & Selling Holder Questionnaire. Such Holder will cooperate with the Company by, with reasonable promptness, supplying information and executing documents relating to such selling Holder or the securities of the Company owned by such selling Holder in connection with such registration which are customary for offerings of this type or is required by applicable laws or regulations, including but not limited to furnishing to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "**Selling Holder Questionnaire**"). The Company will not be required to include the Registrable Securities of a Holder in a Registration Statement and will not be required to pay any damages under Section 2(c) to any Holder who fails to furnish to the Company a fully completed Selling Holder Questionnaire at least five (5) Business Days prior to the applicable Filing Deadline.

(ii) Undertakings. Such selling Holder will enter into any undertakings and take such other action relating to the conduct of the proposed offering which the Company may reasonably request as being necessary to insure compliance with federal and state securities laws and the rules or other requirements of FINRA.

(iii) Shelf Sales. In connection with and as a condition to the Company's obligations with respect to any shelf Registration Statement, each Holder covenants and agrees that it will not offer or sell any such Registrable Securities under the Registration Statement until the Registration Statement has been declared effective by the Commission and such Holder has provided a written notice to the Company of such proposed sale. The Company and the Holders acknowledge and agree that in no way shall this clause limit Holder's ability to sell securities without using the Registration Statement.

(iv) Discontinuance of Sales. Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a Suspension Notice or a Discontinuance Notice from the Company, such Holder will forthwith discontinue any offers and sales of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing (the "**Advice**") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company and the Holders acknowledge and agree that in no way shall this clause limit Holder's ability to sell securities without using the Registration Statement.

(e) Demand Registration.

(i) Right to Demand Registration. Subject to the other provisions of this Section (2)(e), Holders will have the right, on a one-time basis, exercisable by written notice satisfying the requirements of Section (2)(e)(ii) (a "**Demand Registration Notice**") to the Company by the Majority Holders (such notifying Majority Holders, the "**Demanding Notice Holders**"), to require the Company to register, under the Securities Act, an offering (a "**Demand Offering**") of Registrable Securities in accordance with this Section 2(e).

(ii) Contents of Demand Registration Notice. Each Demand Registration Notice sent by any Demanding Notice Holder(s) must include the below information. Each Holder agrees to treat as confidential information, its delivery or receipt of any Demand Registration Notice and the information contained therein, including the related Demand Offering.

(1) the name of, and contact information for, each such Demanding Notice Holder(s) and the number of Registrable Securities held by each such Demanding Notice Holder;

(2) the number of Registrable Securities that are proposed to be sold by each such Demanding Notice Holder; and

(3) the desired structure of the Demand Offering, which may include an Underwritten Offering.

(iii) Participation by Holders Other Than the Demanding Notice Holder(s). If the Company receives a Demand Registration Notice sent by one or more Demanding Notice Holders but not by all Holders, then:

(1) the Company will, within one (1) Business Day, send a copy of such Demand Registration Notice to each Holder other than such Demanding Notice Holders; and

(2) subject to Section 2(e)(vi), the Company will use its commercially reasonable efforts to include, in the related Demand Offering, Registrable Securities of any such Holder that has requested such Registrable Securities to be included in such Demand Offering pursuant to a joinder notice, delivered no later than the first (1st) Business Day after the date on which Company sent a copy of such Demand Registration Notice pursuant to Section (1) above.

(iv) Certain Procedures Relating to Demand Offering.

(1) Obligations and Rights of the Company. Subject to the other terms of this Agreement, upon its receipt of a Demand Registration Notice, the Company will (A) designate a Demand Registration Statement, in accordance with the definition of such term and this Section 2(e), for the Demand Offering; and (B) use its reasonable best efforts to effect such Demand Offering promptly and in accordance with the reasonable requests set forth in such Demand Registration Notice or the reasonable requests of the Holder(s) of a majority of the Registrable Securities included in such Demand Offering (the "**Demand Offering Holders**"), and cooperate in good faith with the Demand Offering Holders in connection therewith. Notwithstanding anything to the contrary in this Agreement, the Company will not be obligated to effect, or take any actions in respect of, any Demand Offering (i) during a Suspension Period or at any time when the securities proposed to be sold pursuant to such Demand Offering are subject to any lock-up agreement (including pursuant to a prior Demand Offering) that has not been waived or released or (ii) after the Company has already effected one (1) Demand Offering pursuant to this Agreement. The Company will be entitled to rely on the authority of the Demand Offering Holders of any Demand Offering to act on behalf of all Holders that have requested any securities to be included in such Demand Offering.

(2) Authority of the Demand Offering Holders. The Demand Offering Holders for any Demand Offering will have the following rights with respect to such Demand Offering, which rights, if exercised, will be deemed to have been exercised on behalf of all Holders that have requested any securities to be included in such Demand Offering:

(A) to determine the structure of the offering, provided such structure is be reasonably acceptable to the Company;

(B) with respect to any Demand Offering that is structured as an Underwritten Offering, to select the managing underwriters, and any other underwriter, subject to the approval of the Company, which will not be unreasonably withheld or delayed;

(C) with respect to any Demand Offering that is structured as an Underwritten Offering, to negotiate any related underwriting agreement, including the amount of securities to be sold by the applicable Holders pursuant thereto and the offering price of, and underwriting discount for, such securities; provided, however, that the Company will have the right to negotiate in good faith all of its representations, warranties and covenants, and indemnification and contribution obligations, set forth in any such underwriting agreement; and

(D) withdraw such Demand Offering by providing notice thereof to the Company.

(v) Conditions Precedent to Inclusion of a Holder's Registrable Securities. Notwithstanding anything to the contrary in this Section 2(e), the right of Holder to include any of its Registrable Securities in a Demand Offering will be subject to the following conditions:

(1) with respect to any Demand Offering that is structured as an Underwritten Offering, the execution and delivery, by such Holder or it is duly authorized representative or power of attorney, of any related underwriting agreement and such other agreements or instruments (including customary "lock-up" agreements, custody agreements and powers of attorney), if any, as may be reasonably requested by the managing underwriters; and

(2) the provision, by such Holder no later than one (1) Business Day immediately after the request therefor, of any information reasonably requested by the Company or, with respect to any Demand Offering that is structured as an Underwritten Offering, the managing underwriters.

(vi) Priority of Securities in Demand Offering Structured as Underwritten Offering. If the total number of securities requested to be included in a Demand Offering structured as an Underwritten Offering pursuant to this Section 2(e) exceeds the Maximum Successful Underwritten Offering Size, then:

(1) the number of securities to be included in such Demand Offering will be reduced to an amount that does not exceed the Maximum Successful Underwritten Offering Size; and

(2) to effect such reduction, if the number of Registrable Securities of Holders and other Persons that have duly requested such Registrable Securities to be included in such Demand Offering in accordance with this Section 2(e) (or in the case of other Persons, pursuant to "piggyback rights" evidenced by another agreement) exceeds such Maximum Successful Underwritten Offering Size, then the number of Registrable Securities to be included in such Demand Offering will be allocated first to the Holders pro rata based on the total number of Registrable Securities so requested by each such Holder to be included in such Demand Offering and, thereafter to such other Persons.

(vii) Rule 415. The provisions of Sections 2(a)(ii)-(iii) shall apply to this Section 2(e), *mutatis mutandis*.

(f) Piggyback Registrations.

(i) Right to Piggyback Registration. Without limiting any obligation of the Company, if (i) there is not an effective Registration Statement covering all of the Registrable Securities, if the Prospectus contained therein is not available for use, and if Rule 144 is not available with respect to the Registrable Securities, and (ii) the Company shall determine to prepare and file with the Commission a registration statement or offering statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity or equity-linked securities (other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity or equity-linked securities to be issued solely in connection with any acquisition of any entity or business (or a business combination subject to Rule 145 under the Securities Act) or equity or equity-linked securities issuable in connection with the Company's stock option or other employee benefit plans), or a dividend reinvestment or similar plan or rights offering, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen (15) calendar days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement or offering statement all or any part of such Registrable Securities that such Holder requests to be registered (a "**Piggyback Registration**"). The Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and shall use its reasonable best efforts to cause the managing underwriter or underwriters of a proposed Underwritten Offering in connection with such Piggyback Registration to permit the Registrable Securities requested by the Holders pursuant to this Section 2(f) to be included in a Piggyback Registration on the same terms and conditions as any similar securities of the Company included in such registration and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All such Holders proposing to distribute their Registrable Securities through an Underwritten Offering under this Section 2(f) shall enter into an underwriting agreement in customary form with the underwriter(s) selected for such Underwritten Offering by the Company. The Company may postpone or withdraw the filing or the effectiveness of a piggyback registration at any time in its sole discretion. The Company shall not grant piggyback registration rights to any holders of its Common Stock or securities that are convertible into its Common Stock that are senior to the rights of the Holders set forth in this Section 2(f).

(ii) Priority of Securities in Underwritten Offerings. Notwithstanding the foregoing, if the total number of securities requested to be included in an Underwritten Offering pursuant to this Section 2(f) exceeds the Maximum Successful Underwritten Offering Size, then: (1) the number of securities to be included in such Underwritten Offering will be reduced to an amount that does not exceed the Maximum Successful Underwritten Offering Size; and (2) to effect such reduction, if the number of Registrable Securities of Holders and other Persons that have duly requested such Registrable Securities to be included in such Underwritten Offering in accordance with this Section 2(f) (or in the case of other Persons, pursuant to "piggyback rights" evidenced by another agreement) exceeds such Maximum Successful Underwritten Offering Size, then the number of Registrable Securities to be included in such Underwritten Offering will be allocated first to such other Persons and thereafter to the Holders pro rata based on the total number of Registrable Securities so requested by each such Holder to be included in such Underwritten Offering.

3. Registration Procedures. In connection with the Company's obligations to effect a registration pursuant to Section 2(a), the Company and, as applicable, the Holders, will do the following:

(a) FINRA Cooperation. The Company and the Holders will cooperate and assist in any filings required to be made with FINRA.

(b) Right to Review Prior Drafts. Not less than ten (10) Business Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto, the Company will furnish to each Holder copies of the "**Selling Securityholders**" and "**Plan of Distribution**" sections of such documents (together with drafts of the Registration Statement or any related Prospectus or any amendment or supplement thereto) in the form in which the Company proposes to file them, which sections and documents will be subject to the review of each such Holder. Each Holder will provide comments, if any, within five (5) Business Days after the date such materials are provided. The Company will not file a Registration Statement, any Prospectus or any amendments or supplements thereto in which the "**Selling Securityholders**" or the "**Plan of Distribution**" sections thereof differ in any material respect from the disclosure received from a Holder in its Selling Holder Questionnaire (as amended or supplemented) or otherwise differ in any material respect from the drafts previously received by such Holder. Each Holder whose Registrable Securities are to be sold pursuant to a Demand Offering in accordance with Section 2(e) will be afforded the same rights set forth in this Section 3(b) with respect to any Registration Statement or Prospectus or any amendment or supplement thereto which names such Holder.

(c) Right to Copies. The Company will furnish to each Holder and the managing underwriters, if any, without charge, (i) at least one (1) conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Holder (excluding those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, except if such documents are available on EDGAR; and (ii) as many copies of each Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Holder may reasonably request. The Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders or managing underwriters, as applicable, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(d) Notices. The Company will notify each Holder covered by the Registration Statement as promptly as reasonably practicable: (A) when the Prospectus or any prospectus supplement or post-effective amendment has been filed, and with respect to the Registration Statement or any post-effective amendment, when the same has become effective; (B) of any request by the Commission for any amendments or supplements to the Registration Statement or the Prospectus or for additional information; (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (D) if, at any time prior to the closing contemplated by the Exchange Agreement, it becomes aware that the representations and warranties of the Company contained in such agreement cease to be true and correct; (E) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (F) of the happening of any event which it believes may make any statement made in the Registration Statement, the Prospectus or any document incorporated therein by reference untrue, or of any material misstatement or omission, and which requires the making of any changes in the Registration Statement, the Prospectus or any document incorporated therein by reference in order to make the statements therein not misleading; (G) upon the occurrence of a Suspension Period (items (C) through and including (G) being a "**Discontinuance Notice**"); and (H) upon the conclusion of a Suspension Period. In addition, during the pendency of any Demand Offering pursuant to Section 2(e), but other than during a Suspension Period, the Company will provide notice to each Holder whose Registrable Securities are to be sold in such offering pursuant to the Registration Statement used in connection with the Demand Offering, which Holders will be afforded the same notice set forth in clauses (A) through (H) of this Section 3(d) relating to such Registration Statement.

(e) Withdrawal of Suspension Orders. The Company will use its reasonable best efforts to respond as promptly as reasonably possible to any comments received from the Commission with respect to any Registration Statement or any amendment thereto and to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement or the suspension of the qualification of the Registrable Securities for sale in any jurisdiction, or to prevent any such suspension.

(f) Supplements & Amendments. Subject to Sections 2(a) and 2(e), if required by applicable federal securities laws, based on the advice of the Company's counsel, the Company will prepare a supplement or post-effective amendment to a Registration Statement, the related Prospectus or any document incorporated therein by reference or file any other required document or, if necessary, renew or refile a Registration Statement prior to its expiration, so that, as thereafter delivered to the purchasers of the Registrable Securities, (A) the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading; (B) such Registration Statement remains continuously effective as to the applicable Registrable Securities for its applicable Effectiveness Period; (C) the related Prospectus may be supplemented by any required prospectus supplement, and as so supplemented may be filed pursuant to Rule 424 and (D) the Prospectus will be supplemented, if necessary, to update the disclosure of the number of shares that each Holder intends to sell, reflecting prior resales in accordance with guidance of the staff of the Commission (as such guidance may be substituted for, amended or supplemented by the staff of the Commission after the date of this Agreement). Furthermore, subject to a Holder's compliance with its obligations under Section 2(d)(i), the Company will take such actions as are required to name such Holder as a selling Holder in a Registration Statement or any supplement thereto and to include (to the extent not theretofore included) in such Registration Statement the Registrable Securities identified in such Holder's Selling Holder Questionnaire.

(g) Listing. The Company will use its best efforts to cause all Underlying Shares that constitute Registrable Securities covered by the Registration Statement to be listed on each securities exchange on which identical securities issued by the Company are then listed if requested by the Holder thereof and, if not so listed, to be approved for listing on the national securities exchange on which the Company's Common Stock is then listed.

(h) Transfer Agent & Registrar. The Company will provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by such Registration Statement from and after a date not later than the Effective Date of such Registration Statement.

(i) Certificates. The Company will cooperate with the Holders to facilitate the timely preparation and delivery of any certificates representing Registrable Securities to be delivered to a transferee pursuant to any Registration Statement, which certificates will be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

(j) CUSIPs. The Company, if necessary, will use its reasonable best efforts to provide a CUSIP number for the Registrable Securities, not later than the Effective Date of the Registration Statement.

(k) Legal Counsel. Holders will have the right to select one legal counsel, at the Company's reasonable expense pursuant to Section 4, to review any Registration Statement or Prospectus prepared pursuant to Section 2 or this Section 3, which will be such counsel as designated by the Majority Holders. The Company will reasonably cooperate with such legal counsel's reasonable requests in performing their obligations under this Agreement.

(l) Blue Sky. If at any time the Registrable Securities are not "Covered Securities" within the meaning of Rule 146 of the Securities Act, the Company will, prior to any public offering of Registrable Securities, use its reasonable best efforts to register or qualify or cooperate with the selling Holders, in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or blue sky laws ("**Blue Sky**") of all jurisdictions within the United States that the selling Holders request in writing be covered, to keep each such registration or qualification (or exemption therefrom) effective during the applicable Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by any Registration Statement; provided, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to become subject to any material tax in any such jurisdiction where it is not then so subject.

(m) Subsequent Form S-3. If, at the time of filing of a Registration Statement, the Company is not eligible to use Form S-3 for transactions involving secondary offerings and the Company is not otherwise eligible to incorporate by reference prospectively into such Registration Statement, then at such time as the Company becomes eligible to register transactions involving secondary offerings on Form S-3, the Company may, in its sole discretion, file in accordance with the procedures outlined in this Section 3, including but not limited to all required notices to the Holders, an additional Registration Statement on Form S-3 to cover resales pursuant to Rule 415 of the Registrable Securities (a "**Subsequent Form S-3**"), and, when such Subsequent Form S-3 has been filed with the Commission, the Company may, concurrently with its filing of a request for acceleration of effectiveness of such Subsequent Form S-3, withdraw or terminate the original Registration Statement; provided, however, that nothing in this Section 3(m) will be interpreted to limit the Company's obligations pursuant to Section 2(a).

4. Registration Expenses.

All fees and expenses incident to the performance of or compliance with this Agreement by the Company will be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement including, without limitation: (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (B) related to compliance with applicable state securities or Blue Sky laws and (C) incurred in connection with the preparation or submission of any filing with FINRA); (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing Prospectuses); (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of counsel for the Company and counsel pursuant to Section 3(k); (v) Securities Act liability insurance, if the Company so desires such insurance; (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement and (vii) all of the Company's own 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; provided, however, that each selling Holder will pay (i) all underwriting discounts, commissions, fees and expenses and all transfer taxes with respect to the Registrable Securities sold by such selling Holder; (ii) any fees and expenses of legal counsel other than the counsel selected pursuant to Section 3(k) and (iii) all other expenses incurred by such selling Holder and incidental to the sale and delivery of the shares to be sold by such Holder.

5. Indemnification.

(a) Indemnification by the Company. The Company will, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, partners, members and shareholders of each Holder and each Person who controls any Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of any such controlling Persons, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and reasonable attorneys' fees) and expenses (collectively, "**Losses**"), as incurred, arising out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein to make the statements not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein 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, except to the extent, but only to the extent, that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Holder expressly for use in a Registration Statement, 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 approved in writing by such Holder for use in the Registration Statement, such Prospectus or such form of Prospectus (it being understood and agreed that the only such information furnished to the Company by or on behalf of any Holder consists of the information described in Annex A hereto, as may be amended in accordance with the provisions of this Agreement, for this purpose) or (2) resulted from the use by any Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that such Prospectus is outdated or defective and prior to the receipt by such Holder of an Advice or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the Advice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected.

(b) Indemnification by Holders. Each Holder will, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, partners, members and shareholders and each Person who controls the Company (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of such controlling Person, in each case to the fullest extent permitted by applicable law from and against all Losses, as incurred, arising solely out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein to make the statements not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein 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 to the extent, but only to the extent, that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Holder expressly for use in a Registration Statement or Prospectus, 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 approved in writing by such Holder for use in the Registration Statement or Prospectus (it being understood and agreed that the only such information furnished to the Company by or on behalf of any Holder consists of the information described in Annex A hereto, as may be amended in accordance with the provisions of this Agreement, for this purpose) or (2) resulted from the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of an Advice or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the Advice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected; provided, however, that the obligation to indemnify will be several and not joint and in no event will the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by any such selling Holder upon the sale of the Registrable Securities under the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. In order for a Person (the "**Indemnified Party**") to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim or demand made by any Person against the Indemnified Party (a "**Claim**"), such Indemnified Party must notify the indemnifying party ("**Indemnifying Party**") in writing, and in reasonable detail, of the Claim as promptly as reasonably possible after receipt by such Indemnified Party of notice of the Claim; provided, however, that failure to give such notification on a timely basis shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court filings and related papers) received by the Indemnified Party relating to the Claim.

If a Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses and acknowledges its obligation in writing to indemnify the Indemnified Party therefor, to assume at its cost the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party and to settle such suit, action, claim or proceeding in its discretion with an unconditional full release of the Indemnified Party and no admission of fault, liability, culpability or a failure to act by or on behalf of the Indemnified Party. Notwithstanding any acknowledgment made pursuant to the immediately preceding sentence, the Indemnifying Party shall continue to be entitled to assert any limitation to the amount of Losses for which the Indemnifying Party is responsible pursuant to its indemnification obligations. Should the Indemnifying Party so elect to assume the defense of a Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof unless (i) the Indemnifying Party has materially failed to defend, contest or otherwise protest in a timely manner against Claims or (ii) such Indemnified Party reasonably objects to such assumption on the grounds that there are defenses available to it which are different from or in addition to the defenses available to such Indemnifying Party and, as a result, a conflict of interest exists. Subject to the limitations in the preceding sentence, if the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. If the Indemnifying Party chooses to defend any Claim, all the parties hereto shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld).

The obligations of the Company and the Holders under this Section 5 shall survive completion of any offering of Registrable Securities pursuant to a Registration Statement and the termination of this Agreement. The Indemnifying Party's liability to any such Indemnified Party hereunder shall not be extinguished solely because any other Indemnified Party is not entitled to indemnity hereunder.

(d) Contribution. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, 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 will 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 will be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys' or other reasonable 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 Section 5(a) or 5(b) 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 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 this Section 5. Notwithstanding the provisions of this Section 5, no Holder will be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. 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.

(e) **Other**. The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) **Notices**. All notices or other communications hereunder will be in writing and will be given by (i) personal delivery, (ii) courier or other delivery service which obtains a receipt evidencing delivery, (iii) registered or certified mail (postage prepaid and return receipt requested) or (iv) facsimile or similar electronic device, to such address as may be designated from time to time by the relevant party, and which will initially be:

(i) in the case of the Company:

Venus Concept Inc.
235 Yorkland Blvd., Suite 900
Toronto, Ontario, Canada
M2J 4Y8
Attn: General Counsel and Corporate Secretary

Email: mmandarello@venusconcept.com

With a copy to:

Dorsey & Whitney LLP
TD Canada Trust Tower
Brookfield Place 161 Bay Street, Suite 4310
Toronto, ON M5J 2S1
Attn: Richard Raymer
Email: raymer.richard@dorsey.com

(ii) in the case of each Noteholder, to the address described on their respective signature page to the Exchange Agreement.

Notices to Holders shall be provided to the address specified on such Holder's Selling Holder Questionnaire. All notices and other communications will be deemed to have been given (i) if delivered by the United States mail, three (3) Business Days after mailing (five (5) Business Days if delivered to an address outside of the United States), (ii) if delivered by a courier or other delivery service, one (1) Business Day after dispatch (two (2) Business Days if delivered to an address outside of the United States) and (iii) if personally delivered or sent by facsimile or similar electronic device, upon receipt by the recipient or its agent or employee (which, in the case of a notice sent by facsimile or similar electronic device, will be the time and date indicated on the transmission confirmation receipt). No objection may be made by a party to the manner of delivery of any notice actually received in writing by an authorized agent of such party.

(b) **Governing Law; Jurisdiction; Jury Trial; Etc.**. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service will constitute good and sufficient service of process and notice thereof. Nothing contained herein will be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Agreement or any transaction contemplated hereby.

(c) Remedies. In the event of a breach by the Company of its obligations under this Agreement, each Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby waives the defense in any action for specific performance that a remedy at law would be adequate.

(d) Entire Agreement; Amendments. This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the parties' entire agreement with respect to the subject matter hereof and supersede all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may be amended, altered or modified only by a writing signed by the Company and the Majority Holders.

(e) Additional Documents. Each party hereto agrees to execute any and all further documents and writings and to perform such other actions which may be or become necessary or expedient to effectuate and carry out this Agreement.

(f) Third-Party Beneficiaries. None of the provisions of this Agreement will be for the benefit of, or enforceable by, any third-party beneficiary, except with respect to the Holders.

(g) Successors and Assigns. Except as provided herein to the contrary, this Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

(h) Waivers Strictly Construed. With regard to any power, remedy or right provided herein or otherwise available to any party hereunder (a) no waiver or extension of time will be effective unless expressly contained in a writing signed by the waiving party and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

(i) Severability. The validity, legality or enforceability of the remainder of this Agreement will not be affected even if one or more of the provisions of this Agreement will be held to be invalid, illegal or unenforceable in any respect.

(j) Attorneys' Fees. Should any litigation be commenced (including any proceedings in a bankruptcy court) between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any Person hereunder, the party or parties prevailing in such proceeding will be entitled, in addition to such other relief as may be granted, to the attorneys' fees and court costs incurred by reason of such litigation.

(k) Headings. The Section headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular Section.

(l) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank, Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Resale Registration Rights Agreement as of the date first written above.

VENUS CONCEPT INC.

By: /s/ Rajiv De Silva
Name: Rajiv De Silva
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Resale Registration Rights Agreement as of the date first written above.

NOTEHOLDERS:

MADRYN HEALTH PARTNERS, LP

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

PLAN OF DISTRIBUTION

We are registering the Securities covered by this prospectus on behalf of the Selling Securityholders. All costs, expenses and fees connected with the registration of these Securities will be borne by us. Any brokerage commissions and similar expenses connected with selling the Securities will be borne by the Selling Securityholders. The Selling Securityholders may offer and sell the Securities covered by this prospectus from time to time in one or more transactions. The term "**Selling Securityholders**" includes pledgees, donees, transferees and other successors-in-interest who may acquire Securities through a pledge, gift, partnership distribution or other non-sale related transfer from the Selling Securityholders. The Selling Securityholders will act independently of the Company in making decisions with respect to the timing, manner and size of each sale. These transactions include:

- in "at the market offerings" within the meaning of Rule 415(a)(4) under the Securities Act, to or through a market maker or into an existing trading market, on an exchange or otherwise;
- directly to a limited number of purchasers or to a single purchaser;
- through agents;
- by delayed delivery contracts or by remarketing firms;
- ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its own account pursuant to this prospectus;
- exchange or over-the-counter distributions in accordance with the rules of the exchange or other market;
- block trades in which the broker-dealer attempts to sell the Securities as agent but may position and resell a portion of the block as principal to facilitate the transaction, or in crosses, in which the same broker acts as agent on both sides of the trade;
- transactions in options, swaps or other derivatives that may or may not be listed on an exchange;
- through distributions by a Selling Securityholder or its successors in interest to its members, general or limited partners or shareholders (or their respective members, general or limited partners or shareholders);
- a combination of any such method of sale; or
- any other method permitted pursuant to applicable law.

In connection with distributions of the Securities or otherwise, the Selling Securityholders may:

- sell the Securities:
  - in negotiated transactions;
  - in one or more transactions at a fixed price or prices, which may be changed from time to time;
  - at market prices prevailing at the times of sale;
  - at prices related to such prevailing market prices; or
  - at negotiated prices;

- sell the Securities:
    - on a national securities exchange;
    - in the over-the-counter market; or
    - in transactions otherwise than on an exchange or in the over-the-counter market, or in combination;
- enter into option or other transactions with broker-dealers or other financial institutions which require the delivery to them of Securities covered by this prospectus, which they may in turn resell; and
- pledge Securities to broker-dealers or other financial institutions, which, upon a default, they may in turn resell.

The Selling Securityholders may also resell all or a portion of the Securities in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, as permitted by that rule, Section 4(a)(1) under the Securities Act, if available, or any other exemption from the registration requirements that become available, rather than under this prospectus.

If underwriters are used in the sale of any Securities, such Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions described above. Securities may be either offered to the public through underwriting syndicates represented by managing underwriters or directly by underwriters. We may use underwriters with whom we have a material relationship. As applicable, we will describe in each accompanying prospectus supplement the name of the underwriter(s) and the nature of any such relationship(s).

In connection with sales of Securities, the Selling Securityholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of Securities in the course of hedging in positions they assume. The Selling Securityholders may also sell Securities short and the Selling Securityholders may deliver Securities covered by this prospectus to close out short positions and to return borrowed Securities in connection with such short sales. The Selling Securityholders may also loan or pledge Securities to broker-dealers that in turn may sell such Securities, to the extent permitted by applicable law. The Selling Securityholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of 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 Securityholders may, from time to time, pledge or grant a security interest in some or all of the Securities owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the Securities from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act, amending, if necessary, the list of Selling Securityholders to include the pledgee, transferee or other successors in interest as Selling Securityholders under this prospectus. The Selling Securityholders may also may transfer and donate Securities in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

A Selling Securityholder that is an entity may elect to make an in-kind distribution of Securities to its members, general or limited partners or shareholders pursuant to the registration statement of which this prospectus is a part by delivering a prospectus. To the extent that such members, general or limited partners or shareholders are not affiliates of ours, such members, partners or shareholders would thereby receive freely tradable Securities pursuant to the distribution through a registration statement. Additionally, to the extent that entities, members, partners or shareholders are affiliates of ours received shares in any such distribution, such affiliates will also be Selling Securityholders and will be entitled to sell Securities pursuant to this prospectus.

In effecting sales, the Selling Securityholders may engage broker-dealers or agents, who may in turn arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the Selling Securityholders and/or from the purchasers of Securities for whom the broker-dealers may act as agents or to whom they sell as principal, or both. The compensation to a particular broker-dealer may be in excess of customary commissions. To our knowledge, there is currently no plan, arrangement or understanding between any Selling Securityholders and any broker-dealer or agent regarding the sale of any Securities by the Selling Securityholders.

The Selling Securityholders, any broker-dealers or agents and any participating broker-dealers that act in connection with the sale of the Securities covered by this prospectus may be "underwriters" under the Securities Act with respect to those Securities and will be subject to the prospectus delivery requirements of that Act. Any profit that the Selling Securityholders realize, and any compensation that any broker-dealer or agent may receive in connection with any sale, including any profit realized on resale of Securities acquired as principal, may constitute underwriting discounts and commissions. If the Selling Securityholders are deemed to be underwriters, the Selling Securityholders may be subject to certain liabilities under statutes including, but not limited to, Section 11, 12 and 17 of the Securities Act and Section 10(b) and Rule 10b-5 under the Exchange Act.

The securities laws of some states may require the Selling Securityholders to sell the Securities in those states only through registered or licensed brokers or dealers. These laws may also require that we register or qualify the Securities for sale in those states unless an exemption from registration and qualification is available and the Selling Securityholders and we comply with that exemption. In addition, the anti-manipulation rules of Regulation M under the Securities Exchange Act of 1934 may apply to sales of Securities in the market and to the activities of the Selling Securityholders and their affiliates. Regulation M may restrict the ability of any person engaged in the distribution of the Securities to engage in market-making activities with respect to the Securities. All of the foregoing may affect the marketability of the Securities and the ability of any person to engage in market-making activities with respect to the Securities.

If any Selling Securityholder notifies us that he has entered into any material arrangement with a broker-dealer for the sale of Securities through a block trade, special offering, exchange distribution, over-the-counter distribution or secondary distribution, or a purchase by a broker or dealer, we will file any necessary supplement to this prospectus to disclose:

- the number of Securities involved in the arrangement;
- the terms of the arrangement, including the names of any underwriters, dealers or agents who purchase Securities, as required;
- the proposed selling price to the public;
- any discount, commission or other underwriting compensation;
- the place and time of delivery for the Securities being sold;
- any discount, commission or concession allowed, reallowed or paid to any dealers; and
- any other material terms of the distribution of Securities.

In addition, if the Selling Securityholder notifies us that a donee, pledgee, transferee or other successor-in-interest of the Selling Securityholder intends to sell any securities, we will file an amendment to the registration statement of which this prospectus forms a part of or a supplement to this prospectus, if required.

VENUS CONCEPT INC.

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of common stock, $0.0001 par value per share (the "**Common Stock**") and/or securities, of Venus Concept Inc. (the "**Company**") understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "**Commission**") a Registration Statement for the registration and resale of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of October 4, 2023 (the "**Registration Rights Agreement**"), among the Company and the Noteholders (as defined therein). A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms used and not otherwise defined herein will have the meanings ascribed thereto in the Registration Rights Agreement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

1. Name.

(a) Full Legal Name of Selling Securityholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities Listed in Item 3 below 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 the questionnaire):

_____

2. Address for Notices to Selling Securityholder:

Name: _____

Address: _____

_____

Telephone: _____

Fax: _____

Contact Person: _____

3. Beneficial Ownership of Registrable Securities:

(a) Type and Amount of Registrable Securities Beneficially Owned:

_____

4. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

Note: If yes, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(b) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(c) If you are an affiliate of a broker-dealer, do you certify that you bought 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, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

5. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.

Except as set forth below in this Item 5, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item 3.

Type and Amount of Other Securities Beneficially Owned by the Selling Securityholder:

6. 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 inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the Effective Date for the Registration Statement.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Registration Statement and the related prospectus. 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.

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.

Dated:

Beneficial Owner:

_____

By: _____

Name: _____

Title: _____

PLEASE FAX A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:

Venus Concept Inc.
ATTN: Michael Mandarello, General Counsel and Corporate Secretary
235 Yorkland Blvd., Suite 900
Toronto, ON M2J 4Y8

Exhibit 10.3

Execution Version

THESE SECURITIES AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED 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 COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED ON OR ABOUT DECEMBER 9, 2020 AND OCTOBER 4, 2023.

THIS INSTRUMENT IS SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SECURITIES EXCHANGE AND REGISTRATION RIGHTS AGREEMENT DATED AS OF DECEMBER 8, 2020, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

VENUS CONCEPT INC.

SECURED SUBORDINATED CONVERTIBLE NOTE

Certificate No.: 1
Issuance Date: October 4, 2023 Original Principal Amount: U.S.$8,432,946.88

FOR VALUE RECEIVED, Venus Concept Inc., a Delaware corporation (the "Company"), hereby promises to pay to Madryn Health Partners, LP or registered permitted assigns (the "Holder") in cash the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "Principal") when due, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("Interest") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "Issuance Date") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Secured Subordinated Convertible Note (including all Secured Subordinated Convertible Notes issued in exchange, transfer or replacement hereof, this "Note") is one of a series of Secured Subordinated Convertible Notes issued pursuant to the Securities Exchange Agreement (as defined herein) and exchanged pursuant to that certain Exchange Agreement dated as of the Issuance Date by and among Holder and the Company (collectively, the "Notes" and such other Secured Subordinated Convertible Notes, the "Other Notes"). Certain capitalized terms used herein are defined in Section 28.

1. Payments of Principal. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (a) all outstanding Principal as of such date, plus (b) all accrued and unpaid Interest thereon as of such date. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal or accrued and unpaid Interest. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all other amounts (other than Principal, but including any Redemption Premium Amount) outstanding hereunder and under any other Notes held by such Holder, and (iii) third, all Principal outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. Interest. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in kind by capitalizing such Interest and adding it to the Principal balance of this Note on the last Business Day of each Calendar Quarter after the Issuance Date (each, an "Interest Date"). Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, and in cash in full on the Maturity Date by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. If any portion of this Note is repaid or redeemed pursuant to Sections 4.2, 4.3, 5.2 and 7 or converted pursuant to Section 3 prior to the Maturity Date and prior to the payment of Interest on an Interest Date, Interest on such portion of this Note shall accrue at the Interest Rate and be payable in cash on each Redemption Date, on each Conversion Date and/or in connection with any required payment upon any Event of Default, as applicable; provided, that, in connection with a conversion, such Interest accrued and unpaid interest may, at the option of the Company, be converted into shares of Common Stock on the same terms as the Principal being converted on such Conversion Date, in lieu of payment in cash. Interest shall continue to accrue on any portion of this Note to the extent not so repaid, redeemed or converted.

3. Conversion of Notes. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.3, at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Principal into fully paid and nonassessable shares of Common Stock in accordance with Section 3.2, at the Conversion Rate. The Company shall not issue any fraction of a share of Common Stock upon any such conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "Transfer Agent")) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any portion of the outstanding and unpaid Principal.

3.2 Mechanics of Conversion.

(a) Optional Conversion.

(i) To convert any portion of the outstanding Principal into shares of Common Stock on any date (a "Conversion Date"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "Conversion Notice") to the Company. If required by Section 3.2(c), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 16.2).

(ii) On or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile, electronic mail or otherwise the Transfer Agent instructions and representation as to whether such shares of Common Stock may then be resold pursuant to (A) an effective and available registration statement, either, (1) prior to, (2) contemporaneously with, or (3) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, (B) Rule 144, unless the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Stock issuable in connection with such Conversion Notice are not being resold either (1) prior to, (2) contemporaneously with, or (3) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, provided that the Holder shall provide the Company with customary representations with respect to compliance by the Holder with Rule 144, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "Permitted Securities Transaction"), substantially in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

(iii) On or before the third (3rd) Trading Day following the date on which the Company has received a Conversion Notice (the "Share Delivery Deadline"), the Company shall (A) provided, that, the Transfer Agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, with respect to the shares of Common Stock included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Stock included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, deliver a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion.

(iv) If this Note is physically surrendered for conversion pursuant to Section 3.2(c) and the outstanding Principal of this Note is greater than the portion of the Principal being converted, then the Company shall as soon as practicable and in no event later than five (5) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 16.4) representing the outstanding Principal not so converted.

(v) The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(b) [Reserved].

(c) Registration; Book-Entry. The Company shall maintain a register (the "Register") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "Registered Notes"). The entries in the Register shall be presumed correct absent reasonable evidence to the contrary provided by the holders of the Notes. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. Unless the Assignment Conditions (as defined in the Securities Exchange Agreement) and the other terms of Section 9.8 of the Securities Exchange Agreement have been satisfied, the Registered Note may not be assigned, transferred or sold in whole or in part other than to an Affiliate of Holder and may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon satisfaction of the Assignment Conditions and the other terms of Section 9.8 of the Securities Exchange Agreement, the Company shall record the information relating to such assignment in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 16, provided, that, if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (i) the full outstanding Principal represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3.2(a)) or (ii) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other methods as are reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(d) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3.3, shall convert from each holder of Notes electing to have Notes converted on such Conversion Date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such Conversion Date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such Conversion Date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 21.

3.3 Exchange Cap. So long as the rules of the Principal Market (or another Eligible Market, if Common Stock is re-listed, re-traded or re-quoted on another Eligible Market) so require, the sum of the number of shares of Common Stock that may be issued under this Note and all outstanding Other Notes shall be limited to the Exchange Cap, unless stockholder approval is obtained prior to the issuance to issue more than the Exchange Cap. The Exchange Cap shall be appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction in accordance with the rules of the Principal Market or another Eligible Market. If the Exchange Cap is reached upon conversion of this Note and all outstanding Other Notes, the Company shall use its commercially reasonable efforts to file a proxy statement with the SEC seeking stockholder approval, within seventy-five (75) calendar days after the date on which the Exchange Cap is reached, from at least a majority of the Company's stockholders, for the Company's issuance of all of the remaining shares of Common Stock underlying this Note and all outstanding Other Notes. Should the stockholders of the Company vote to reject such additional issuance, the Company shall not be required to seek another stockholder approval under this Section 3.3.

3.4 Net Share Settlement.

(a) Notwithstanding Section 3.2 above, in the case of conversion of this Note on the Maturity Date, any Redemption Date or any date of any required payment upon any Event of Default, as applicable, on which the entire outstanding Principal of this Note is to be repaid, redeemed or prepaid in full, the Company shall, at the option of the Holder, satisfy its obligation to issue and deliver shares of Common Stock by paying and delivering to the Holder, a combination of cash and shares of Common Stock (the "Net Share Settlement"), as set forth in this Section 3.4.

(b) If the Holder elects the Net Share Settlement in a Conversion Notice, the Company shall pay and deliver the Net Share Settlement Amount in accordance with Sections 1, 2 and 3, as applicable.

The "Net Share Settlement Amount" will consist of (i) cash equal to the Principal of this Note outstanding immediately prior to the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, plus all accrued but unpaid Interest and, if any, Redemption Premium Amount thereon and (ii) the number of shares of Common Stock equal to the Net Share Amount.

The "Net Share Amount" means the number of shares of Common Stock calculated by the following formula:

$$\text{Net Share Amount} = \frac{P}{CP} - \frac{P}{MP}$$

Where:

P	=	the Principal of this Note to be redeemed on the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, as the case may be.
CP	=	the Conversion Price in effect as of the date of the Conversion Notice.
MP	=	the Closing Sale Price per share of the Common Stock on the date of the Conversion Notice or, if such Closing Sale Price is not yet available as of the date of the Conversion Notice, the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the date of the Conversion Notice.

4. Events of Default; Rights Upon an Event of Default.

4.1 Event of Default. Each of the following events shall constitute an "Event of Default" and each of the events in clauses (d) and (e) below shall constitute a "Bankruptcy Event of Default":

(a) the Company's failure to cure a Conversion Failure by delivery of the required number of shares of Common Stock within ten (10) Trading Days after the applicable Conversion Date;

(b) the Company's or any Guarantor's failure to pay to the Holder (i) any amount of Principal when due under this Note, or (ii) any amount of Interest or other amounts due under this Note (including, without limitation, the Company's or any Guarantor's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document or any other agreement, document, certificate or other instrument delivered to Holder in connection with the transactions contemplated hereby and thereby, within three (3) Trading Days after such amounts were due;

(c) The occurrence of any default, event of default, or similar term under the MSPLP Facility after the expiration of all applicable notice, grace and cure periods (each, a "CNB Event of Default"); provided, that no CNB Event of Default shall have occurred if the underlying default or event of default is a result of a breach of the CNB Escrow Agreement (as defined in the Securities Exchange Agreement) by Madryn Health Partners, LP or any of its Affiliates; provided, further, that, to the extent that the Holder has not accelerated the Notes or foreclosed upon the Collateral in reliance on the Event of Default in this clause (c) on or prior to the date upon which CNB, its affiliates or successors enter into a consent, amendment, waiver or similar agreement with respect to the underlying CNB Event of Default giving rise to the Event of Default under this clause (c), the Event of Default pursuant to this clause (c) shall be deemed to be automatically cured upon effectiveness of such waiver or similar agreement among CNB, its affiliates or successors and the Company and its affiliates with respect to the CNB Event of Default. For the avoidance of doubt, the proviso set forth in this clause (c) shall not apply to, or be deemed to have any impact on, any Event of Default arising independently of this clause (c);

(d) any Obligor or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law (as defined in the Guaranty and Security Agreement), or makes an assignment for the benefit of creditors; or makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable law seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or applies for or consents to the appointment (including any provisional appointment) of any receiver, receiver-manager, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, administrative receiver, administrator, compulsory manager, receiver-manager, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or with regard to an Israeli Guarantor (as defined in the Securities and Exchange Agreement), the occurrence at any time with respect to it of a winding-up, bankruptcy, dissolution or administration;

(e) the entry against the Company or any Guarantor of one or more final judgments or orders for the payment of money in an aggregate amount exceeding $500,000 (to the extent not covered by independent third-party insurance and/or third party indemnity rights as to which the applicable insurer or indemnitor does not dispute coverage in writing) and such judgment or order remains unpaid for a period of thirty (30) consecutive days;

(f) any default by the Company in the due performance and observance of any of the covenants or agreements contained in Section 12;

(g) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(h) other than as specifically set forth in another clause of this Section 4.1, any default by any Obligor in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of thirty (30) days following the earlier of the date on which (i) a Responsible Officer (as defined in the Securities Exchange Agreement) of any Obligor becomes aware of such failure and (ii) notice thereof shall have been given to the Obligors by the Holder;

(i) any material provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Obligors party thereto in any material respect, or the validity or enforceability thereof shall be contested by any Obligor party thereto (other than with respect to indemnification or contribution provisions which may be unenforceable), or a proceeding shall be commenced by the Company or any Guarantor or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Guarantor shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document;

(j) shares of Common Stock shall cease to be quoted on the Principal Market for any reason and are not thereafter re-listed, re-traded or re-quoted on another Eligible Market within fifteen (15) Trading Days;

(k) the Company shall fail to comply in any material respect with the reporting requirements of the Exchange Act (including but not limited to becoming delinquent in its filings beyond any available extension); or

(l) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Holder may (a) declare the outstanding Principal of this Note, all Interest accrued and unpaid on the outstanding Principal of this Note and all other amounts owing or payable hereunder or under any other Transaction Document, to be immediately due and payable (and upon any such declaration the same shall become and shall be immediately due and payable), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company and (b) exercise all rights and remedies available to it under the Transaction Documents. Notwithstanding anything to the contrary in this Section 4.2, but subject to Section 3.3, the Holder may, in its sole discretion, determine to accept payment on the Principal part in shares of the Common Stock, converted at the Conversion Price, and part in cash. Accrued but unpaid Interest on the Principal shall be paid to the Holder in cash. For the avoidance of doubt, it is understood and agreed that no Redemption Premium Amount shall be due or payable upon acceleration of this Note.

4.3 Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing all outstanding Principal, in addition to all accrued and unpaid Interest and any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity; provided, that, the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment under Section 4.2 or of any Redemption Price, as applicable.

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) If, at any time while this Note is outstanding, (i) the Company, directly or indirectly, in one or more related transactions, effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to any Person other than one of the Company's subsidiaries in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of fifty percent (50%) or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions, effects any reclassification, reorganization or recapitalization of the Common Stock (other than changes resulting from a subdivision or combination thereof) or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than fifty percent (50%) of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Note, the Holder shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 3.3 on the conversion of this Note), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Note is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 3.3 on the conversion of this Note). For purposes of any such conversion, the determination of the Conversion Rate shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Rate among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Transaction. The Company shall cause the Successor Entity to assume in writing all of the obligations of the Company under this Note, the other Transaction Documents, and any document ancillary hereto or thereto, pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by such Holders (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder of this Note, deliver to the Holder in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its Parent Entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note (without regard to any limitations on the conversion of this Note) prior to such Fundamental Transaction, and with a conversion rate which applies the Conversion Rate hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion rate being for the purpose of protecting the economic value of this Note immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. At and after the effective time of such Fundamental Transaction, (A) the Holder shall continue to have the right to determine the form of consideration to be paid or delivered in accordance with Section 3.4, (B)(1) any amount payable in cash upon conversion of this Note in accordance with Section 3 shall continue to be payable in cash, (2) any shares of Common Stock that the Company would have been required to deliver upon conversion of this Note in accordance with Section 3 shall instead be deliverable in the corresponding amount of Alternate Consideration that a holder of that number of shares of Common Stock would have received in such Fundamental Transaction and (3) the Closing Sale Price for the purposes Section 3.4 shall be calculated based on the value of such Alternate Consideration; provided that, if shares of capital stock of the relevant Successor Entity (or its Parent Entity) are not then traded on any securities exchange or trading market, the Closing Sale Price for the purposes Section 3.4 shall be deemed to be the greater of the per share price of the capital stock of such Successor Entity (or its Parent Entity) (I) as determined at the time of such Fundamental Transaction and (II) as determined by the latest transaction or series of related transactions pursuant to which such Successor Entity (or its Parent Entity) issues and sells shares of its capital stock (including securities convertible or exchangeable into shares of such capital stock) with the principal purpose of raising capital. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(b) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note and the other Transaction Documents.

(c) Applicability. The provisions of this Section 5.1 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

5.2 Notice of a Change of Control; Redemption Right. Subject to prior public disclosure by the Company, not later than fifteen (15) calendar days, prior to the consummation of a Change of Control, the Company shall deliver written notice thereof via facsimile or electronic mail and overnight courier to the Holder (a "Change of Control Notice"). At any time during the period beginning after the Company's delivery of a Change of Control Notice, or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable), and ending on the later of fifteen (15) calendar days after (a) the date on which the Company delivers such Change of Control Notice or (b) only if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence, the Holder becoming aware of the consummation of such Change of Control, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("Change of Control Redemption Notice") to the Company, which Change of Control Redemption Notice shall indicate the portion of the Principal the Holder is electing to redeem. The portion of the Principal of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company at par (the "Change of Control Redemption Price"), plus all accrued but unpaid Interest on such portion of the Principal being redeemed. Redemptions required by this Section 5.2 shall be made in accordance with the provisions of Section 10 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments, but will not, in any event, be subject to the payment of any Redemption Premium Amount. Notwithstanding anything to the contrary in this Section 5.2, but subject to Section 3.3, until the Change of Control Redemption Price (together with all accrued but unpaid Interest on the Principal to be redeemed) is repaid in full, the portion of the Principal submitted for redemption under this Section 5.2 may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3 (in which case such accrued but unpaid Interest on such Principal shall be paid to the Holder in cash). In no event will any Redemption Premium Amount be required to be paid in connection with payment of the Change of Control Redemption Price or any accrued Interest therewith.

6. Adjustments to the Conversion Rate.

6.1 Adjustment of Conversion Rate upon Subdivision or Combination of Common Stock or Stock Dividend. 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 effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

Where:

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such stock split or stock combination, as applicable.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable.

OS_0 the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable.

OS_1 the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

For the avoidance of doubt, pursuant to the definition of CR_1 above in this Section 6.1, any adjustment to the Conversion Rate made pursuant to this Section 6.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 6.1 is declared or announced, but not so paid or made, then the Conversion Rate, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

6.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Rate will be decreased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

CR_0	=	the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such distribution.
CR_1	=	the Conversion Rate in effect immediately after the open of business on such ex-dividend date.
OS		the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date.
X		the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.
Y	=	a number of shares of Common Stock obtained by dividing (i) the aggregate price amount to exercise all such rights, options or warrants distributed by the Company by (ii) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

For the avoidance of doubt, any adjustment to the Conversion Rate made pursuant to this Section 6.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CR_1 above in this Section 6.2, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Rate that would then be in effect had the decrease to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Rate that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 6.2, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will 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 not cash, to be determined by the Board of Directors of the Company.

6.3 Other In-Kind Distributions. If the Company distributes shares of its capital stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 6.1 or Section 6.2;

(b) rights issued under a stockholder rights plan (except as set forth in this Section 6.3);

(c) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 6.4;

(d) any dividends and distributions in connection with a Fundamental Transaction described in Section 5.1; and

(e) Spin-Offs as to which the provisions set forth in this Section 6.3 shall apply,

(any of such shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants to acquire capital stock or other securities of the Company, the "Distributed Property"), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{(SP_0 - FMV)}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such distribution.
CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.
SP_0 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the ex-dividend date for such distribution.
FMV = the fair market value (as determined by the Board of Directors of the Company) of the Distributed Property so distributed with respect to each outstanding share of the Common Stock on the ex-dividend date for such distribution.

Any increase made under the portion of this Section 6.3 above shall become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to pay or make such distribution, 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, the Holder shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property 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 Section 6.3 where there has been a payment of 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 of the Company, 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 shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{(FMV_0+MP_0)}{MP_0}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

FMV_0 = the average of the Closing Sale Prices per share 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 ten (10) consecutive Trading Day period after, and including, the ex-dividend date of the Spin-Off (the "Valuation Period").

MP_0 = the average of the Closing Sale Prices per share of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; provided, that, if the relevant Conversion Date occurs during the Valuation Period, the references to "10" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the ex-dividend date of such Spin-Off and the Conversion Date in determining the Conversion Rate. If such Spin-Off does not occur, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to consummate such Spin-Off, to be the Conversion Rate that would then be in effect if such distribution had not been declared, effective as of the date on which the Company's Board of Directors (or its designee) determines not to consummate such Spin-Off.

For purposes of this Section 6.3, rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"):

(i) are deemed to be transferred with such shares of the Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of the Common Stock,

shall be deemed not to have been distributed for purposes of this Section 6.3 (and no adjustment to the Conversion Rate under this Section 6.3 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 6.3. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, 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 with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

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 immediately 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 6.3 was made:

(A) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase, (1) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (2) 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 a holder or holders of Common Stock with respect to such rights, options or warrants (assuming 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

(B) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 6.1, Section 6.2 and this Section 6.3, any dividend or distribution to which this Section 6.3 is applicable that also includes one or both of:

(I) a dividend or distribution of shares of Common Stock to which Section 6.1 is applicable (the "Section 6.1 Distribution"); or

(II) a dividend or distribution of rights, options or warrants to which Section 6.2 is applicable (the "Section 6.2 Distribution"),

then:

(x) such dividend or distribution, other than the Section 6.1 Distribution and the Section 6.2 Distribution, shall be deemed to be a dividend or distribution to which this Section 6.3 is applicable (the "Section 6.3 Distribution") and any Conversion Rate adjustment required by this Section 6.3 with respect to such Section 6.3 Distribution shall then be made; and

(y) the Section 6.1 Distribution and Section 6.2 Distribution shall be deemed to immediately follow the Section 6.3 Distribution and any Conversion Rate adjustment required by Section 6.1 and Section 6.2 with respect thereto shall then be made, except that, if determined by the Company (a) the "ex-dividend date " of the Section 6.1 Distribution and the Section 6.2 Distribution shall be deemed to be the ex-dividend date of the Section 6.3 Distribution and (b) any shares of Common Stock included in the Section 6.1 Distribution or Section 6.2 Distribution shall be deemed not to be "outstanding immediately before the open of business on such ex-dividend date or effective date" within the meaning of Section 6.1 or "outstanding immediately before the open of business on such ex-dividend date" within the meaning of Section 6.2.

6.4 Cash Dividends and Distributions. If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

SP_0 = the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend or distribution.

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase made pursuant to this Section 6.4 shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make or pay such dividend or distribution, 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, the Holder shall receive, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that the Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the ex-dividend date for such cash dividend or distribution.

6.5 Tender or Exchange Offers. If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock (in each case excluding a tender or exchange offer that constitutes a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Prices per share of the Common Stock over the ten (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 (such date, the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{(AC + (SP_1 \times OS_1))}{(OS_0 \times SP_1)}$$

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date.

CR_1 = the Conversion Rate in effect immediately after the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date.

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) 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 "Expiration Time") such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

SP_1 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The increase to the Conversion Rate under this Section 6.5 shall occur at the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided, that, if the relevant Conversion Date occurs during the ten (10) Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to "10" or "10^{th}" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between such Expiration Date of such tender or exchange offer and the Conversion Date in determining the Conversion Rate.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

6.6 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, increase the then current Conversion Rate to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

6.7 No Adjustments. Notwithstanding anything to the contrary in this Section 6, the Conversion Rate shall not be adjusted:

(a) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(b) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(c) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in Section 6.7(b) and outstanding as of the date the Notes were first issued;

(d) for ordinary course of business stock repurchases that are not tender offers referred to in Section 6.5, including structured or derivative transactions or pursuant to a stock repurchase program approved by the Board of Directors of the Company;

(e) solely for a change in the par value of the Common Stock; or

(f) for accrued and unpaid interest, if any.

6.8 Calculations. All calculations and other determinations under this Section 6 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. If an adjustment to the Conversion Rate otherwise required pursuant to Sections 6.1 through 6.5 would result in a change of less than 1.0% to the Conversion Rate, then, notwithstanding the foregoing, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest to occur of the following: (i) when all such deferred adjustments would result in an aggregate change of at least 1.0% to the Conversion Rate; (ii) on the Conversion Date for this Note, and (iii) on the effective date of any Fundamental Transaction, in each case, unless the adjustment has already been made.

7. Redemptions at the Company's Option.

7.1 Company Optional Redemption.

(a) The Company shall have the right at any time to redeem all, but not less than all, of the Principal then outstanding under this Note (the "Company Optional Redemption Amount") on the Company Optional Redemption Date (a "Company Optional Redemption"). The portion of this Note subject to redemption pursuant to this Section 7.1 shall be redeemed by the Company in cash at (i) a price equal to the sum of the Redemption Premium Amount as of the Company Optional Redemption Date and the outstanding Principal being redeemed as of the Company Optional Redemption Date (the "Company Optional Redemption Price"), plus (ii) all accrued but unpaid Interest on such Principal to be redeemed.

(b) The Company may exercise its right to require redemption under this Section 7.1 by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "Company Optional Redemption Notice" and the date all of the holders of Notes received such notice is referred to as the "Company Optional Redemption Notice Date"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable; provided, that the Company Optional Redemption Notice may be conditioned upon the effectiveness of any credit facility or capital raising, the consummation of a particular disposition or the occurrence of a change of control, as specified in the Company Optional Redemption Notice, in which case such Company Optional Redemption Notice may be revoked by the Company (by notice to all the holders of Notes on or prior to the Company Optional Redemption Date) if such condition is not satisfied. The Company Optional Redemption Notice shall (i) state the date on which the Company Optional Redemption shall occur (the "Company Optional Redemption Date") which date shall (A) not be less than fifteen (15) calendar days nor more than twenty-five (25) calendar days following the Company Optional Redemption Notice Date, or (B) if such Company Optional Redemption is conditioned upon the effectiveness of any credit facility or capital raising, the consummation of a particular disposition or the occurrence of a change of control, as specified in the Company Optional Redemption Notice, not be less than fifteen (15) calendar days following the Company Optional Redemption Notice Date nor be a date that is later than the applicable closing date of the relevant transaction specified in the Company Optional Redemption Notice and (ii) certify that there has been no Equity Conditions Failure.

(c) Notwithstanding anything herein to the contrary, (i) if no Equity Conditions Failure has occurred as of the Company Optional Redemption Notice Date but an Equity Conditions Failure occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect, and (B) unless the Holder waives the Equity Conditions Failure, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void, and (ii) at any time prior to the date that is fifteen (15) calendar days following the Company Optional Redemption Notice Date, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Stock pursuant to Section 3 (in which case all accrued but unpaid Interest and any Redemption Premium Amount payable on such Principal shall be paid to the Holder in cash).

(d) Any portion of the Principal of the Note converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 7.1 shall be made in accordance with Section 10. For the avoidance of doubt, the Redemption Premium shall be disregarded for purposes of calculation of the number of shares of Common Stock issuable upon conversion of this Note.

(e) In the event of the Company's redemption of this Note under this Section 7.1, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium amount due under this Section 7.1 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have the right to effect a Company Optional Redemption if any Event of Default has occurred and continuing.

7.2 Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 7.1, then it must simultaneously take the same action with respect to all of the Other Notes.

8. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, (b) shall not modify the voting rights attached to Common Stock and (c) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of this Note.

9. Reservation of Authorized Shares.

9.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note and the Other Notes equal to 100% of the Conversion Rate with respect to the principal amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that, at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "Required Reserve Amount"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Exchange Agreement) or at the time of the increase in the number of reserved shares, as the case may be (the "Authorized Share Allocation"). In the event that a holder shall sell or otherwise transfer this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

9.2 Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "Authorized Share Failure"), then the Company shall promptly take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (i) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock or (ii) file with the SEC a proxy statement for a meeting of its stockholders at which meeting the Company will seek the approval of its stockholders for an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use commercially reasonable efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

10. Redemptions.

10.1 Mechanics.

(a) If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, the Company shall deliver the applicable Change of Control Redemption Price (together with all accrued but unpaid Interest on the Principal to be redeemed) to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise (each, a "Change of Control Redemption Date").

(b) In the event of a Company Optional Redemption, the Company shall deliver the applicable Company Optional Redemption Price (together with all accrued but unpaid Interest) to the Holder in cash or shares of Common Stock as determined in Section 3.4 hereof on the applicable Company Optional Redemption Date.

(c) Notwithstanding anything herein to the contrary, in connection with any redemption under this Section 10 at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document.

(d) In the event of a redemption of less than all of the Principal of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 16.4) representing the outstanding Principal which has not been redeemed.

(e) In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Principal that was submitted for redemption and for which the applicable Redemption Price (together with any Interest thereon) has not been paid. Upon the Company's receipt of such notice, (i) the applicable Redemption Notice shall be null and void with respect to such Principal, and (ii) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 16.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full.

10.2 Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes (other than any such holder which is an Affiliate of the Holder) for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described Section 5.2 (each, an "Other Redemption Notice"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Change of Control Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's Change of Control Redemption Notice and ending on and including the date which is five (5) Business Days after the Company's receipt of the Holder's Change of Control Redemption Notice and the Company is unable to redeem all principal, interest and any other amount designated in such Change of Control Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Change of Control Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

11. Voting Rights. The Holder shall have no voting rights with respect to the shares of the capital stock of the Company in its capacity as the holder of this Note, except as required by law and as expressly provided in this Note.

12. Covenants. Until all of the Notes have been converted, redeemed or otherwise satisfied, in full, in accordance with their terms (excluding contingent and indemnification or contribution obligations), the Company hereby covenants and agrees that:

12.1 Rank. All payments due under this Note shall rank *pari passu* with all Other Notes.

12.2 Maintenance of Existence. The Company shall preserve and maintain its legal existence.

12.3 Maintenance of Listing. The Company shall maintain its Common Stock listing on the Principal Market or another Eligible Market (subject to all cure periods permitted by the Principal Market or such other Eligible Market). The Company shall list any Common Stock issuable upon conversion of this Note on the Principal Market or any other Eligible Market on which the Common Stock is then listed prior to issuance of such Common Stock.

13. Amendments and Waivers. No amendment or waiver of any provision of this Note or any other Transaction Document, and no consent to any departure by the Company therefrom, shall be effective unless in writing signed by the Required Holders and the Company. Each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. Notwithstanding the foregoing, any such amendment, waiver, consent or other departure that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any holder of this Note or any Other Note relative to the comparable rights and obligations of the other holders of this Note or any Other Note shall require the prior written consent of such adversely affected Person(s). Any change, amendment, waiver, consent or departure by the Company and the Holder required by this Section 13 shall be binding on the Company, the Holder of this Note and all holders of the Other Notes.

14. Collateral. Solely in the event that this Note is held by Madryn Health Partners, LP or Madryn Health Partners (Cayman Master), LP or any of its Affiliates, this Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Guaranty and Security Agreement).

15. Transfer. Unless the Assignment Conditions and the other terms of Section 9.8 of the Securities Exchange Agreement have been satisfied, this Note may not be offered, sold, assigned or transferred by the Holder other than to an Affiliate of the Holder upon notice to the Company, subject only to the provisions of Section 4.1 of the Securities Exchange Agreement. Any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.1 of the Securities Exchange Agreement.

16. Reissuances; New Notes.

16.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16.4 and subject to Section 3.2(c)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16.4) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3.2(c) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

16.2 Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 16.4) representing the outstanding Principal.

16.3 Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16.4) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

16.4 Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (a) shall be of like tenor with this Note, (b) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16.1 or Section 16.3, the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (c) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, and (d) shall have the same rights and conditions as this Note.

17. Remedies, other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. Notwithstanding anything to the contrary set forth herein or any other Transaction Document, to the fullest extent permitted by applicable law, neither the Company nor the Holder shall assert, and each of the Company and the Holder waives, and acknowledges that no Person shall have, any claims on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Note or any other Transaction Document or any transaction contemplated thereby.

18. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable and documented out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

19. Construction; Headings. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof' and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

20. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

21. Dispute Resolution.

21.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Sale Price, a Conversion Rate, a fair market value or a Redemption Premium Amount or the arithmetic calculation of a Conversion Price or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (i) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (ii) if by the Holder, within five (5) Business Days after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Sale Price, such Conversion Rate, such fair market value or such Redemption Premium Amount, or the arithmetic calculation of such Conversion Price or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, with the consent of the Company (such consent not to be unreasonably or untimely withheld), select an independent, reputable, nationally known investment bank to resolve such dispute.

(b) The Holder and the Company shall each deliver to such investment bank (i) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 21 and (ii) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the tenth (10th) Business Day immediately following the date on which the Holder selected such investment bank (the "Dispute Submission Deadline") (the documents referred to in the immediately preceding clauses (i) and (ii) are collectively referred to herein as the "Required Dispute Documentation") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(c) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The reasonable fees and reasonable expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

21.2 Miscellaneous. The Company expressly acknowledges and agrees that (a) this Section 21 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("CPLR") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 21, (b) a dispute relating to a Conversion Rate or a Conversion Price includes, without limitation, disputes as to whether an agreement, instrument, security or the like constitutes a right, warrant, grant or option to subscribe for or purchase shares of Common Stock, (c) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (d) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 21 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 21 and (e) nothing in this Section 21 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 21).

21.3 Pendency of Dispute. Notwithstanding anything to the contrary set forth herein, during either (a) the pendency of any dispute under this Section 21 with respect to either (i) whether the existence or continuation of an Event of Default has occurred or (ii) whether the conditions to a Company Optional Redemption pursuant to Section 7 have been satisfied, or (b) the time that both an Event of Default is continuing and the pendency of any other dispute under this Section 21, without the prior written consent of the Holder, the Company shall not be permitted to exercise its rights under Section 7 and no Company Optional Redemption pursuant to Section 7 shall be effective.

22. Notices; Currency; Payments.

22.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9.5 of the Securities Exchange Agreement. The Company will give written notice to the Holder promptly upon any adjustment of the Conversion Rate, setting forth in reasonable detail, and certifying, the calculation of such adjustment.

22.2 Currency. All dollar amounts referred to in this Note are in United States Dollars ("U.S. Dollars"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "Exchange Rate" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

22.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of the Holder, shall initially be as set forth on the Schedule of Investors attached to the Securities Exchange Agreement); provided, that, the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

23. Cancellation. After all Principal, accrued Interest and other amounts at any time owed on this Note have been satisfied in full (including, for the avoidance of doubt, by conversion in full of this Note into shares of the Common Stock, but excluding contingent and indemnification obligations), this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

24. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Exchange Agreement.

25. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 21 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (a) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder or (b) shall limit, or shall be deemed or construed to limit, any provision of Section 21. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

26. Severability. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

27. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

28. Adjusted Three-Month Term SOFR Unavailability Period.

Notwithstanding anything to the contrary in this Note, if the Holder determines (which determination shall be conclusive absent manifest error) that a SOFR Unavailability Period has commenced and is continuing, then, reasonably promptly after such determination, the Holder shall give the Company notice thereof and the Holder and the Company may amend this Note to replace Adjusted Three-Month Term SOFR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein (including spread adjustments or method for calculating or determining such spread adjustments, which may be a positive or negative value or equal to zero)), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities for such alternative benchmarks (any such proposed rate, a "SOFR Successor Rate"), together with any proposed SOFR Successor Rate Conforming Changes. It is understood and agreed that, for all purposes of this Agreement, once commenced, a "SOFR Unavailability Period" shall be deemed to exist and be continuing unless and until such amendment has become effective in accordance with the terms hereof.

Notwithstanding anything else herein, any definition of SOFR Successor Rate shall provide that in no event shall such SOFR Successor Rate be less than five percent (5.0%) for purposes of this Note.

29. Definitions. As used in this Note, the following terms shall have the following meanings:

29.1 "Adjusted Three-Month Term SOFR" means, which respect to any Interest Period, a rate per annum equal to the sum of (a) Three-Month Term SOFR for such Interest Period, plus (b) the SOFR Adjustment.

29.2 "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

29.3 "Applicable Margin" means eight and one-half percent (8.50%) per annum.

29.4 "Authorized Share Allocation" has the meaning specified in Section 9.1.

29.5 "Authorized Share Failure" has the meaning specified in Section 9.2.

29.6 "Bankruptcy Event of Default" has the meaning specified in Section 4.1.

29.7 "Business Day" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York or Ontario, Canada are authorized or required by law or other governmental action to close.

29.8 "Calendar Quarter" means each of: (a) the period beginning on and including January 1 and ending on and including the next occurring March 31; (b) the period beginning on and including April 1 and ending on and including the next occurring June 30; (c) the period beginning on and including July 1 and ending on and including the next occurring September 30; (d) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

29.9 "Change of Control" means the occurrence of, for any reason whatsoever, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than any of the Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50% or more of the equity interests of the Company entitled to vote for members of the Board of Directors of the Company on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right).

29.10 "Change of Control Notice" has the meaning specified in Section 5.2.

29.11 "Change of Control Redemption Date" has the meaning specified in Section 10.1.

29.12 "Change of Control Redemption Notice" has the meaning specified in Section 5.2.

29.13 "Change of Control Redemption Price" has the meaning specified in Section 5.2.

29.14 "Closing Sale Price" means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by FactSet, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price (as the case may be) then last trade price of such security prior to 4:00:00 p.m., New York time, as reported by FactSet, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by FactSet, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by FactSet, or, if no last trade price is reported for such security by FactSet, the average of the ask prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 21. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

29.15 "CME" means CME Group Benchmark Administration Limited.

29.16 "CNB" means City National Bank of Florida.

29.17 "CNB Event of Default" has the meaning specified in Section 4.1(c).

29.18 "Common Stock" means (a) Common Stock, par value $0.0001 per share of the Company, and (b) any share capital into which such Common Stock shall be changed or any share capital resulting from a reclassification of such Common Stock.

29.19 "Company" has the meaning specified in the preamble to this Note.

29.20 "Company Optional Redemption" has the meaning specified in Section 7.1.

29.21 "Company Optional Redemption Amount" has the meaning specified in Section 7.1.

29.22 "Company Optional Redemption Date" has the meaning specified in Section 7.1.

29.23 "Company Optional Redemption Notice" has the meaning specified in Section 7.1.

29.24 "Company Optional Redemption Notice Date" has the meaning specified in Section 7.1.

29.25 "Company Optional Redemption Price" has the meaning specified in Section 7.1.

29.26 "Controlled Investment Affiliate" means, as to any Person, any other Person which directly or indirectly is in control of or is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlled by such Person) primarily for making equity or debt investments in the Company or other portfolio companies of such Person.

29.27 "Conversion Date" has the meaning specified in Section 3.2(a).

29.28 "Conversion Failure" means the failure by the Company, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to either: (a) if (i) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (ii) such applicable shares of Common Stock may not then be resold by the Holder pursuant to a Permitted Securities Transaction, deliver a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register, or (b) if (i) the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and (ii) such applicable shares of Common Stock may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit the balance account of the Holder or the Holder's designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be).

29.29 "Conversion Notice" has the meaning specified in Section 3.2(a).

29.30 "Conversion Price" per share of Common Stock as of any time means the result obtained by dividing (a) $1,000 by (b) the then applicable Conversion Rate, rounded to the nearest cent.

29.31 "Conversion Rate" means the rate at which shares of Common Stock shall be delivered upon conversion, which rate shall be initially 41.6666667 shares of Common Stock for each $1,000 principal amount of Notes, as adjusted from time to time pursuant to the provisions of this Agreement.

29.32 "Dispute Submission Deadline" has the meaning specified in Section 21.1(b).

29.33 "DTC" has the meaning specified in Section 3.2(a).

29.34 "Eligible Market" means the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the OTCBB.

29.35 "Equity Conditions" means, with respect to a given date of determination, as of such date of determination:

(a) either (i) one or more Registration Statements filed pursuant to the Securities Exchange Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (each, a "Required Minimum Securities Amount"), in each case, in accordance with the terms of the Securities Exchange Agreement and there shall not be any ongoing Grace Periods (as defined in the Securities Exchange Agreement) as of such date of determination or (ii) all Registrable Securities shall be eligible for sale without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes);

(b) the Common Stock (including all Registrable Securities) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (i) a writing by such Eligible Market or (ii) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable) for the period of time specified by such requirement;

(c) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination) may be issued in full without violating Section 3.3 hereof; provided, that this clause (c) shall not apply if prior to such date of determination, the stockholders of the Company have already voted to reject additional issuances of shares of the Common Stock in excess of the Exchange Cap;

(d) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable);

(e) the Company shall have no knowledge of any fact that would reasonably be expected to cause (i) any Registration Statement filed pursuant to the Securities Exchange Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of Registrable Securities in accordance with the terms of the Securities Exchange Agreement or (ii) any Registrable Securities to not be eligible for sale without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes);

(f) [reserved];

(g) (i) no Authorized Share Failure shall exist or be continuing, (ii) the applicable Required Minimum Securities Amount of shares of Common Stock are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (iii) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure;

(h) there shall not have occurred and then be continuing an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; and

(i) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

29.36 "Equity Conditions Failure" means that, on any day during the period commencing ten (10) calendar days prior to the applicable Company Optional Redemption Notice Date through the applicable Company Optional Redemption Date, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

29.37 "Event of Default" has the meaning specified in Section 4.1.

29.38 "Exchange Act" means the Securities Exchange Act of 1934, as amended.

29.39 "Exchange Cap" the maximum number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules and regulations of the Principal Market as set forth in Nasdaq Rule 5635(b) (or such equivalent rule under another Eligible Market, if the Common Stock is re-listed, re-traded or re-quoted on another Eligible Market).

29.40 "Fundamental Transaction" has the meaning specified in Section 5.1.

29.41 "Group" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

29.42 "Guarantors" means each Person that is a party to the Guaranty and Security Agreement as a "Guarantor" thereunder, including each Person that becomes a "Guarantor" thereunder after the Issuance Date.

29.43 "Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Issuance Date, by and among the Company, the Guarantors from time to time party thereto, the Holder and each holder of Other Notes.

29.44 "Holder" has the meaning specified in the preamble to this Note.

29.45 "Interest" has the meaning specified in the preamble to this Note.

29.46 "Interest Date" has the meaning specified in Section 2.

29.47 "Interest Period" means (a) initially, the period commencing on (and including) the date hereof and ending on (and including) December 31, 2023; provided, that, if such day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such day, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the last day of the calendar quarter following the calendar quarter in which the preceding Interest Period ended; provided, that, if any such last day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such last day of such quarter, and (y) the Maturity Date.

29.48 "Interest Rate" means, for any Interest Period, a rate per annum equal to the sum of (a) the Applicable Margin plus (b) Adjusted Three-Month Term SOFR for such Interest Period; provided, that, (i) if the Holder determines (which determination shall be conclusive absent manifest error) that a SOFR Unavailability Period has commenced and is continuing, then at all times during such SOFR Unavailability Period, the "Interest Rate" shall be a rate per annum equal to the sum of (A) the Applicable Margin plus (B) the most recent Adjusted Three-Month Term SOFR that was determined in accordance with the terms hereof, provided, that, on any date when an Event of Default shall have occurred and be continuing and the Holder has delivered written notice to the Company of its election to invoke a default rate of interest, the "Interest Rate" shall be the "Interest Rate" determined in accordance with the foregoing plus 4.00%. Notwithstanding the foregoing proviso, if the Event of Default is a Bankruptcy Event of Default, the Holder shall not be required to deliver any notice to the Company to invoke a default rate of interest and such default rate of interest shall instead be deemed automatically invoked.

29.49 "Israeli Insolvency and Economic Rehabilitation Law" means the Israeli Insolvency and Economic Rehabilitation Law, 5778-2018, as amended and any supplement thereto or replacement thereof that hereinafter may be made effective.

29.50 "Issuance Date" has the meaning specified in the preamble to this Note.

29.51 "Material Adverse Effect" has the meaning specified in the Securities Exchange Agreement.

29.52 "Maturity Date" means December 9, 2025.

29.53 "MSPLP Facility" means the Loan and Security Agreement to be entered into between Venus Concept USA Inc., as borrower, the Company, as guarantor, and CNB, as agent and lender, together with any extension, renewal, refinancing or replacement thereof.

29.54 "Note" has the meaning specified in the preamble to this Note.

29.55 "Other Notes" has the meaning specified in the preamble to this Note.

29.56 "Other Redemption Notice" has the meaning specified in Section 10.2.

29.57 "Parent Entity" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

29.58 "Permitted Holders" means, without duplication, (a) Aperture Venture Partners II, L.P., Aperture Venture Partners II-A, L.P., Aperture Venture Partners II-B, L.P., Aperture Venture Partners III, L.P., Deerfield Special Situations Fund, L.P., SEDCO Capital Global Funds - SC Private Equity Global Fund IV, SEDCO Capital Cayman Ltd., Longitude Venture Partner II L.P., Venus Technologies Ltd., EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P., Healthquest Partners, L.P., Healthquest Partners II, L.P., Madryn Health Partners, LP, Madryn Health Partners (Cayman Master), LP, and any Controlled Investment Affiliate of any of the foregoing Persons, (b) Domenic Serafino and his Permitted Transferees and (c) Senior Management Persons of the Company and Board Members of the Company, in each case, for so long as such Persons are actively employed by the Company in such capacity or serve in such capacity, as the case may be.

29.59 "Permitted Securities Transaction" has the meaning specified in Section 3.2(a).

29.60 "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and any other legal entity.

29.61 "Principal" has the meaning specified in the preamble to this Note.

29.62 "Principal Market" means the NASDAQ Global Market.

29.63 "Redemption Date" means, as applicable, the Change of Control Redemption Date or Company Optional Redemption Date.

29.64 "Redemption Notice" means, as applicable, a Company Optional Redemption Notices and a Change of Control Redemption Notice.

29.65 "Redemption Premium Amount" means, on any date of determination, with respect to any amount of outstanding Principal redeemed or required to be redeemed, an amount equal to the present value as of such date of determination (as determined by the Holder or, if there are other holders whose Notes are also redeemed or required to be redeemed at the same time, as determined by the holders of Notes representing at least a majority of the aggregate principal amount of the Notes being so redeemed or required to be redeemed, in each case, in accordance with customary practice), discounted at the Three-Month Treasury Rate, of the aggregate remaining Interest payment amounts (at the non-default Interest Rate)on the amount of Principal redeemed or required to be redeemed.

29.66 "Redemption Price" means, as applicable, the Change of Control Redemption Price and the Company Optional Redemption Price.

29.67 "Register" has the meaning specified in Section 3.2(c).

29.68 "Registered Notes" has the meaning specified in Section 3.2(c).

29.69 "Registrable Securities" has the meaning specified in the Securities Exchange Agreement.

29.70 "Registration Statement" has the meaning specified in the Securities Exchange Agreement.

29.71 "Required Dispute Documentation" has the meaning specified in Section 21.1(b).

29.72 "Required Holders" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

29.73 "Required Reserve Amount" has the meaning specified in Section 9.1.

29.74 "Rule 144" has the meaning specified in the Securities Exchange Agreement.

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

29.76 "Securities Exchange Agreement" means that certain Securities Exchange and Registration Rights Agreement, dated as of December 8, 2020, among the Company, the guarantors identified therein and the investors identified therein, pursuant to which the Company issued the Notes, as such agreement may be amended, restated or otherwise modified from time to time.

29.77 "Senior Management Persons" means the collective reference to Rajiv De Silva, Hemanth Varghese, Domenic Della Penna, Willliam McGrail, Ross Portaro, Anna Georgiadis and Michael Mandarello; and "Senior Management Person" means any one of them.

29.78 "Share Delivery Deadline" has the meaning specified in Section 3.2(a).

29.79 "SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

29.80 "SOFR Adjustment" means 0.10% (10 basis points) per annum.

29.81 "SOFR Successor Rate" has the meaning set forth in Section 28.

29.82 "SOFR Successor Rate Conforming Changes" means, with respect to any proposed SOFR Successor Rate, any conforming changes to the definitions of "Adjusted Three-Month Term SOFR," "Interest Date," "Interest Period," "Interest Rate," "SOFR," "SOFR Adjustment" or "Three-Month Term SOFR," the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Holder, to reflect the adoption of such SOFR Successor Rate and to permit the administration thereof by the Holder in a manner substantially consistent with market practice (or, if the Holder determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such SOFR Successor Rate exists, in such other manner of administration as the Holder determines in consultation with the Borrower).

29.83 "SOFR Unavailability Period" means a period, commencing on the date on which the Holder shall have determined (which determination shall be conclusive absent manifest error) that any of the events set forth in clauses (a) or (b) below have occurred and are continuing through the date on which a SOFR Successor Rate is established pursuant to Section 28:

(a) adequate and reasonable means do not exist for ascertaining Three-Month Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, or

(b) the CME (or any successor administrator reasonably satisfactory to the Holder) has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease, provided, that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Holder that will continue to provide SOFR, or for any reason Three-Month Term SOFR does not adequately and fairly reflect the cost to the Holder of funding this Note.

29.84 "Subsidiary" has the meaning specified in the Securities Exchange Agreement.

29.85 "Successor Entity" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

29.86 "Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Transfer Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Transfer Agent from time to time).

29.87 "Three-Month Term SOFR" means, with respect to any Interest Period, the rate per annum equal to the greater of (x) five percent (5.0%) per annum and (y) the three-month Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then Three-Month Term SOFR means the three-month Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto. The Holder's determination of interest rates shall be determinative in the absence of manifest error.

29.88 "Three-Month Treasury Rate" means, as of any date of determination, the weekly average yield as of such date of determination of actually traded United States Treasury securities adjusted to a constant maturity of three (3) months (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Federal Reserve Statistical Release H.15(519) is no longer published, any publicly available source of similar market data)). For the avoidance of doubt, this calculation is based on yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

29.89 "Trading Day" has the meaning specified in the Securities Exchange Agreement.

29.90 "Transaction Documents" has the meaning specified in the Securities Exchange Agreement.

29.91 "Transfer Agent" has the meaning specified in Section 3.1.

29.92 "U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Secured Subordinated Convertible Note as of the Issuance Date set out above.

VENUS CONCEPT INC.

By: /s/ Rajiv De silva
Name: Rajiv De silva
Title: Chief Executive Officer

Accepted and Agreed:

MADRYN HEALTH PARTNERS, LP

By: MADYN HEALTH ADVISORS, LP,
Its: General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
Its: General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

EXHIBIT I

VENUS CONCEPT INC.
CONVERSION NOTICE

Reference is made to the Secured Subordinated Convertible Note (the "Note") dated as of October 4, 2023, issued to the undersigned by Venus Concept Inc., a Delaware corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the portion of the Principal (as defined in the Note) of the Note indicated below into shares of Common Stock of the Company with $0.0001 par value per share (the "Common Stock"), as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

AGGREGATE PRINCIPAL TO BE CONVERTED: _____

Please confirm the following information:

Conversion Rate: _____

Net Share Settlement: [Yes / No / N/A]

Number of shares of Common Stock to be issued [as Net Share Amount][1] (the "Shares"):

[Principal to be repaid in cash][2]: $ _____

Accrued but unpaid Interest to be paid in cash: $ _____

Redemption Premium Amount to be paid in cash: $ _____

Check here if the Holder does not intend to resell the Shares to be issued either (a) prior to, (b) contemporaneously with or (c) no later than thirty (30) days after, as applicable, the date of this Conversion Notice.

[1]Include if Net Share Settlement is elected.
[2]Include if Net Share Settlement is elected.

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty (30) days after the date of this Conversion Notice.

Please issue the shares of the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number:
Account Number: _____

Please make the cash payments specified above to Holder by wire transfer of immediately available funds.

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

VENUS CONCEPT INC.

_____ 20_

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of Venus Concept Inc.

Ladies and Gentlemen:

Reference is made to (a) the Securities Exchange Agreement, dated as of December 8, 2020, as amended, by and among Venus Concept Inc., a Delaware corporation (the "Company"), the guarantors named therein and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "Holders") secured subordinated convertible notes (the "Notes"), which are convertible into shares of the Company's Common Stock, par value $0.0001 per share (the "Common Stock"); (b) the conversion notice attached hereto (the "Conversion Notice"); and (c) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (i) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "1933 Act"), (ii) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("Rule 144"), or (iii) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice, and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

VENUS CONCEPT INC.

By:
Name:
Title:

Exhibit 10.4

Execution Version

THESE SECURITIES AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED 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 COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED ON OR ABOUT DECEMBER 9, 2020 AND OCTOBER 4, 2023.

THIS INSTRUMENT IS SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SECURITIES EXCHANGE AND REGISTRATION RIGHTS AGREEMENT DATED AS OF DECEMBER 8, 2020, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

VENUS CONCEPT INC.

SECURED SUBORDINATED CONVERTIBLE NOTE

Certificate No.: 2
Issuance Date: October 4, 2023 Original Principal Amount: U.S.$14,358,801.44

FOR VALUE RECEIVED, Venus Concept Inc., a Delaware corporation (the "Company"), hereby promises to pay to Madryn Health Partners (Cayman Master), LP or registered permitted assigns (the "Holder") in cash the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "Principal") when due, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("Interest") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "Issuance Date") until the same becomes due and payable, whether upon an Interest Date, the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Secured Subordinated Convertible Note (including all Secured Subordinated Convertible Notes issued in exchange, transfer or replacement hereof, this "Note") is one of a series of Secured Subordinated Convertible Notes issued pursuant to the Securities Exchange Agreement (as defined herein) and exchanged pursuant to that certain Exchange Agreement dated as of the Issuance Date by and among Holder and the Company (collectively, the "Notes" and such other Secured Subordinated Convertible Notes, the "Other Notes"). Certain capitalized terms used herein are defined in Section 28.

1. Payments of Principal. On the Maturity Date, the Company shall pay to the Holder an amount in cash equal to (a) all outstanding Principal as of such date, plus (b) all accrued and unpaid Interest thereon as of such date. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal or accrued and unpaid Interest. Notwithstanding anything herein to the contrary, with respect to any repayment, conversion or redemption hereunder, as applicable, the Company shall repay, convert or redeem, as applicable, (i) first, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, (ii) second, all other amounts (other than Principal, but including any Redemption Premium Amount) outstanding hereunder and under any other Notes held by such Holder, and (iii) third, all Principal outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. Interest. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in kind by capitalizing such Interest and adding it to the Principal balance of this Note on the last Business Day of each Calendar Quarter after the Issuance Date (each, an "Interest Date"). Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, and in cash in full on the Maturity Date by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. If any portion of this Note is repaid or redeemed pursuant to Sections 4.2, 4.3, 5.2 and 7 or converted pursuant to Section 3 prior to the Maturity Date and prior to the payment of Interest on an Interest Date, Interest on such portion of this Note shall accrue at the Interest Rate and be payable in cash on each Redemption Date, on each Conversion Date and/or in connection with any required payment upon any Event of Default, as applicable; provided, that, in connection with a conversion, such Interest accrued and unpaid interest may, at the option of the Company, be converted into shares of Common Stock on the same terms as the Principal being converted on such Conversion Date, in lieu of payment in cash. Interest shall continue to accrue on any portion of this Note to the extent not so repaid, redeemed or converted.

3. Conversion of Notes. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock, on the terms and conditions set forth in this Section 3.

3.1 Conversion Right. Subject to the provisions of Section 3.3, at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Principal into fully paid and nonassessable shares of Common Stock in accordance with Section 3.2, at the Conversion Rate. The Company shall not issue any fraction of a share of Common Stock upon any such conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp and similar taxes, costs and expenses (including, without limitation, fees and expenses of the transfer agent of the Company (the "Transfer Agent")) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any portion of the outstanding and unpaid Principal.

3.2 Mechanics of Conversion.

(a) Optional Conversion.

(i) To convert any portion of the outstanding Principal into shares of Common Stock on any date (a "Conversion Date"), the Holder shall deliver (whether via facsimile, electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "Conversion Notice") to the Company. If required by Section 3.2(c), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 16.2).

(ii) On or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile, electronic mail or otherwise the Transfer Agent instructions and representation as to whether such shares of Common Stock may then be resold pursuant to (A) an effective and available registration statement, either, (1) prior to, (2) contemporaneously with, or (3) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, (B) Rule 144, unless the Holder affirmatively indicates on the applicable Conversion Notice that the shares of Common Stock issuable in connection with such Conversion Notice are not being resold either (1) prior to, (2) contemporaneously with, or (3) within thirty (30) days after, as applicable, the date of the applicable Conversion Notice by the Holder, provided that the Holder shall provide the Company with customary representations with respect to compliance by the Holder with Rule 144, or (C) Rule 144 without having to comply with the information requirements under Rule 144(c)(1) (each, a "Permitted Securities Transaction"), substantially in the form attached hereto as Exhibit II, to the Holder and the Transfer Agent which shall instruct the Transfer Agent to process such Conversion Notice in accordance with the terms herein.

(iii) On or before the third (3rd) Trading Day following the date on which the Company has received a Conversion Notice (the "Share Delivery Deadline"), the Company shall (A) provided, that, the Transfer Agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program, with respect to the shares of Common Stock included in the Conversion Notice that may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or with respect to the shares of Common Stock included in the Conversion Notice that may not then be resold by the Holder pursuant to a Permitted Securities Transaction, deliver a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion.

(iv) If this Note is physically surrendered for conversion pursuant to Section 3.2(c) and the outstanding Principal of this Note is greater than the portion of the Principal being converted, then the Company shall as soon as practicable and in no event later than five (5) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 16.4) representing the outstanding Principal not so converted.

(v) The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(b) [Reserved].

(c) Registration; Book-Entry. The Company shall maintain a register (the "Register") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "Registered Notes"). The entries in the Register shall be presumed correct absent reasonable evidence to the contrary provided by the holders of the Notes. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. Unless the Assignment Conditions (as defined in the Securities Exchange Agreement) and the other terms of Section 9.8 of the Securities Exchange Agreement have been satisfied, the Registered Note may not be assigned, transferred or sold in whole or in part other than to an Affiliate of Holder and may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon satisfaction of the Assignment Conditions and the other terms of Section 9.8 of the Securities Exchange Agreement, the Company shall record the information relating to such assignment in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 16, provided, that, if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (i) the full outstanding Principal represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3.2(a)) or (ii) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other methods as are reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal and Interest converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(d) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3.3, shall convert from each holder of Notes electing to have Notes converted on such Conversion Date a pro rata amount of such holder's portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such Conversion Date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such Conversion Date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 21.

3.3 Exchange Cap. So long as the rules of the Principal Market (or another Eligible Market, if Common Stock is re-listed, re-traded or re-quoted on another Eligible Market) so require, the sum of the number of shares of Common Stock that may be issued under this Note and all outstanding Other Notes shall be limited to the Exchange Cap, unless stockholder approval is obtained prior to the issuance to issue more than the Exchange Cap. The Exchange Cap shall be appropriately adjusted for any reorganization, recapitalization, non-cash dividend, stock split, reverse stock split or other similar transaction in accordance with the rules of the Principal Market or another Eligible Market. If the Exchange Cap is reached upon conversion of this Note and all outstanding Other Notes, the Company shall use its commercially reasonable efforts to file a proxy statement with the SEC seeking stockholder approval, within seventy-five (75) calendar days after the date on which the Exchange Cap is reached, from at least a majority of the Company's stockholders, for the Company's issuance of all of the remaining shares of Common Stock underlying this Note and all outstanding Other Notes. Should the stockholders of the Company vote to reject such additional issuance, the Company shall not be required to seek another stockholder approval under this Section 3.3.

3.4 Net Share Settlement.

(a) Notwithstanding Section 3.2 above, in the case of conversion of this Note on the Maturity Date, any Redemption Date or any date of any required payment upon any Event of Default, as applicable, on which the entire outstanding Principal of this Note is to be repaid, redeemed or prepaid in full, the Company shall, at the option of the Holder, satisfy its obligation to issue and deliver shares of Common Stock by paying and delivering to the Holder, a combination of cash and shares of Common Stock (the "Net Share Settlement"), as set forth in this Section 3.4.

(b) If the Holder elects the Net Share Settlement in a Conversion Notice, the Company shall pay and deliver the Net Share Settlement Amount in accordance with Sections 1, 2 and 3, as applicable.

The "Net Share Settlement Amount" will consist of (i) cash equal to the Principal of this Note outstanding immediately prior to the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, plus all accrued but unpaid Interest and, if any, Redemption Premium Amount thereon and (ii) the number of shares of Common Stock equal to the Net Share Amount.

The "Net Share Amount" means the number of shares of Common Stock calculated by the following formula:

$$\text{Net Share Amount} = \frac{P}{CP} - \frac{P}{MP}$$

Where:

P = the Principal of this Note to be redeemed on the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, as the case may be.

CP = the Conversion Price in effect as of the date of the Conversion Notice.

MP = the Closing Sale Price per share of the Common Stock on the date of the Conversion Notice or, if such Closing Sale Price is not yet available as of the date of the Conversion Notice, the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the date of the Conversion Notice.

4. Events of Default; Rights Upon an Event of Default.

4.1 Event of Default. Each of the following events shall constitute an "Event of Default" and each of the events in clauses (d) and (e) below shall constitute a "Bankruptcy Event of Default":

(a) the Company's failure to cure a Conversion Failure by delivery of the required number of shares of Common Stock within ten (10) Trading Days after the applicable Conversion Date;

(b) the Company's or any Guarantor's failure to pay to the Holder (i) any amount of Principal when due under this Note, or (ii) any amount of Interest or other amounts due under this Note (including, without limitation, the Company's or any Guarantor's failure to pay any redemption payments or amounts hereunder) or any other Transaction Document or any other agreement, document, certificate or other instrument delivered to Holder in connection with the transactions contemplated hereby and thereby, within three (3) Trading Days after such amounts were due;

(c) The occurrence of any default, event of default, or similar term under the MSPLP Facility after the expiration of all applicable notice, grace and cure periods (each, a "CNB Event of Default"); provided, that no CNB Event of Default shall have occurred if the underlying default or event of default is a result of a breach of the CNB Escrow Agreement (as defined in the Securities Exchange Agreement) by Madryn Health Partners, LP or any of its Affiliates; provided, further, that, to the extent that the Holder has not accelerated the Notes or foreclosed upon the Collateral in reliance on the Event of Default in this clause (c) on or prior to the date upon which CNB, its affiliates or successors enter into a consent, amendment, waiver or similar agreement with respect to the underlying CNB Event of Default giving rise to the Event of Default under this clause (c), the Event of Default pursuant to this clause (c) shall be deemed to be automatically cured upon effectiveness of such waiver or similar agreement among CNB, its affiliates or successors and the Company and its affiliates with respect to the CNB Event of Default. For the avoidance of doubt, the proviso set forth in this clause (c) shall not apply to, or be deemed to have any impact on, any Event of Default arising independently of this clause (c);

(d) any Obligor or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law (as defined in the Guaranty and Security Agreement), or makes an assignment for the benefit of creditors; or makes a proposal to its creditors or files notice of its intention to do so, institutes any other proceeding under applicable law seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors, composition of it or its debts or any other similar relief; or applies for or consents to the appointment (including any provisional appointment) of any receiver, receiver-manager, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, administrative receiver, administrator, compulsory manager, receiver-manager, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or with regard to an Israeli Guarantor (as defined in the Securities and Exchange Agreement), the occurrence at any time with respect to it of a winding-up, bankruptcy, dissolution or administration;

(e) the entry against the Company or any Guarantor of one or more final judgments or orders for the payment of money in an aggregate amount exceeding $500,000 (to the extent not covered by independent third-party insurance and/or third party indemnity rights as to which the applicable insurer or indemnitor does not dispute coverage in writing) and such judgment or order remains unpaid for a period of thirty (30) consecutive days;

(f) any default by the Company in the due performance and observance of any of the covenants or agreements contained in Section 12;

(g) any representation, warranty or other written statement of the Company set forth in any Transaction Document or any certification provided by the Company pursuant to any Transaction Document is incorrect or misleading in any material respect when given;

(h) other than as specifically set forth in another clause of this Section 4.1, any default by any Obligor in the due performance and observance of any of the covenants or agreements of any Transaction Document, except, in the case of a breach of a covenant that is curable, only if such breach remains uncured for a period of thirty (30) days following the earlier of the date on which (i) a Responsible Officer (as defined in the Securities Exchange Agreement) of any Obligor becomes aware of such failure and (ii) notice thereof shall have been given to the Obligors by the Holder;

(i) any material provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Obligors party thereto in any material respect, or the validity or enforceability thereof shall be contested by any Obligor party thereto (other than with respect to indemnification or contribution provisions which may be unenforceable), or a proceeding shall be commenced by the Company or any Guarantor or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Guarantor shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document;

(j) shares of Common Stock shall cease to be quoted on the Principal Market for any reason and are not thereafter re-listed, re-traded or re-quoted on another Eligible Market within fifteen (15) Trading Days;

(k) the Company shall fail to comply in any material respect with the reporting requirements of the Exchange Act (including but not limited to becoming delinquent in its filings beyond any available extension); or

(l) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

4.2 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Holder may (a) declare the outstanding Principal of this Note, all Interest accrued and unpaid on the outstanding Principal of this Note and all other amounts owing or payable hereunder or under any other Transaction Document, to be immediately due and payable (and upon any such declaration the same shall become and shall be immediately due and payable), without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company and (b) exercise all rights and remedies available to it under the Transaction Documents. Notwithstanding anything to the contrary in this Section 4.2, but subject to Section 3.3, the Holder may, in its sole discretion, determine to accept payment on the Principal part in shares of the Common Stock, converted at the Conversion Price, and part in cash. Accrued but unpaid Interest on the Principal shall be paid to the Holder in cash. For the avoidance of doubt, it is understood and agreed that no Redemption Premium Amount shall be due or payable upon acceleration of this Note.

4.3 Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing all outstanding Principal, in addition to all accrued and unpaid Interest and any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity; provided, that, the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment under Section 4.2 or of any Redemption Price, as applicable.

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

(a) If, at any time while this Note is outstanding, (i) the Company, directly or indirectly, in one or more related transactions, effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to any Person other than one of the Company's subsidiaries in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of fifty percent (50%) or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions, effects any reclassification, reorganization or recapitalization of the Common Stock (other than changes resulting from a subdivision or combination thereof) or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than fifty percent (50%) of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Note, the Holder shall have the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 3.3 on the conversion of this Note), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Note is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 3.3 on the conversion of this Note). For purposes of any such conversion, the determination of the Conversion Rate shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Rate among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Transaction. The Company shall cause the Successor Entity to assume in writing all of the obligations of the Company under this Note, the other Transaction Documents, and any document ancillary hereto or thereto, pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by such Holders (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder of this Note, deliver to the Holder in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its Parent Entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note (without regard to any limitations on the conversion of this Note) prior to such Fundamental Transaction, and with a conversion rate which applies the Conversion Rate hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion rate being for the purpose of protecting the economic value of this Note immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. At and after the effective time of such Fundamental Transaction, (A) the Holder shall continue to have the right to determine the form of consideration to be paid or delivered in accordance with Section 3.4, (B)(1) any amount payable in cash upon conversion of this Note in accordance with Section 3 shall continue to be payable in cash, (2) any shares of Common Stock that the Company would have been required to deliver upon conversion of this Note in accordance with Section 3 shall instead be deliverable in the corresponding amount of Alternate Consideration that a holder of that number of shares of Common Stock would have received in such Fundamental Transaction and (3) the Closing Sale Price for the purposes Section 3.4 shall be calculated based on the value of such Alternate Consideration; provided that, if shares of capital stock of the relevant Successor Entity (or its Parent Entity) are not then traded on any securities exchange or trading market, the Closing Sale Price for the purposes Section 3.4 shall be deemed to be the greater of the per share price of the capital stock of such Successor Entity (or its Parent Entity) (I) as determined at the time of such Fundamental Transaction and (II) as determined by the latest transaction or series of related transactions pursuant to which such Successor Entity (or its Parent Entity) issues and sells shares of its capital stock (including securities convertible or exchangeable into shares of such capital stock) with the principal purpose of raising capital. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(b) Waiver. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5.1 to permit the Fundamental Transaction without the assumption of this Note and the other Transaction Documents.

(c) Applicability. The provisions of this Section 5.1 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

5.2 Notice of a Change of Control; Redemption Right. Subject to prior public disclosure by the Company, not later than fifteen (15) calendar days, prior to the consummation of a Change of Control, the Company shall deliver written notice thereof via facsimile or electronic mail and overnight courier to the Holder (a "Change of Control Notice"). At any time during the period beginning after the Company's delivery of a Change of Control Notice, or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable), and ending on the later of fifteen (15) calendar days after (a) the date on which the Company delivers such Change of Control Notice or (b) only if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence, the Holder becoming aware of the consummation of such Change of Control, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof ("Change of Control Redemption Notice") to the Company, which Change of Control Redemption Notice shall indicate the portion of the Principal the Holder is electing to redeem. The portion of the Principal of this Note subject to redemption pursuant to this Section 5.2 shall be redeemed by the Company at par (the "Change of Control Redemption Price"), plus all accrued but unpaid Interest on such portion of the Principal being redeemed. Redemptions required by this Section 5.2 shall be made in accordance with the provisions of Section 10 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5.2 are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments, but will not, in any event, be subject to the payment of any Redemption Premium Amount. Notwithstanding anything to the contrary in this Section 5.2, but subject to Section 3.3, until the Change of Control Redemption Price (together with all accrued but unpaid Interest on the Principal to be redeemed) is repaid in full, the portion of the Principal submitted for redemption under this Section 5.2 may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3 (in which case such accrued but unpaid Interest on such Principal shall be paid to the Holder in cash). In no event will any Redemption Premium Amount be required to be paid in connection with payment of the Change of Control Redemption Price or any accrued Interest therewith.

6. Adjustments to the Conversion Rate.

6.1 Adjustment of Conversion Rate upon Subdivision or Combination of Common Stock or Stock Dividend. 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 effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

Where:

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution, or immediately before the open of business on the effective date of such stock split or stock combination, as applicable.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable.

OS_0 the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date or effective date, as applicable.

OS_1 the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

For the avoidance of doubt, pursuant to the definition of CR_1 above in this Section 6.1, any adjustment to the Conversion Rate made pursuant to this Section 6.1 will become effective immediately after the open of business on such ex-dividend date or the open of business on such effective date, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 6.1 is declared or announced, but not so paid or made, then the Conversion Rate, if previously adjusted, will be readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

6.2 Rights, Options and Warrants. If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is publicly announced, then the Conversion Rate will be decreased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

OS the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date.

X the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.

Y = a number of shares of Common Stock obtained by dividing (i) the aggregate price amount to exercise all such rights, options or warrants distributed by the Company by (ii) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

For the avoidance of doubt, any adjustment to the Conversion Rate made pursuant to this Section 6.2 will be made successively whenever any such rights, options or warrants are issued and, pursuant to the definition of CR_1 above in this Section 6.2, will become effective immediately after the open of business on the ex-dividend date for the applicable distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate, if previously adjusted, will be readjusted effective as of such expiration date to the Conversion Rate that would then be in effect had the decrease to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted effective as of the date the Board of Directors of the Company determines not to distribute such rights, options or warrants, to the Conversion Rate that would then be in effect had the ex-dividend date for the distribution of such rights, options or warrants not occurred. For purposes of this Section 6.2, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date of the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will 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 not cash, to be determined by the Board of Directors of the Company.

6.3 Other In-Kind Distributions. If the Company distributes shares of its capital stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its capital stock or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 6.1 or Section 6.2;

(b) rights issued under a stockholder rights plan (except as set forth in this Section 6.3);

(c) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 6.4;

(d) any dividends and distributions in connection with a Fundamental Transaction described in Section 5.1; and

(e) Spin-Offs as to which the provisions set forth in this Section 6.3 shall apply,

(any of such shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants to acquire capital stock or other securities of the Company, the "Distributed Property"), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{(SP_0 - FMV)}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

SP_0 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the ex-dividend date for such distribution.

FMV = the fair market value (as determined by the Board of Directors of the Company) of the Distributed Property so distributed with respect to each outstanding share of the Common Stock on the ex-dividend date for such distribution.

Any increase made under the portion of this Section 6.3 above shall become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to pay or make such distribution, 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, the Holder shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property 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 Section 6.3 where there has been a payment of 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 of the Company, 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 shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{(FMV_0 + MP_0)}{MP_0}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

FMV_0 = the average of the Closing Sale Prices per share 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 ten (10) consecutive Trading Day period after, and including, the ex-dividend date of the Spin-Off (the "Valuation Period").

MP_0 = the average of the Closing Sale Prices per share of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; provided, that, if the relevant Conversion Date occurs during the Valuation Period, the references to "10" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the ex-dividend date of such Spin-Off and the Conversion Date in determining the Conversion Rate. If such Spin-Off does not occur, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to consummate such Spin-Off, to be the Conversion Rate that would then be in effect if such distribution had not been declared, effective as of the date on which the Company's Board of Directors (or its designee) determines not to consummate such Spin-Off.

For purposes of this Section 6.3, rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"):

(i) are deemed to be transferred with such shares of the Common Stock;

(ii) are not exercisable; and

(iii) are also issued in respect of future issuances of the Common Stock,

shall be deemed not to have been distributed for purposes of this Section 6.3 (and no adjustment to the Conversion Rate under this Section 6.3 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 6.3. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, 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 with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

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 immediately 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 6.3 was made:

(A) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase, (1) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (2) 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 a holder or holders of Common Stock with respect to such rights, options or warrants (assuming 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

(B) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 6.1, Section 6.2 and this Section 6.3, any dividend or distribution to which this Section 6.3 is applicable that also includes one or both of:

(I) a dividend or distribution of shares of Common Stock to which Section 6.1 is applicable (the "Section 6.1 Distribution"); or

(II) a dividend or distribution of rights, options or warrants to which Section 6.2 is applicable (the "Section 6.2 Distribution"),

then:

(x) such dividend or distribution, other than the Section 6.1 Distribution and the Section 6.2 Distribution, shall be deemed to be a dividend or distribution to which this Section 6.3 is applicable (the "Section 6.3 Distribution") and any Conversion Rate adjustment required by this Section 6.3 with respect to such Section 6.3 Distribution shall then be made; and

(y) the Section 6.1 Distribution and Section 6.2 Distribution shall be deemed to immediately follow the Section 6.3 Distribution and any Conversion Rate adjustment required by Section 6.1 and Section 6.2 with respect thereto shall then be made, except that, if determined by the Company (a) the "ex-dividend date " of the Section 6.1 Distribution and the Section 6.2 Distribution shall be deemed to be the ex-dividend date of the Section 6.3 Distribution and (b) any shares of Common Stock included in the Section 6.1 Distribution or Section 6.2 Distribution shall be deemed not to be "outstanding immediately before the open of business on such ex-dividend date or effective date" within the meaning of Section 6.1 or "outstanding immediately before the open of business on such ex-dividend date" within the meaning of Section 6.2.

6.4 Cash Dividends and Distributions. If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

CR_0 = the Conversion Rate in effect immediately before the open of business on the ex-dividend date for such dividend or distribution.

CR_1 = the Conversion Rate in effect immediately after the open of business on such ex-dividend date.

SP_0 = the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the ex-dividend date for such dividend or distribution.

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase made pursuant to this Section 6.4 shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make or pay such dividend or distribution, 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, the Holder shall receive, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that the Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the ex-dividend date for such cash dividend or distribution.

6.5 Tender or Exchange Offers. If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock (in each case excluding a tender or exchange offer that constitutes a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Prices per share of the Common Stock over the ten (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 (such date, the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{(AC + (SP_1 \times OS_1))}{(OS_0 \times SP_1)}$$

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date.

CR_1 = the Conversion Rate in effect immediately after the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date.

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) 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 "Expiration Time") such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

SP_1 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The increase to the Conversion Rate under this Section 6.5 shall occur at the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided, that, if the relevant Conversion Date occurs during the ten (10) Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to "10" or "10^{th}" in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between such Expiration Date of such tender or exchange offer and the Conversion Date in determining the Conversion Rate.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

6.6 Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Required Holders, increase the then current Conversion Rate to any amount and for any period of time deemed appropriate by the Board of Directors of the Company.

6.7 No Adjustments. Notwithstanding anything to the contrary in this Section 6, the Conversion Rate shall not be adjusted:

(a) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(b) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(c) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in Section 6.7(b) and outstanding as of the date the Notes were first issued;

(d) for ordinary course of business stock repurchases that are not tender offers referred to in Section 6.5, including structured or derivative transactions or pursuant to a stock repurchase program approved by the Board of Directors of the Company;

(e) solely for a change in the par value of the Common Stock; or

(f) for accrued and unpaid interest, if any.

6.8 Calculations. All calculations and other determinations under this Section 6 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. If an adjustment to the Conversion Rate otherwise required pursuant to Sections 6.1 through 6.5 would result in a change of less than 1.0% to the Conversion Rate, then, notwithstanding the foregoing, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest to occur of the following: (i) when all such deferred adjustments would result in an aggregate change of at least 1.0% to the Conversion Rate; (ii) on the Conversion Date for this Note, and (iii) on the effective date of any Fundamental Transaction, in each case, unless the adjustment has already been made.

7. Redemptions at the Company's Option.

7.1 Company Optional Redemption.

(a) The Company shall have the right at any time to redeem all, but not less than all, of the Principal then outstanding under this Note (the "Company Optional Redemption Amount") on the Company Optional Redemption Date (a "Company Optional Redemption"). The portion of this Note subject to redemption pursuant to this Section 7.1 shall be redeemed by the Company in cash at (i) a price equal to the sum of the Redemption Premium Amount as of the Company Optional Redemption Date and the outstanding Principal being redeemed as of the Company Optional Redemption Date (the "Company Optional Redemption Price"), plus (ii) all accrued but unpaid Interest on such Principal to be redeemed.

(b) The Company may exercise its right to require redemption under this Section 7.1 by delivering a written notice thereof by facsimile or electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "Company Optional Redemption Notice" and the date all of the holders of Notes received such notice is referred to as the "Company Optional Redemption Notice Date"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable; provided, that the Company Optional Redemption Notice may be conditioned upon the effectiveness of any credit facility or capital raising, the consummation of a particular disposition or the occurrence of a change of control, as specified in the Company Optional Redemption Notice, in which case such Company Optional Redemption Notice may be revoked by the Company (by notice to all the holders of Notes on or prior to the Company Optional Redemption Date) if such condition is not satisfied. The Company Optional Redemption Notice shall (i) state the date on which the Company Optional Redemption shall occur (the "Company Optional Redemption Date") which date shall (A) not be less than fifteen (15) calendar days nor more than twenty-five (25) calendar days following the Company Optional Redemption Notice Date, or (B) if such Company Optional Redemption is conditioned upon the effectiveness of any credit facility or capital raising, the consummation of a particular disposition or the occurrence of a change of control, as specified in the Company Optional Redemption Notice, not be less than fifteen (15) calendar days following the Company Optional Redemption Notice Date nor be a date that is later than the applicable closing date of the relevant transaction specified in the Company Optional Redemption Notice and (ii) certify that there has been no Equity Conditions Failure.

(c) Notwithstanding anything herein to the contrary, (i) if no Equity Conditions Failure has occurred as of the Company Optional Redemption Notice Date but an Equity Conditions Failure occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect, and (B) unless the Holder waives the Equity Conditions Failure, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void, and (ii) at any time prior to the date that is fifteen (15) calendar days following the Company Optional Redemption Notice Date, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Stock pursuant to Section 3 (in which case all accrued but unpaid Interest and any Redemption Premium Amount payable on such Principal shall be paid to the Holder in cash).

(d) Any portion of the Principal of the Note converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 7.1 shall be made in accordance with Section 10. For the avoidance of doubt, the Redemption Premium shall be disregarded for purposes of calculation of the number of shares of Common Stock issuable upon conversion of this Note.

(e) In the event of the Company's redemption of this Note under this Section 7.1, the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium amount due under this Section 7.1 is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have the right to effect a Company Optional Redemption if any Event of Default has occurred and continuing.

7.2 Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 7.1, then it must simultaneously take the same action with respect to all of the Other Notes.

8. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate or articles of incorporation, bylaws or other governing document or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, (b) shall not modify the voting rights attached to Common Stock and (c) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of this Note.

9. Reservation of Authorized Shares.

9.1 Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note and the Other Notes equal to 100% of the Conversion Rate with respect to the principal amount of each such Note as of the Issuance Date. So long as any of this Note and the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that, at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "Required Reserve Amount"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Securities Exchange Agreement) or at the time of the increase in the number of reserved shares, as the case may be (the "Authorized Share Allocation"). In the event that a holder shall sell or otherwise transfer this Note, or a portion thereof, or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation.

9.2 Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to have reserved for issuance upon conversion of the outstanding Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "Authorized Share Failure"), then the Company shall promptly take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (i) obtain the written consent of its stockholders for the approval of an increase in the number of authorized shares of Common Stock or (ii) file with the SEC a proxy statement for a meeting of its stockholders at which meeting the Company will seek the approval of its stockholders for an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use commercially reasonable efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

10. Redemptions.

10.1 Mechanics.

(a) If the Holder has submitted a Change of Control Redemption Notice in accordance with Section 5.2, the Company shall deliver the applicable Change of Control Redemption Price (together with all accrued but unpaid Interest on the Principal to be redeemed) to the Holder in cash concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and within five (5) Business Days after the Company's receipt of such notice otherwise (each, a "Change of Control Redemption Date").

(b) In the event of a Company Optional Redemption, the Company shall deliver the applicable Company Optional Redemption Price (together with all accrued but unpaid Interest) to the Holder in cash or shares of Common Stock as determined in Section 3.4 hereof on the applicable Company Optional Redemption Date.

(c) Notwithstanding anything herein to the contrary, in connection with any redemption under this Section 10 at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document.

(d) In the event of a redemption of less than all of the Principal of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 16.4) representing the outstanding Principal which has not been redeemed.

(e) In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Principal that was submitted for redemption and for which the applicable Redemption Price (together with any Interest thereon) has not been paid. Upon the Company's receipt of such notice, (i) the applicable Redemption Notice shall be null and void with respect to such Principal, and (ii) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 16.4), to the Holder; provided, that, notwithstanding the applicable Redemption Notice being deemed null and void and such return or issuance of this Note or a new Note in accordance with the foregoing, a continual Event of Default shall thereafter be deemed to have occurred and be continuing until the subsequent repayment or conversion of this Note in full.

10.2 Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes (other than any such holder which is an Affiliate of the Holder) for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described Section 5.2 (each, an "Other Redemption Notice"), the Company shall immediately, but no later than two (2) Business Days after its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Change of Control Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's Change of Control Redemption Notice and ending on and including the date which is five (5) Business Days after the Company's receipt of the Holder's Change of Control Redemption Notice and the Company is unable to redeem all principal, interest and any other amount designated in such Change of Control Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Change of Control Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

11. Voting Rights. The Holder shall have no voting rights with respect to the shares of the capital stock of the Company in its capacity as the holder of this Note, except as required by law and as expressly provided in this Note.

12. Covenants. Until all of the Notes have been converted, redeemed or otherwise satisfied, in full, in accordance with their terms (excluding contingent and indemnification or contribution obligations), the Company hereby covenants and agrees that:

12.1 Rank. All payments due under this Note shall rank *pari passu* with all Other Notes.

12.2 Maintenance of Existence. The Company shall preserve and maintain its legal existence.

12.3 Maintenance of Listing. The Company shall maintain its Common Stock listing on the Principal Market or another Eligible Market (subject to all cure periods permitted by the Principal Market or such other Eligible Market). The Company shall list any Common Stock issuable upon conversion of this Note on the Principal Market or any other Eligible Market on which the Common Stock is then listed prior to issuance of such Common Stock.

13. Amendments and Waivers. No amendment or waiver of any provision of this Note or any other Transaction Document, and no consent to any departure by the Company therefrom, shall be effective unless in writing signed by the Required Holders and the Company. Each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. Notwithstanding the foregoing, any such amendment, waiver, consent or other departure that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any holder of this Note or any Other Note relative to the comparable rights and obligations of the other holders of this Note or any Other Note shall require the prior written consent of such adversely affected Person(s). Any change, amendment, waiver, consent or departure by the Company and the Holder required by this Section 13 shall be binding on the Company, the Holder of this Note and all holders of the Other Notes.

14. Collateral. Solely in the event that this Note is held by Madryn Health Partners, LP or Madryn Health Partners (Cayman Master), LP or any of its Affiliates, this Note and the Other Notes are secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Guaranty and Security Agreement).

15. Transfer. Unless the Assignment Conditions and the other terms of Section 9.8 of the Securities Exchange Agreement have been satisfied, this Note may not be offered, sold, assigned or transferred by the Holder other than to an Affiliate of the Holder upon notice to the Company, subject only to the provisions of Section 4.1 of the Securities Exchange Agreement. Any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.1 of the Securities Exchange Agreement.

16. Reissuances; New Notes.

16.1 Transfer. If this Note is to be transferred in accordance with the terms of this Note, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16.4 and subject to Section 3.2(c)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16.4) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3.2(c) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

16.2 Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 16.4) representing the outstanding Principal.

16.3 Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16.4) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

16.4 Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (a) shall be of like tenor with this Note, (b) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16.1 or Section 16.3, the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (c) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, and (d) shall have the same rights and conditions as this Note.

17. Remedies, other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. Notwithstanding anything to the contrary set forth herein or any other Transaction Document, to the fullest extent permitted by applicable law, neither the Company nor the Holder shall assert, and each of the Company and the Holder waives, and acknowledges that no Person shall have, any claims on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Note or any other Transaction Document or any transaction contemplated thereby.

18. Payment of Collection, Enforcement and Other Costs. If (a) an Event of Default has occurred and this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable and documented out-of-pocket costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

19. Construction; Headings. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof' and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

20. Failure or Indulgence Not Waiver. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

21. Dispute Resolution.

21.1 Submission to Dispute Resolution.

(a) In the case of a dispute relating to a Closing Sale Price, a Conversion Rate, a fair market value or a Redemption Premium Amount or the arithmetic calculation of a Conversion Price or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile or electronic mail (i) if by the Company, within five (5) Business Days after the occurrence of the circumstances giving rise to such dispute or (ii) if by the Holder, within five (5) Business Days after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Sale Price, such Conversion Rate, such fair market value or such Redemption Premium Amount, or the arithmetic calculation of such Conversion Price or such applicable Redemption Price (as the case may be), at any time after the second (2^{nd}) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, with the consent of the Company (such consent not to be unreasonably or untimely withheld), select an independent, reputable, nationally known investment bank to resolve such dispute.

(b) The Holder and the Company shall each deliver to such investment bank (i) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 21 and (ii) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the tenth (10^{th}) Business Day immediately following the date on which the Holder selected such investment bank (the "Dispute Submission Deadline") (the documents referred to in the immediately preceding clauses (i) and (ii) are collectively referred to herein as the "Required Dispute Documentation") (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(c) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The reasonable fees and reasonable expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

21.2 Miscellaneous. The Company expressly acknowledges and agrees that (a) this Section 21 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("CPLR") and that the Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 21, (b) a dispute relating to a Conversion Rate or a Conversion Price includes, without limitation, disputes as to whether an agreement, instrument, security or the like constitutes a right, warrant, grant or option to subscribe for or purchase shares of Common Stock, (c) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (d) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 21 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 21 and (e) nothing in this Section 21 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 21).

21.3 Pendency of Dispute. Notwithstanding anything to the contrary set forth herein, during either (a) the pendency of any dispute under this Section 21 with respect to either (i) whether the existence or continuation of an Event of Default has occurred or (ii) whether the conditions to a Company Optional Redemption pursuant to Section 7 have been satisfied, or (b) the time that both an Event of Default is continuing and the pendency of any other dispute under this Section 21, without the prior written consent of the Holder, the Company shall not be permitted to exercise its rights under Section 7 and no Company Optional Redemption pursuant to Section 7 shall be effective.

22. Notices; Currency; Payments.

22.1 Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9.5 of the Securities Exchange Agreement. The Company will give written notice to the Holder promptly upon any adjustment of the Conversion Rate, setting forth in reasonable detail, and certifying, the calculation of such adjustment.

22.2 Currency. All dollar amounts referred to in this Note are in United States Dollars ("U.S. Dollars"), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "Exchange Rate" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

22.3 Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of the Holder, shall initially be as set forth on the Schedule of Investors attached to the Securities Exchange Agreement); provided, that, the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

23. Cancellation. After all Principal, accrued Interest and other amounts at any time owed on this Note have been satisfied in full (including, for the avoidance of doubt, by conversion in full of this Note into shares of the Common Stock, but excluding contingent and indemnification obligations), this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

24. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Exchange Agreement.

25. Governing Law. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Except as otherwise required by Section 21 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (a) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder or (b) shall limit, or shall be deemed or construed to limit, any provision of Section 21. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

26. Severability. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

27. Usury. This Note is subject to the express condition that at no time shall the Company be obligated or required to pay interest hereunder at a rate or in an amount which could subject the Holder to either civil or criminal liability as a result of being in excess of the maximum interest rate or amount which the Company is permitted by applicable law to contract or agree to pay. If by the terms of this Note, the Company is at any time required or obligated to pay interest hereunder at a rate or in an amount in excess of such maximum rate or amount, the rate or amount of interest under this Note shall be deemed to be immediately reduced to such maximum rate or amount and the interest payable shall be computed at such maximum rate or be in such maximum amount and all prior interest payments in excess of such maximum rate or amount shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

28. Adjusted Three-Month Term SOFR Unavailability Period.

Notwithstanding anything to the contrary in this Note, if the Holder determines (which determination shall be conclusive absent manifest error) that a SOFR Unavailability Period has commenced and is continuing, then, reasonably promptly after such determination, the Holder shall give the Company notice thereof and the Holder and the Company may amend this Note to replace Adjusted Three-Month Term SOFR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein (including spread adjustments or method for calculating or determining such spread adjustments, which may be a positive or negative value or equal to zero)), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities for such alternative benchmarks (any such proposed rate, a "SOFR Successor Rate"), together with any proposed SOFR Successor Rate Conforming Changes. It is understood and agreed that, for all purposes of this Agreement, once commenced, a "SOFR Unavailability Period" shall be deemed to exist and be continuing unless and until such amendment has become effective in accordance with the terms hereof.

Notwithstanding anything else herein, any definition of SOFR Successor Rate shall provide that in no event shall such SOFR Successor Rate be less than five percent (5.0%) for purposes of this Note.

29. Definitions. As used in this Note, the following terms shall have the following meanings:

29.1 "Adjusted Three-Month Term SOFR" means, which respect to any Interest Period, a rate per annum equal to the sum of (a) Three-Month Term SOFR for such Interest Period, plus (b) the SOFR Adjustment.

29.2 "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

29.3 "Applicable Margin" means eight and one-half percent (8.50%) per annum.

29.4 "Authorized Share Allocation" has the meaning specified in Section 9.1.

29.5 "Authorized Share Failure" has the meaning specified in Section 9.2.

29.6 "Bankruptcy Event of Default" has the meaning specified in Section 4.1.

29.7 "Business Day" means any day other than Saturday, Sunday, any day which shall be a federal legal holiday in the United States or any day on which banking institutions in The State of New York or Ontario, Canada are authorized or required by law or other governmental action to close.

29.8 "Calendar Quarter" means each of: (a) the period beginning on and including January 1 and ending on and including the next occurring March 31; (b) the period beginning on and including April 1 and ending on and including the next occurring June 30; (c) the period beginning on and including July 1 and ending on and including the next occurring September 30; (d) and the period beginning on and including October 1 and ending on and including the next occurring December 31.

29.9 "Change of Control" means the occurrence of, for any reason whatsoever, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than any of the Permitted Holders, becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "option right"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50% or more of the equity interests of the Company entitled to vote for members of the Board of Directors of the Company on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right).

29.10 "Change of Control Notice" has the meaning specified in Section 5.2.

29.11 "Change of Control Redemption Date" has the meaning specified in Section 10.1.

29.12 "Change of Control Redemption Notice" has the meaning specified in Section 5.2.

29.13 "Change of Control Redemption Price" has the meaning specified in Section 5.2.

29.14 "Closing Sale Price" means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by FactSet, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price (as the case may be) then last trade price of such security prior to 4:00:00 p.m., New York time, as reported by FactSet, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by FactSet, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by FactSet, or, if no last trade price is reported for such security by FactSet, the average of the ask prices of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 21. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

29.15 "CME" means CME Group Benchmark Administration Limited.

29.16 "CNB" means City National Bank of Florida.

29.17 "CNB Event of Default" has the meaning specified in Section 4.1(c).

29.18 "Common Stock" means (a) Common Stock, par value $0.0001 per share of the Company, and (b) any share capital into which such Common Stock shall be changed or any share capital resulting from a reclassification of such Common Stock.

29.19 "Company" has the meaning specified in the preamble to this Note.

29.20 "Company Optional Redemption" has the meaning specified in Section 7.1.

29.21 "Company Optional Redemption Amount" has the meaning specified in Section 7.1.

29.22 "Company Optional Redemption Date" has the meaning specified in Section 7.1.

29.23 "Company Optional Redemption Notice" has the meaning specified in Section 7.1.

29.24 "Company Optional Redemption Notice Date" has the meaning specified in Section 7.1.

29.25 "Company Optional Redemption Price" has the meaning specified in Section 7.1.

29.26 "Controlled Investment Affiliate" means, as to any Person, any other Person which directly or indirectly is in control of or is controlled by, or is under common control with, such Person and is organized by such Person (or any Person controlled by such Person) primarily for making equity or debt investments in the Company or other portfolio companies of such Person.

29.27 "Conversion Date" has the meaning specified in Section 3.2(a).

29.28 "Conversion Failure" means the failure by the Company, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, to either: (a) if (i) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or (ii) such applicable shares of Common Stock may not then be resold by the Holder pursuant to a Permitted Securities Transaction, deliver a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register, or (b) if (i) the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and (ii) such applicable shares of Common Stock may then be resold by the Holder pursuant to a Permitted Securities Transaction, credit the balance account of the Holder or the Holder's designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be).

29.29 "Conversion Notice" has the meaning specified in Section 3.2(a).

29.30 "Conversion Price" per share of Common Stock as of any time means the result obtained by dividing (a) $1,000 by (b) the then applicable Conversion Rate, rounded to the nearest cent.

29.31 "Conversion Rate" means the rate at which shares of Common Stock shall be delivered upon conversion, which rate shall be initially 41.6666667 shares of Common Stock for each $1,000 principal amount of Notes, as adjusted from time to time pursuant to the provisions of this Agreement.

29.32 "Dispute Submission Deadline" has the meaning specified in Section 21.1(b).

29.33 "DTC" has the meaning specified in Section 3.2(a).

29.34 "Eligible Market" means the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the OTCBB.

29.35 "Equity Conditions" means, with respect to a given date of determination, as of such date of determination:

(a) either (i) one or more Registration Statements filed pursuant to the Securities Exchange Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (each, a "Required Minimum Securities Amount"), in each case, in accordance with the terms of the Securities Exchange Agreement and there shall not be any ongoing Grace Periods (as defined in the Securities Exchange Agreement) as of such date of determination or (ii) all Registrable Securities shall be eligible for sale without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes);

(b) the Common Stock (including all Registrable Securities) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (i) a writing by such Eligible Market or (ii) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable) for the period of time specified by such requirement;

(c) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination) may be issued in full without violating Section 3.3 hereof; provided, that this clause (c) shall not apply if prior to such date of determination, the stockholders of the Company have already voted to reject additional issuances of shares of the Common Stock in excess of the Exchange Cap;

(d) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable);

(e) the Company shall have no knowledge of any fact that would reasonably be expected to cause (i) any Registration Statement filed pursuant to the Securities Exchange Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of Registrable Securities in accordance with the terms of the Securities Exchange Agreement or (ii) any Registrable Securities to not be eligible for sale without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes or other issuance of securities with respect to the Notes);

(f) [reserved];

(g) (i) no Authorized Share Failure shall exist or be continuing, (ii) the applicable Required Minimum Securities Amount of shares of Common Stock are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Notes and (iii) all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) may be issued in full without resulting in an Authorized Share Failure;

(h) there shall not have occurred and then be continuing an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; and

(i) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions (or issuable upon conversion of the portion of the Principal being redeemed in the event requiring this determination at the Conversion Rate then in effect (without regard to any limitations on conversion set forth herein)) are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

29.36 "Equity Conditions Failure" means that, on any day during the period commencing ten (10) calendar days prior to the applicable Company Optional Redemption Notice Date through the applicable Company Optional Redemption Date, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

29.37 "Event of Default" has the meaning specified in Section 4.1.

29.38 "Exchange Act" means the Securities Exchange Act of 1934, as amended.

29.39 "Exchange Cap" the maximum number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules and regulations of the Principal Market as set forth in Nasdaq Rule 5635(b) (or such equivalent rule under another Eligible Market, if the Common Stock is re-listed, re-traded or re-quoted on another Eligible Market).

29.40 "Fundamental Transaction" has the meaning specified in Section 5.1.

29.41 "Group" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

29.42 "Guarantors" means each Person that is a party to the Guaranty and Security Agreement as a "Guarantor" thereunder, including each Person that becomes a "Guarantor" thereunder after the Issuance Date.

29.43 "Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Issuance Date, by and among the Company, the Guarantors from time to time party thereto, the Holder and each holder of Other Notes.

29.44 "Holder" has the meaning specified in the preamble to this Note.

29.45 "Interest" has the meaning specified in the preamble to this Note.

29.46 "Interest Date" has the meaning specified in Section 2.

29.47 "Interest Period" means (a) initially, the period commencing on (and including) the date hereof and ending on (and including) December 31, 2023; provided, that, if such day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such day, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the last day of the calendar quarter following the calendar quarter in which the preceding Interest Period ended; provided, that, if any such last day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such last day of such quarter, and (y) the Maturity Date.

29.48 "Interest Rate" means, for any Interest Period, a rate per annum equal to the sum of (a) the Applicable Margin plus (b) Adjusted Three-Month Term SOFR for such Interest Period; provided, that, (i) if the Holder determines (which determination shall be conclusive absent manifest error) that a SOFR Unavailability Period has commenced and is continuing, then at all times during such SOFR Unavailability Period, the "Interest Rate" shall be a rate per annum equal to the sum of (A) the Applicable Margin plus (B) the most recent Adjusted Three-Month Term SOFR that was determined in accordance with the terms hereof, provided, that, on any date when an Event of Default shall have occurred and be continuing and the Holder has delivered written notice to the Company of its election to invoke a default rate of interest, the "Interest Rate" shall be the "Interest Rate" determined in accordance with the foregoing plus 4.00%. Notwithstanding the foregoing proviso, if the Event of Default is a Bankruptcy Event of Default, the Holder shall not be required to deliver any notice to the Company to invoke a default rate of interest and such default rate of interest shall instead be deemed automatically invoked.

29.49 "Israeli Insolvency and Economic Rehabilitation Law" means the Israeli Insolvency and Economic Rehabilitation Law, 5778-2018, as amended and any supplement thereto or replacement thereof that hereinafter may be made effective.

29.50 "Issuance Date" has the meaning specified in the preamble to this Note.

29.51 "Material Adverse Effect" has the meaning specified in the Securities Exchange Agreement.

29.52 "Maturity Date" means December 9, 2025.

29.53 "MSPLP Facility" means the Loan and Security Agreement to be entered into between Venus Concept USA Inc., as borrower, the Company, as guarantor, and CNB, as agent and lender, together with any extension, renewal, refinancing or replacement thereof.

29.54 "Note" has the meaning specified in the preamble to this Note.

29.55 "Other Notes" has the meaning specified in the preamble to this Note.

29.56 "Other Redemption Notice" has the meaning specified in Section 10.2.

29.57 "Parent Entity" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

29.58 "Permitted Holders" means, without duplication, (a) Aperture Venture Partners II, L.P., Aperture Venture Partners II-A, L.P., Aperture Venture Partners II-B, L.P., Aperture Venture Partners III, L.P., Deerfield Special Situations Fund, L.P., SEDCO Capital Global Funds - SC Private Equity Global Fund IV, SEDCO Capital Cayman Ltd., Longitude Venture Partner II L.P., Venus Technologies Ltd., EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P., Healthquest Partners, L.P., Healthquest Partners II, L.P., Madryn Health Partners, LP, Madryn Health Partners (Cayman Master), LP, and any Controlled Investment Affiliate of any of the foregoing Persons, (b) Domenic Serafino and his Permitted Transferees and (c) Senior Management Persons of the Company and Board Members of the Company, in each case, for so long as such Persons are actively employed by the Company in such capacity or serve in such capacity, as the case may be.

29.59 "Permitted Securities Transaction" has the meaning specified in Section 3.2(a).

29.60 "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and any other legal entity.

29.61 "Principal" has the meaning specified in the preamble to this Note.

29.62 "Principal Market" means the NASDAQ Global Market.

29.63 "Redemption Date" means, as applicable, the Change of Control Redemption Date or Company Optional Redemption Date.

29.64 "Redemption Notice" means, as applicable, a Company Optional Redemption Notices and a Change of Control Redemption Notice.

29.65 "Redemption Premium Amount" means, on any date of determination, with respect to any amount of outstanding Principal redeemed or required to be redeemed, an amount equal to the present value as of such date of determination (as determined by the Holder or, if there are other holders whose Notes are also redeemed or required to be redeemed at the same time, as determined by the holders of Notes representing at least a majority of the aggregate principal amount of the Notes being so redeemed or required to be redeemed, in each case, in accordance with customary practice), discounted at the Three-Month Treasury Rate, of the aggregate remaining Interest payment amounts (at the non-default Interest Rate)on the amount of Principal redeemed or required to be redeemed.

29.66 "Redemption Price" means, as applicable, the Change of Control Redemption Price and the Company Optional Redemption Price.

29.67 "Register" has the meaning specified in Section 3.2(c).

29.68 "Registered Notes" has the meaning specified in Section 3.2(c).

29.69 "Registrable Securities" has the meaning specified in the Securities Exchange Agreement.

29.70 "Registration Statement" has the meaning specified in the Securities Exchange Agreement.

29.71 "Required Dispute Documentation" has the meaning specified in Section 21.1(b).

29.72 "Required Holders" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

29.73 "Required Reserve Amount" has the meaning specified in Section 9.1.

29.74 "Rule 144" has the meaning specified in the Securities Exchange Agreement.

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

29.76 "Securities Exchange Agreement" means that certain Securities Exchange and Registration Rights Agreement, dated as of December 8, 2020, among the Company, the guarantors identified therein and the investors identified therein, pursuant to which the Company issued the Notes, as such agreement may be amended, restated or otherwise modified from time to time.

29.77 "Senior Management Persons" means the collective reference to Rajiv De Silva, Hemanth Varghese, Domenic Della Penna, Willliam McGrail, Ross Portaro, Anna Georgiadis and Michael Mandarello; and "Senior Management Person" means any one of them.

29.78 "Share Delivery Deadline" has the meaning specified in Section 3.2(a).

29.79 "SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

29.80 "SOFR Adjustment" means 0.10% (10 basis points) per annum.

29.81 "SOFR Successor Rate" has the meaning set forth in Section 28.

29.82 "SOFR Successor Rate Conforming Changes" means, with respect to any proposed SOFR Successor Rate, any conforming changes to the definitions of "Adjusted Three-Month Term SOFR," "Interest Date," "Interest Period," "Interest Rate," "SOFR,"

"SOFR Adjustment" or "Three-Month Term SOFR," the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Holder, to reflect the adoption of such SOFR Successor Rate and to permit the administration thereof by the Holder in a manner substantially consistent with market practice (or, if the Holder determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such SOFR Successor Rate exists, in such other manner of administration as the Holder determines in consultation with the Borrower).

29.83 "SOFR Unavailability Period" means a period, commencing on the date on which the Holder shall have determined (which determination shall be conclusive absent manifest error) that any of the events set forth in clauses (a) or (b) below have occurred and are continuing through the date on which a SOFR Successor Rate is established pursuant to Section 28:

(a) adequate and reasonable means do not exist for ascertaining Three-Month Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, or

(b) the CME (or any successor administrator reasonably satisfactory to the Holder) has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease, provided, that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Holder that will continue to provide SOFR, or for any reason Three-Month Term SOFR does not adequately and fairly reflect the cost to the Holder of funding this Note.

29.84 "Subsidiary" has the meaning specified in the Securities Exchange Agreement.

29.85 "Successor Entity" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

29.86 "Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Transfer Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Transfer Agent from time to time).

29.87 "Three-Month Term SOFR" means, with respect to any Interest Period, the rate per annum equal to the greater of (x) five percent (5.0%) per annum and (y) the three-month Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then Three-Month Term SOFR means the three-month Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto. The Holder's determination of interest rates shall be determinative in the absence of manifest error.

29.88 "Three-Month Treasury Rate" means, as of any date of determination, the weekly average yield as of such date of determination of actually traded United States Treasury securities adjusted to a constant maturity of three (3) months (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Federal Reserve Statistical Release H.15(519) is no longer published, any publicly available source of similar market data)). For the avoidance of doubt, this calculation is based on yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

29.89 "Trading Day" has the meaning specified in the Securities Exchange Agreement.

29.90 "Transaction Documents" has the meaning specified in the Securities Exchange Agreement.

29.91 "Transfer Agent" has the meaning specified in Section 3.1.

29.92 "U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Secured Subordinated Convertible Note as of the Issuance Date set out above.

VENUS CONCEPT INC.

By: /s/ Rajiv De silva
Name: Rajiv De silva
Title: Chief Executive Officer

Accepted and Agreed:

MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP

By: MADYN HEALTH ADVISORS, LP,
Its: General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
Its: General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

EXHIBIT I

VENUS CONCEPT INC.
CONVERSION NOTICE

Reference is made to the Secured Subordinated Convertible Note (the "Note") dated as of October 4, 2023, issued to the undersigned by Venus Concept Inc., a Delaware corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the portion of the Principal (as defined in the Note) of the Note indicated below into shares of Common Stock of the Company with $0.0001 par value per share (the "Common Stock"), as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

AGGREGATE PRINCIPAL TO BE CONVERTED: _____

Please confirm the following information:

Conversion Rate: _____

Net Share Settlement: [Yes / No / N/A]

Number of shares of Common Stock to be issued [as Net Share Amount][1] (the "Shares"): _____

[Principal to be repaid in cash][2]: $ _____

Accrued but unpaid Interest to be paid in cash: $ _____

Redemption Premium Amount to be paid in cash: $ _____

Check here if the Holder does not intend to resell the Shares to be issued either (a) prior to, (b) contemporaneously with or (c) no later than thirty (30) days after, as applicable, the date of this Conversion Notice.

[1]Include if Net Share Settlement is elected.

[2]Include if Net Share Settlement is elected.

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty (30) days after the date of this Conversion Notice.

Please issue the shares of the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: ____

_____

_____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number: _____
Account Number: _____

Please make the cash payments specified above to Holder by wire transfer of immediately available funds.

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

VENUS CONCEPT INC.

_____ 20_

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of Venus Concept Inc.

Ladies and Gentlemen:

Reference is made to (a) the Securities Exchange Agreement, dated as of December 8, 2020, as amended, by and among Venus Concept Inc., a Delaware corporation (the "Company"), the guarantors named therein and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "Holders") secured subordinated convertible notes (the "Notes"), which are convertible into shares of the Company's Common Stock, par value $0.0001 per share (the "Common Stock"); (b) the conversion notice attached hereto (the "Conversion Notice"); and (c) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (i) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "1933 Act"), (ii) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("Rule 144"), or (iii) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice, and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

VENUS CONCEPT INC.

By:
Name:
Title:

Exhibit 10.5

SUBORDINATION OF DEBT AGREEMENT

This SUBORDINATION OF DEBT AGREEMENT is entered into as of October 4, 2023 (the "**Agreement**"), by and among MADRYN HEALTH PARTNERS, LP and MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP (collectively, the "**Junior Lender**"), whose address is 140 E. 45th Street, 15th Floor, Suite B, New York, New York 10017, CITY NATIONAL BANK OF FLORIDA, its successors and/or assigns (the "**Senior Lender**"), whose address is 100 S.E. 2nd Street, 13th Floor, Miami, Florida 33131, and VENUS CONCEPT LTD., a company formed under the Companies Law of Israel (the "**Debtor**"), whose address is 6 Hayozma, Yokne'am, Illit, Israel 2069200.

R E C I T A L S:

A. The Debtor is now or will be from time to time hereafter indebted in various sums to the Junior Lender pursuant to certain existing and/or future notes, agreements and instruments (collectively, the "**Junior Debt Instruments**").

B. The Junior Lender desires that the Senior Lender extend and/or continue the extension of credit to certain affiliates of the Debtor from time to time as the Senior Lender in its sole discretion may determine, and as a condition of such extension and/or continued extension of such credit, the Senior Lender is requiring that the Debtor grant liens in certain of its assets to secure the Senior Debt (as defined below) and the Junior Debt (as defined below) be subordinated to the Senior Debt in the manner hereinafter set forth; and

C. The extension and/or continued extension of credit, as aforesaid, by the Senior Lender is necessary or desirable to the conduct and operation of the business of the Debtor, and will inure to the benefit of the Junior Lender.

A G R E E M E N T S:

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration to the Junior Lender, the receipt and sufficiency of which are hereby acknowledged, the Junior Lender and the Debtor hereby agree with the Senior Lender as follows:

1. Subordination.

1.1 The Junior Lender hereby subordinates the indebtedness evidenced by the Junior Debt Instruments, and any and all other indebtedness now or at any time or times hereafter owing by the Debtor, or any successor or assign of the Debtor, including without limitation, a receiver, trustee or debtor-in-possession (the term "**Debtor**" as used hereinafter shall include any such successor or assign) to the Junior Lender, whether such indebtedness is absolute or contingent, direct or indirect and howsoever evidenced, including without limitation, all interest thereon, including pre-petition and post-petition interest, fees and expenses and any other charges, and any refinancings thereof (collectively, the "**Junior Debt**") to any and all indebtedness now or at any time hereafter owing by the Debtor to the Senior Lender, whether absolute or contingent, direct or indirect and howsoever evidenced, including, but not limited to, all pre-petition and post-petition interest thereon, fees, expenses and all other demands, claims, liabilities or causes of action for which the Debtor may now or at any time or times hereafter in any way be liable to the Senior Lender, whether under any agreement, instrument or document executed and delivered or made by the Debtor to the Senior Lender or otherwise, including any refinancings thereof, including, without limitation, any obligations of Debtor relating to the indebtedness evidenced by that certain Promissory Note dated as of December 8, 2020 from Venus Concept USA Inc. in favor of Senior Lender in the principal amount of $50,000,000.00, as the same may be amended or modified from time to time (collectively, the "**Senior Debt**").

1.2 The Junior Lender hereby subordinates all security interests, liens, encumbrances and claims, whether now existing or hereafter arising, which in any way secure the payment of the Junior Debt (the "**Junior Lender's Collateral**") to all security interests, liens, encumbrances and claims, whether now existing or hereafter arising, which in any way secure the payment of the Senior Debt (the "**Senior Lender's Collateral**").

1.3 The Junior Lender shall not take any action to enforce any of its liens on the Junior Lender's Collateral, and shall not ask for or receive from the Debtor or any other person or entity any security for the Junior Debt not specifically granted by the Junior Debt Instruments.

1.4 The Junior Lender agrees that it shall have no right to possession of any assets included in the Junior Lender's Collateral or in the Senior Lender's Collateral, whether by judicial action or otherwise.

1.5 The Junior Lender agrees to instruct the Debtor not to pay, and agrees not to accept payment of, or assert, demand, sue for or seek to enforce against the Debtor or any other person or entity, by setoff or otherwise, all or any portion of the Junior Debt. Notwithstanding the foregoing, so long as there is no Event of Default or Unmatured Event of Default (each as defined in the Loan Agreement) under the Senior Debt, the Debtor shall be permitted to make regularly scheduled payments of accrued interest and principal on the Junior Debt which are mandatory and due or as otherwise permitted under the terms of the Main Street Priority Loan Facility, which has been authorized under Section 13(3) of the Federal Reserve Act. As used herein, the "**Loan Agreement**" shall mean that certain Loan and Security Agreement dated as of December 8, 2020 by and between Venus Concept USA Inc. and Senior Lender, as the same may be amended or modified from time to time. Notwithstanding the foregoing, nothing in this Agreement shall prohibit the Junior Lender from taking or receiving the proceeds of any assets of the Debtor or any other party which do not constitute Senior Lenders' Collateral (collectively, the "**Excluded Collateral**") and applying the proceeds of Excluded Collateral to the repayment of the Junior Debt when mandatory and due.

1.6 The Junior Lender hereby assigns to the Senior Lender and subrogates to the Senior Lender all of the Junior Lender's right, title and interest in and to the Junior Debt and the Junior Lender's Collateral, and hereby irrevocably authorizes the Senior Lender (i) to collect, receive, enforce and accept any and all sums or distributions of any kind, whether cash, securities or other property, that may become due, payable or distributable on or in respect of the Junior Debt or the Junior Lender's Collateral, whether paid directly by the Debtor or paid or distributed in any liquidation, bankruptcy, arrangement, receivership, assignment, reorganization or dissolution proceedings or otherwise, and (ii) in the Senior Lender's sole discretion, to make, present and vote claims therefor in, and take such other actions as the Senior Lender deems necessary or advisable in connection with, any such proceedings, either in the Senior Lender's name or in the name of the Junior Lender, including, but not limited to, any election in any proceeding instituted under Chapter 11 of Title 11 of United States Code (11 U.S.C. § 101 et. seq.) (the "**Bankruptcy Code**"); and agrees that, upon the written request of the Senior Lender after the occurrence of an Event of Default, it will promptly assign, endorse and deliver to and deposit with the Senior Lender all agreements, instruments and documents evidencing the Junior Debt, including without limitation the Junior Debt Instruments.

1.7 The Junior Lender hereby agrees that all material agreements, instruments and documents evidencing the Junior Debt and the Junior Lender's Collateral will be endorsed with proper notice of this Agreement as follows:

> "This instrument is subordinated to all indebtedness now or hereafter owing by the maker to CITY NATIONAL BANK OF FLORIDA, as provided in that certain Subordination of Debt Agreement dated as of October 4, 2023."

The Junior Lender will promptly deliver to the Senior Lender a certified copy of the Junior Debt Instruments, as well as certified copies of all other material agreements, instruments and documents hereafter evidencing any Junior Debt, in each case showing such endorsement.

1.8 The Junior Lender agrees to receive and hold in trust for and promptly turn over to the Senior Lender, in the form received (except for the endorsement or assignment by the Junior Lender where necessary), any sums at any time paid to, or received by, the Junior Lender in violation of the terms of this Agreement and to reimburse the Senior Lender for all costs, including reasonable attorney's fees, incurred by the Senior Lender in the course of collecting said sums should the Junior Lender fail to voluntarily turn the same over to the Senior Lender as herein required.

1.9 The Junior Lender hereby irrevocably makes, constitutes and appoints the Senior Lender (and any officer of the Senior Lender or any person designated by the Senior Lender for that purpose) as the Junior Lender's true and lawful proxy and attorney-in-fact (and agent-in-fact) in the Junior Lender's name, place and stead, with full power of substitution, to (i) take any and all actions as are permitted in this Agreement, (ii) execute such financing statements and other documents and to do such other acts as the Senior Lender may require to perfect and preserve the Junior Debt and the Junior Lender's Collateral, and (iii) carry out any remedy provided for in this Agreement. The Junior Lender hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Junior Lender hereby ratifies and confirms all that said attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

1.10 The Junior Lender agrees that it shall not modify or amend any agreement, instrument or document evidencing or securing the Junior Debt, including without limitation the Junior Debt Instruments, without the prior written consent of the Senior Lender.

2. Representations.

2.1 The Junior Lender represents and warrants to the Senior Lender that the Junior Lender has not assigned or otherwise transferred the Junior Debt or the Junior Lender's Collateral, or any interest therein to any person or entity, that the Junior Lender will make no such assignment or other transfer thereof.

2.2 The Junior Lender represents and warrants to the Senior Lender that, to the knowledge of Junior Lender, no default or of any event which, with the lapse of time, the giving of notice or both, would constitute a default under the Junior Debt or any instrument evidencing or securing the Junior Debt, has occurred and is continuing (a "**Junior Debt Default**"), and the Junior Lender further agrees to promptly provide the Senior Lender with written notice of any Junior Debt Default.

2.3 The Junior Lender represents and warrants to the Senior Lender that the outstanding amount of Junior Debt evidenced by the Junior Debt Instruments as of the date hereof is $22,791,748.32.

3. Further Agreements.

3.1 The Junior Lender expressly waives all notice of the acceptance by the Senior Lender of the subordination and other provisions of this Agreement and all notices not specifically required pursuant to the terms of this Agreement, and the Junior Lender expressly waives reliance by the Senior Lender upon the subordination and other provisions of this Agreement as herein provided.

3.2 The Junior Lender consents and agrees that all Senior Debt shall be deemed to have been made, incurred and/or continued at the request of the Junior Lender and in reliance upon this Agreement.

3.3 The Junior Lender agrees that the Senior Lender has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the documents, instruments and agreements evidencing the Senior Debt, that the Senior Lender shall be entitled to manage and supervise its financial arrangements with the Junior Lender in accordance with its usual practices, without impairing or affecting this Agreement.

3.4 The Junior Lender agrees that the Senior Lender shall have no liability to the Junior Lender, and in particular, the Junior Lender hereby waives any claim which it may now or hereafter have against the Senior Lender arising out of (i) any and all actions which the Senior Lender takes or omits to take (including without limitation actions with respect to the creation, perfection or continuation of liens or security interests in any existing or future the Senior Lender's Collateral, actions with respect to the occurrence of an event of default under any documents, instruments or agreements evidencing the Senior Debt, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Senior Lender's Collateral and actions with respect to the collection of any claim for all or any part of the Senior Debt from any account debtor, guarantor or other person or entity) with respect to the documents, instruments and agreements evidencing the Senior Debt or to the collection of the Senior Debt or the valuation, use, protection or release of the Senior Lender's Collateral, (ii) the Senior Lender's election (whether on behalf of the Senior Lender or the Junior Lender) in any proceeding instituted under the Bankruptcy Code, and/or (iii) any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by the Debtor, as debtor-in-possession.

4. Further Assurances. The Junior Lender agrees that the Senior Lender, at any time and from time to time hereafter, may enter into such agreements with the Debtor as the Senior Lender may deem proper extending the time of payment of or renewing or otherwise altering the terms of all or any of the Senior Debt or affecting any of the Senior Lender's Collateral, and may sell or surrender or otherwise deal with any of the Senior Lender's Collateral, and may release any balance of funds of the Debtor with the Senior Lender, without notice to the Junior Lender and without in any way impairing or affecting this Agreement.

5. Continuing Agreement. This Agreement shall be irrevocable and shall constitute a continuing agreement of subordination and shall be binding on the Junior Lender and its heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Senior Lender, its successors and assigns until the Senior Lender has, in writing, notified the Junior Lender that all of the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged. The Senior Lender may continue, without notice to the Junior Lender, to lend monies, extend credit and make other accommodations to or for the account of the Debtor on the faith hereof. The Junior Lender hereby agrees that all payments received by the Senior Lender may be applied, reversed, and reapplied, in whole or in part, to any of the Senior Debt, without impairing or affecting this Agreement.

6. No Reliance. The Junior Lender hereby assumes responsibility for keeping itself informed of the financial condition of the Debtor, any and all endorsers and any and all guarantors of the Senior Debt and the Junior Debt, and of all other circumstances bearing upon the risk of nonpayment of the Senior Debt and the Junior Debt that diligent inquiry would reveal, and the Junior Lender hereby agrees that the Senior Lender shall have no duty to advise the Junior Lender of information known to the Senior Lender regarding such condition or any such circumstances or to undertake any investigation. If the Senior Lender, in its sole discretion, undertakes, at any time or from time to time, to provide any information of the type described herein to the Junior Lender, the Senior Lender shall be under no obligation to subsequently update any such information or to provide any such information to the Junior Lender on any subsequent occasion.

7. Senior Lender's Duty Limited. The rights granted to the Senior Lender in this Agreement are solely for its protection and nothing herein contained imposes on the Senior Lender any duties with respect to any property of either the Debtor or of the Junior Lender received by the Senior Lender beyond the duty to exercise reasonable care in the custody and preservation of such property while in the Senior Lender's possession. The Senior Lender shall have no duty to preserve rights against prior parties on any instrument or chattel paper received from the Debtor or the Junior Lender as collateral security for the Senior Debt or any portion thereof.

8. No Marshalling. The Junior Lender, on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights, if any, to require a marshalling of the Debtor's assets by the Senior Lender or to require that the Senior Lender first resort to some or any portion of any collateral for the Senior Debt before foreclosing upon, selling or otherwise realizing on any other portion thereof.

9. Reinstatement. To the extent that the Debtor makes a payment to the Senior Lender or the Senior Lender receives any payment or proceeds of the collateral securing the Senior Debt for the Debtor's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then, to the extent of such payment or proceeds received and not retained by the Senior Lender, the Junior Lender's obligations intended to be satisfied thereby and this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to the Senior Lender. The Junior Lender agrees to hold in trust for the Senior Lender and promptly remit to the Senior Lender any payments received by the Junior Lender after such invalidated, rescinded or returned payment was originally made.

10. Waiver In Writing. No waiver shall be deemed to be made by the Senior Lender of any of its rights hereunder unless the same shall be in writing signed on behalf of the Senior Lender and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of the Senior Lender or the obligations of the Junior Lender to the Senior Lender in any other respect at any other time.

11. Choice Of Law. This Agreement shall be governed and controlled by the internal laws of the State of Florida.

12. FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF MIAMI-DADE COUNTY, THE STATE OF FLORIDA OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE SENIOR LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE JUNIOR LENDER AND THE DEBTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF MIAMI-DADE COUNTY, STATE OF FLORIDA AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE JUNIOR LENDER AND THE DEBTOR FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF FLORIDA. THE JUNIOR LENDER AND THE DEBTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

13. WAIVER OF JURY TRIAL. THE JUNIOR LENDER AND THE SENIOR LENDER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS SUBORDINATION AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE BANK GRANTING ANY FINANCIAL ACCOMMODATION TO THE DEBTOR AND ENTERING INTO THIS AGREEMENT.

14. Additional Debtor Agreements.

14.1 The Debtor hereby agrees that until all Senior Debt is paid in full and all obligations arising in connection therewith have been satisfied, the Debtor will make no payments or distributions contrary to the provisions hereof and will do every other thing necessary to carry out such provisions. The Debtor will give the Senior Lender notice of any suit or action brought in violation of said agreement.

14.2 The Debtor represents and warrants to the Senior Lender that no Junior Debt Default exists and agrees to promptly provide the Senior Lender with written notice of any Junior Debt Default.

14.3 In the event of any violation of any of the provisions of this Agreement, then, at the election of the Senior Lender, any and all obligations of the Debtor to the Senior Lender shall immediately become due and payable and any and all agreements of the Senior Lender to make loans, advances or other financial accommodations to the Debtor shall immediately terminate, notwithstanding any provision hereof to the contrary.

[EXECUTION COMMENCES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Junior Lender, the Senior Lender and the Debtor have executed this Agreement as of the date set forth above.

JUNIOR LENDER:

MADRYN HEALTH PARTNERS, LP

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP

By: MADRYN HEALTH ADVISORS, LP,
its General Partner

By: MADRYN HEALTH ADVISORS GP, LLC,
its General Partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

[EXECUTION CONTINUES ON THE FOLLOWING PAGE]

SENIOR LENDER:

CITY NATIONAL BANK OF FLORIDA

By: /s/ Luis Moran

Its: Vice President

[EXECUTION CONTINUES ON THE FOLLOWING PAGE]

DEBTOR:

VENUS CONCEPT LTD., a company formed under the Companies Law of Israel

By: /s/ Rajiv De Silva

Name: Rajiv De Silva
Title: Chief Executive Officer

Exhibit 10.6

Execution Version

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement (this "**Modification**"), dated as October 4, 2023, is made by and among (a) VENUS CONCEPT USA INC., a Delaware corporation (the "**Borrower**"), (b) VENUS CONCEPT INC., a Delaware corporation (the "**Original Guarantor**"), (c) VENUS CONCEPT CANADA CORP., a corporation incorporated under the laws of the Province of Ontario (the "**New Guarantor**" and, together with the Original Guarantor, the "**Guarantors**"), (d) VENUS CONCEPT LTD., a company formed under the Companies Law of Israel (the "**Israeli Grantor**" and, together with the Guarantors, the "**Joinder Parties**"; the Borrower, and the Joinder Parties shall be referred to herein, collectively, as the "**Loan Parties**"), (e) CITY NATIONAL BANK OF FLORIDA, as the lender (the "**Lender**") and (f) each of (i) MADRYN HEALTH PARTNERS, LP, a Delaware limited partnership ("**Madryn US**") and (ii) MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP, a Cayman Islands limited partnership ("**Madryn Cayman**" and, together with Madryn US, the "**Junior Creditors**"; the Subordinated Creditors, together with the Lender and the Loan Parties are hereinafter referred to as the "**Parties**"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Main Street Loan Agreement (as defined below).

RECITALS:

A. The Borrower and Lender entered into that certain Loan and Security Agreement (Main Street Priority Loan Facility), dated as of December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Main Street Loan Agreement**"; the Original Main Street Loan Agreement, as amended by this Modification, the "**Main Street Loan Agreement**"), pursuant to the terms of which, *inter alia*, (i) the Lender made a loan to the Borrower under the Main Street Priority Loan Facility in the original principal amount of Fifty Million and 00/100 Dollars ($50,000,000.00) (the "**Main Street Loan**") and (ii) as security for the Main Street Loan, the Borrower granted to the Lender a security interest over the Collateral described in Section 4(a) of the Main Street Loan Agreement.

B. The Main Street Loan is further evidenced by that certain Promissory Note (Main Street Priority Loan Facility), dated December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Main Street Note**"; the Original Main Street Note, as amended by this Modification, the "**Main Street Note**"), executed and delivered by the Borrower to and in favor of the Lender in the original principal amount of $50,000,000.00.

C. In connection with the Main Street Loan, on December 8, 2020, the Borrower executed and delivered to the Lender that certain Main Street Priority Loan Facility Borrower Certifications and Covenants, Instructions and Guidance issued on June 11, 2020 (the "**Certifications**").

D. In connection with the Main Street Loan, the Original Guarantor issued a Guaranty of Payment and Performance, dated as of December 8, 2020, in favor of the Lender (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Main Street Guaranty**"; the Original Main Street Guaranty, as amended by this Modification, the "**Main Street Guaranty**").

E. In connection with the Main Street Loan, (i) the Borrower, each Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Borrower Main Street Subordination Agreement**"; the Original Borrower Main Street Subordination Agreement, as amended by this Modification, the "**Borrower Main Street Subordination Agreement**") pursuant to which each Junior Creditor subordinated the Junior Debt (as defined in the Borrower Main Street Subordination Agreement) to the Obligations, (ii) the Original Guarantor, each Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Guarantor Main Street Subordination Agreement**"; the Original Guarantor Main Street Subordination Agreement, as amended by this Modification, the "**Guarantor Main Street Subordination Agreement**") pursuant to which each Junior Creditor subordinated the Junior Debt (as defined in the Guarantor Main Street Subordination Agreement) to the Obligations and (iii) the New Guarantor, each Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Canada Main Street Subordination Agreement**"; the Original Canada Main Street Subordination Agreement, as amended by this Modification, the "**Canada Main Street Subordination Agreement**" and, together with the Borrower Main Street Subordination Agreement, the Guarantor Main Street Subordination Agreement and the Canada Main Street Subordination Agreement, the "**Existing Main Street Subordination Agreements**") pursuant to which each Junior Creditor subordinated the Junior Debt (as defined in the Canada Main Street Subordination Agreement) to the Obligations. The Original Main Street Loan Agreement, the Original Main Street Note, the Original Main Street Guaranty, the Original Borrower Main Street Subordination Agreement, the Original Guarantor Main Street Subordination Agreement and the Original Canada Main Street Subordination Agreement are hereinafter referred to as the "**Original Main Street Loan Documents**". The Main Street Loan Agreement, the Main Street Note, the Main Street Guaranty, the Existing Main Street Subordination Agreements and the New Main Street Subordination Agreement (as defined below) are hereinafter referred to as the "**Main Street Loan Documents**".

F. The Borrower has advised the Lender that it is unable to make the principal payments required to be made on each Principal Payment Date (as defined in the Original Main Street Note) pursuant to Section C. of the Original Main Street Note without amending the same as set forth in this Modification.

G. As consideration for the Lender's entry into this Modification, (i) each of the Guarantors have agreed to accede to the Main Street Loan Agreement as grantors in order to grant to the Lender a security interest over substantially all of their respective assets, (ii) the New Guarantor has agreed to accede to the Main Street Guaranty as guarantor of the Obligations under the Main Street Loan Documents, (iii) the Israeli Grantor has agreed to accede to the Main Street Loan Agreement in order to grant to the Lender a security interest over certain of its trademarks and patents, in each case, pursuant to the terms of this Modification, (iv) each Junior Creditor has agreed to subordinate, or reaffirm the subordination of (as applicable), the obligations owing to the Junior Creditors by the applicable Loan Party under the Junior Debt Instruments (as defined in the applicable Main Street Subordination Agreement) to the Obligations as set forth herein, and (v) the Parties have agreed to amend the Original Main Street Loan Documents as set forth in this Modification.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the Parties, intending to be legally bound, agree as follows:

SECTION 1. Amendments to Main Street Loan Documents.

(a) Effective as of the Effective Date (as defined below), the Original Main Street Loan Agreement is hereby amended as follows:

(i) Section 1(p) is hereby deleted in its entirety and replaced with the following:

" "Guarantor" shall mean each of (i) Venus Concept Inc., a Delaware corporation ("Original Guarantor"), (ii) Venus Concept Canada Corp., a corporation incorporated under the laws of the Province of Ontario ("New Guarantor" and, together with the Borrower and the Original Guarantor, the "All-Assets Grantors") and (iv) any other individual or entity now or hereafter guaranteeing the Loan."

(ii) Section 1(s) is hereby deleted in its entirety and replaced with the following:

" "Loan Documents" shall mean any and all documents evidencing, securing or executed in connection with the Loan, including, without limitation, (i) the Note, (ii) this Agreement, (iii) that certain Loan Modification Agreement, dated as of October 4, 2023 (the "Modification"), among the Lender, the Borrower, the Guarantors, Venus Concept Ltd., a company formed under the Companies Law of Israel (the "Israeli Grantor", together with the Original Guarantor and the Borrower, the "IP Grantors"); the Israeli Grantor, together with the All-Assets Grantors, the "Grantors"), Madryn Health Partners, LP, a Delaware limited partnership, and Madryn Health Partners (Cayman Master), LP, a Cayman Islands limited partnership and (iv) the Main Street Subordination Agreements (as defined in the Modification)."

(iii) Section 1(x) is hereby deleted in its entirety and replaced with the following:

" "Obligor" shall mean the Borrower, each Guarantor, the Israeli Grantor, any subsidiary of the Borrower, any other guarantor, accommodation endorser, third party grantor, or any other party liability with respect to the Obligations."

(iv) Section 1(cc) is hereby deleted in its entirety and replaced with the following:

" "UCC" shall mean, as applicable, (i) the Uniform Commercial Code in effect from time to time in the State of Delaware and (ii) the Uniform Commercial Code in effect from time to time in the District of Columbia. Any term used in this Agreement, any other Loan Document or any Financing Statement filed in connection herewith which is defined in the UCC and not otherwise defined in this Agreement or in any other Loan Document has the meaning given to such term in the UCC."

(v) Section 4(a) is hereby deleted in its entirety and replaced with the following:

"(a) Security for Obligations. As security for the payment and performance of the Obligations, each All-Assets Grantor, for itself, does hereby pledge, assign, transfer, deliver and grant to the Lender, for its own benefit and as agent for its affiliates, a continuing and unconditional security interest in and to any and all property of such All-Assets Grantor, of any kind or description, tangible or intangible, wheresoever located and whether now existing or hereafter arising or acquired, including the following (all of which property, along with the products and proceeds therefrom, are individually and collectively referred to as the "All-Assets Collateral"):

(i) all property of, or for the account of, such All-Assets Grantor, whether now existing or hereafter arising or acquired, and wherever now or hereafter located, together with all additions and accessions thereto, substitutions, betterments and replacements therefor, products and Proceeds therefrom, and all of such All-Assets Grantor's books and records and recorded date relating thereto (regardless of the medium of recording or storage), together with all of such All-Assets Grantor's right, title and interest in and to all computer software required to utilize, create, maintain and process any such records or data on electronic media, identified and set forth as follows:

(1) All Accounts and all Goods whose sale, lease or other disposition by such All-Assets Grantor has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, such All-Assets Grantor, or rejected or refused by an Account Debtor;

(2) All Inventory, including raw materials, work-in-process and finished goods;

(3) All Goods (other than Inventory), including embedded software, Equipment, vehicles, furniture and Fixtures;

(4) All Software and computer programs;

(5) All Securities, Investment Property, Financial Assets and Deposit Accounts;

(6) All Chattel Paper, Electronic Chattel Paper, Instruments, Documents, Letter of Credit Rights, all proceeds of letters of credit, Health-Care-Insurance Receivables, Supporting Obligations, notes secured by real estate, Commercial Tort Claims and General Intangibles, including Payment Intangibles; and

(7) All Proceeds (whether Cash Proceeds or Noncash Proceeds) of the foregoing property, including all insurance policies and proceeds of insurance payable by reason of loss or damage to the foregoing property, including unearned premiums, and of eminent domain or condemnation awards.

(ii) In addition to, and not in substitution of, the security interest granted by the Original Guarantor to the Lender pursuant to Section 4(a)(i), as security for the payment and performance of the Obligations, the Original Guarantor, for itself, does hereby pledge, assign, transfer, deliver and grant to the Lender, for its own benefit and as agent for its affiliates, a continuing and unconditional security interest in and to any and all of the right, title, and interest of the Grantor in, to, and under the following (the "Original Guarantor IP Collateral"):

(1) the patents and patent applications set forth in Exhibit A to the Modification and all reissues, divisions, continuations, continuations-in-part, renewals, extensions, and reexaminations thereof and amendments thereto;

(2) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(3) any and all claims and causes of action with respect to any of the foregoing, whether occurring before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right, but no obligation, to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

(iii) In addition to, and not in substitution of, the security interest granted by the Borrower to the Lender pursuant to Section 4(a)(i), as security for the payment and performance of the Obligations, the Borrower, for itself, does hereby pledge, assign, transfer, deliver and grant to the Lender, for its own benefit and as agent for its affiliates, a continuing and unconditional security interest in and to any and all of the right, title, and interest of the Grantor in, to, and under the following (the "Borrower IP Collateral"):

(1) all of its trademark registrations and applications registered with the United States Patents and Trademark Offices, including those set forth in Exhibit B to the Modification, together with the goodwill connected with the use thereof and symbolized thereby, and all extensions and renewals thereof;

(2) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(3) any and all claims and causes of action with respect to any of the foregoing, whether occurring before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right, but no obligation, to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

(iv) As security for the payment and performance of the Obligations, the Israeli Grantor, for itself, does hereby pledge, assign, transfer, deliver and grant to the Lender, for its own benefit and as agent for its affiliates, a continuing and unconditional security interest in and to any and all of the right, title, and interest of the Grantor in, to, and under the following (the "Israeli IP Collateral" and, together with the Original Guarantor IP Collateral and the Borrower IP Collateral, the "IP Collateral"; the IP Collateral, together with the All-Assets Collateral, the "Collateral"):

(1) the patents and patent applications set forth in Exhibit C to the Modification and all reissues, divisions, continuations, continuations-in-part, renewals, extensions, and reexaminations thereof and amendments thereto;

(2) all rights of any kind whatsoever of the Grantor accruing under any of the foregoing provided by applicable law of any jurisdiction, by international treaties and conventions, and otherwise throughout the world;

(3) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing; and

(4) any and all claims and causes of action with respect to any of the foregoing, whether occurring before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right, but no obligation, to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

(v) Each of IP Grantor, for itself, hereby represents and warrants to the Lender that: (i) it owns the entire right, title and interest in its respective IP Collateral and that no claims have been asserted challenging such IP Grantor's inventorship of the subjects of the patents and trademarks, or the ownership, or right to use its respective IP Collateral; (ii) its respective IP Collateral is valid and enforceable and there are no pending or threatened claims or legal actions asserting that such IP Collateral is invalid or unenforceable; (iii) such IP Grantor has the right to sell, license, grant a security interest in, or otherwise transfer its respective IP Collateral, and has obtained the assignment of all interests and all rights to its respective IP Collateral from any and all third parties (including its employees); (iv) its respective IP Collateral is not and has not been the subject matter of any dispute or potential dispute; (v) it has not granted any right, license or interest in or to its respective IP Collateral that is in conflict with the rights of Lender granted under Section 4(a)(ii), Section 4(a)(iii) or Section 4(a)(iv), as applicable, or the Loan Documents, nor has it encumbered any of its IP Collateral other than liens in favor of the holders of the Junior Debt which have been subordinated to the security interest created hereby in favor of the Lender, for its own benefit and as agent for its affiliates, pursuant to the applicable Main Street Subordination Agreement; (vi) no third party has made any claim in writing that the use of its respective IP Collateral infringes upon the rights of such third party; and it has not made any claim in writing that any third party has infringed upon or misappropriated any of its IP Collateral right; and (vii) it possesses all necessary rights and privileges to cause its respective IP Collateral to be duly and appropriately registered in, filed in, or issued by the United States Patent and Trademark Office, or the corresponding offices of other jurisdictions and countries, and there is no fact or circumstance which would prevent such registration, filing or issuance.

Notwithstanding anything to the contrary set forth herein, the term "Collateral" shall not include any Excluded Property."

(vi) Section 4(b) is hereby deleted in its entirety and replaced with the following:

"(b) Possession and Transfer of Collateral. Subject to Section 4(j), until an Event of Default has occurred hereunder, each Grantor shall be entitled to possession or use of the Collateral (other than Collateral required to be delivered to the Lender pursuant to this Section 4). The cancellation or surrender of any promissory note evidencing the Obligations, upon payment or otherwise, shall not affect the right of the Lender to retain the Collateral for any other of the Obligations. No Grantor shall sell, assign (by operation of law or otherwise), license, lease or otherwise dispose of, or grant any option with respect to, any of the Collateral owned by such Grantor, except that each Grantor may sell inventory in the ordinary course of such Grantor's business."

(vii) Section 4(c) is hereby deleted in its entirety and replaced with the following:

"(c) Perfection Filings and Registrations. Each Grantor shall, at the Lender's request, at any time and from time to time, execute and deliver to the Lender such financing statements, filings, registrations, amendments and other documents and do such acts as the Lender deems necessary in order to establish and maintain valid, attached and perfected security interest in the Collateral in favor of the Lender, for its own benefit and as agent for its affiliates, including (i) with respect to the Borrower, filing a UCC-1 financing statement with the Secretary of State of the State of Delaware, (ii) with respect to the New Guarantor, (x) filing a UCC-1 financing statement with the District of Columbia's Recorder of Deeds and (y) filing a financing statement under the Personal Property Security Act (Ontario) from time to time in effect in Ontario (the "PPSA") and (iii) with respect to the Israeli Grantor, filing with the United States Patent and Trademark Office (and any successor office and any similar office in any state of the United States or in any other country), this Agreement, the Modification and other documents for the purpose of perfecting, continuing, enforcing or protecting the security interest granted by the Israeli Grantor hereunder. Each Grantor hereby irrevocably authorizes the Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements, registrations or filings, and amendments thereto, without the signature of such Grantor where permitted by law that (A) indicate the Collateral (1) is comprised of all assets of such All-Assets Grantor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 of the UCC, the PPSA or any other applicable statute in effect in any other jurisdiction applicable to such Grantor, or (ii) as being of an equal or lesser scope or within greater detail as the grant of security interest set forth herein, and (B) contain any other information required by Section 5 of Article 9 of the UCC, the PPSA, or any other applicable statute in effect in any other jurisdiction application to such Grantor. Notwithstanding anything to the contrary herein no Grantor shall be required to seek or deliver deposit account control agreements or their equivalent with respect to deposit accounts maintained outside of the United States; provided that no funds held in any deposit account of any Grantor which is both not maintained with Lender and not subject to a deposit account control agreement (or any equivalent instrument required to perfect the Lender's security interest over such deposit account in any jurisdiction in which such deposit account is maintained) shall be counted when calculating the Borrower's compliance with the Minimum Deposit Requirement. Each Grantor further ratifies and affirms its authorization for any financing statements, filings, registrations and/or amendments thereto, executed and filed by the Lender in any jurisdiction prior to the date of this Agreement and the Modification. In addition, each Grantor shall make appropriate entries on its books and records disclosing the security interests of the Lender, for its own benefit and as agent for its affiliates, in the Collateral owned by such Grantor."

(viii) Section 4(d) is hereby amended to (a) replace the reference to "the Borrower" in the second sentence with "each Grantor", (b) replace the reference to "the Borrower" in the third sentence with "a Grantor", (c)(i) replace the first reference to "the Borrower" in the fourth sentence with "Each Grantor" and (ii) replace the second reference to "the Borrower" in the fourth sentence with "such Grantor", and (d)(i) replace the first reference to "the Borrower" in the fifth sentence with "each Grantor" and (ii) replace the second, third and fourth references to "the Borrower" in the fifth sentence with "such Grantor".

(ix) Section 4(e) is hereby amended to (a) replace the reference to "The Borrower" in the first sentence with "Each Grantor", (b) deleting clause (b) in its entirety and replacing it with the following: "complying with any provision of any statute, regulation or treaty of the United States of America and Canada, as applicable, as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the security interest of the Lender, for its own benefit and as agent for its affiliates, in such Collateral", (c) deleting clause (e) in its entirety and replacing it with the following: "taking all actions required by the UCC in effect from time to time or by any other law applicable in any relevant UCC jurisdiction or by any other law (including the PPSA) applicable in Canada" and (d) replacing the reference to "The Borrower" in the last sentence with "Each Grantor".

(x) Section 4(f) is hereby deleted in its entirety and replaced with the following:

"(f) Warehousemen, Bailee and Landlord Waivers. If any material portion of the Collateral at any time is in the possession of a warehouseman or bailee, the applicable All-Assets Grantor shall promptly notify the Lender thereof, and shall use commercially reasonable efforts to obtain a collateral access agreement upon request of the Lender, including with respect to the location of New Guarantor at 235 Yorkland Blvd., Suite 106, Toronto, Ontario M2J4Y8. Notwithstanding anything herein to the contrary, the All-Assets Grantors shall, no later than the date that is ninety (90) days following the date of the Modification, cause the landlords of such Grantor's Designated Locations to execute and deliver to the Lender, for its own benefit and as agent for its affiliates, landlord waivers and subordination agreements with respect to the Designated Addresses. For purposes hereof, "Designated Addresses" shall mean (i) with respect to the Original Guarantor, 1800 Bering Dr., San Jose CA 95112, and (ii) with respect to the Borrower, 4001 SW 47th Ave., Suite 206, Davie, FL 33314."

(xi) Section 4(g) is hereby amended to (a)replace the reference to "the Borrower" in the first sentence with "any All-Assets Grantor" and (b) replace the second and third references to "the Borrower" in the first sentence with "such All-Assets Grantor".

(xii) Section 4(h) is hereby amended to replace the first reference to "the Borrower" with "any All-Assets Grantor" and replace all other references to "the Borrower" with "such All-Assets Grantor".

(xiii) Section 4(i) is hereby amended to (a)(i) replace the reference to "the Borrower" in the first sentence with "any All-Assets Grantor" and (ii) replace the second reference to "the Borrower" in the first sentence with "such All Assets-Grantor", (b)(i) replace the first reference to "the Borrower" in the second sentence with "each All-Assets Grantor" and (ii) replace the second reference to "the Borrower" in the second sentence with "such All-Assets Grantor".

(xiv) Section 4 is hereby amended by adding a new sub-section (j) immediately after Section 4(i), which shall read as follows:

"(j) Subscription Sales Contracts.

(i) Notwithstanding anything herein to the contrary, including Section 4(b), as additional security for the Obligations, the Borrower assigns to the Lender, for its own benefit and as agent for its affiliates, all of the Borrower's rights under (x) all Eligible Subscription Sales Contracts in effect on the date of the Modification upon the execution of the Modification without any further action by any person (the "Existing Eligible Subscription Sales Contracts") and (y) Eligible Subscription Sales Contracts entered into on or after the date of the Modification designated by Borrower in writing as subject to assignment pursuant to this Section 4(j) (the "Future Eligible Subscription Sales Contracts" and, together with the Existing Eligible Subscription Sales Contracts, the "Assigned Sales Contracts") immediately (and without further action by any person) upon the designation by Borrower of such Future Eligible Subscription Sales Contract as Assigned Sales Contracts pursuant to the terms of this Section 4(j); provided, that if the aggregate original face amount (the "Contract Amount") of all Assigned Sales Contracts assigned to the Lender as of the end of any calendar quarter is less than $12,000,000 (the "Sales Contracts Threshold") (whether as a result of any Subscription Sales Contract ceasing to meet the Eligibility Criteria or otherwise), the Borrower shall promptly thereafter designate additional Eligible Subscription Sales Contracts as assigned to the Lender pursuant to this Section 4(j) until the aggregate Contract Amount of all Assigned Sales Contracts assigned to the Lender hereunder equals or exceeds the Sales Contracts Threshold. Borrower shall ensure that it complies with its obligations hereunder by assigning Eligible Subscription Sales Contracts in the following order: (1) first, Eligible Subscription Sales Contracts entered into on or after January 1, 2023, (2) second, Eligible Subscription Sales Contracts entered into in December 2022, (3) third, Eligible Subscription Sales Contracts entered into in November 2022 and (4) fourth, Eligible Subscription Sales Contracts entered into prior to November 1, 2022 and (5) fifth, Modified Eligible Subscription Sales Contracts. The Lender shall have the right, with prior consultation and written notice to the Borrower, to either adjust the Sales Contracts Threshold or the Minimum Balance solely to the extent necessary (i) to address increases in the interest rate under the Note or (ii) if the Lender has reasonably determined that collections from the Assigned Sales Contracts do not generate sufficient cash flow to satisfy any monthly interest payment requirements under the Note. The Borrower hereby represents and warrants that (A) there are no restrictions in the Existing Eligible Subscription Sales Contract to the Borrower's assignment of such Existing Eligible Subscription Sales Contract pursuant to the terms hereof and (ii) there are no restrictions in the Existing Eligible Subscription Sales Contract to the Lender's exercise of remedies set forth in Section 4(j)(v). The Borrower shall ensure that no Future Eligible Subscription Sales Contract includes any restrictions to assignment by the Borrower to the Lender, for its own benefit and as agent of its affiliates, of its rights under such Future Eligible Subscription Sales Contract nor any restrictions to the Lender's exercise of remedies set forth in Section 4(j)(vi).

(ii) The Borrower shall deliver to the Lender (x) prior to or as of the date of the Modification, a list of all Existing Eligible Subscription Sales Contracts which will be Assigned Sales Contracts on the Effective Date (the "Assigned Sales Contract Schedule"), which list shall (A) include the Contract Amount of each such Existing Eligible Subscription Sales Contract and (B) (1) specify which Existing Eligible Subscription Sales Contracts are Modified Eligible Subscription Sales Contracts and (2) include the aggregate amount of payments due under such Modified Eligible Subscription Sales Contracts which are more than ninety (90) days past due (the "Required Schedule Information") and (y) (A) within forty-five (45) days following the end of each quarter or (B) on any date in which the Borrower makes additional assignments of Eligible Subscription Sales Contracts as required pursuant to Section 4(j)(i) hereof or this Section 4(j)(ii), in each case, an updated Assigned Sales Contract Schedule which shall list any Future Eligible Subscription Sales Contract which are Assigned Sales Contracts pursuant to this Section 4(j) and shall include the Required Schedule Information with respect to each such Future Eligible Subscription Sales Contract. The Lender shall have the right, at any time and in its sole discretion, to request, by delivery of written notice to the Borrower (any such notice, a "Replacement Notice"), that any Modified Eligible Subscription Sale Contract listed in an Assigned Sales Contract Schedule be replaced with Eligible Subscription Sales Contracts that are not Modified Eligible Subscription Sales Contracts to the extent available; provided that the Lender shall have a period of thirty (30) days to review the Assigned Sales Contract Schedule delivered by the Borrower pursuant to Section 3(a)(iv) of the Modification and deliver to the Borrower, at Lender's sole discretion, a Replacement Notice with respect to any Eligible Subscription Sales Contract listed in such Assigned Sales Contract Schedule. The Borrower shall, no later than five (5) Business Days after receipt of a Replacement Notice, solely to the extent Eligible Subscription Sales Contracts that are not Modified Eligible Subscription Sales Contracts exist which have not already been assigned pursuant to the terms hereof, (1) replace the Modified Eligible Subscription Sales Contracts listed in such Replacement Notice with Eligible Subscription Sales Contracts that are not Modified Eligible Subscription Sales Contracts and (2) deliver to the Lender an updated Assigned Sales Contract Schedule. In the event Lender shall have delivered a Replacement Notice to Borrower but there are no Eligible Subsection Sales Contracts that are not Modified Eligible Subscription Sales Contracts which have not already been assigned hereunder available at such time to so replace Modified Eligible Subscription Sales Contracts, the Lender and the Borrower shall amend this Agreement to increase the Minimum Deposit Relationship and/or the Minimum Balance; provided that, if the Lender and the Borrower do not agree on the terms of such amendment during the ten (10) day period following the date on which the Borrower notifies the Lender that there are no Modified Eligible Subscription Sales Contracts to satisfy the applicable Replacement Notice, an Event of Default under Section 8(b) shall occur and the Lender shall be entitled to exercise any remedies available to it under this Agreement (including Section 9), any other Loan Document, and under applicable law. The Borrower shall not be required to deliver updated Assigned Sales Contract Schedules at any time that the Sales Contracts Threshold is satisfied.

(iii) The Borrower shall, no later than forty-five (45) days after the end of each quarter, notify the Lender in writing of the occurrence of any event that results in either (x) an Eligible Subscription Sales Contract ceasing to meet the Eligibility Criteria and (y) the aggregate Contract Amount of all Assigned Sales Contract being less than the Sales Contract Threshold.

(iv) Prior to the occurrence and continuation of an Event of Default and notice from Lender to Borrower that it has elected to exercise remedies in respect of the Assigned Sales Contracts, (i) the Borrower shall continue to collect payments under each Assigned Sales Contract in accordance with the terms of each Assigned Sales Contract (as may be modified in accordance with Section 4(j)(v) hereof) and payments thereunder shall be deposited in the deposit account of the Borrower maintained with the Lender set forth in Schedule A hereto (the "Specified Account") and (ii) all other rights under the Assigned Sales Contracts may be exercised solely by Borrower. Prior to the occurrence and continuation of an Event of Default, the Borrower shall have full access to the Specified Account and all funds therein. In addition to the foregoing, commencing on the date that is 7 Business Days following the Effective Date (as defined in the Modification) the Borrower shall at all times (A) maintain a separate deposit account which shall serve as an interest reserve account (the "Interest Reserve Account") with the Lender and (ii) ensure that the Interest Reserve Account has a balance equal to or greater than $400,000 (or such greater amount agreed to by the Lender and the Borrower pursuant to Section 4(j)(ii)) (the "Minimum Balance"). If Borrower fails to make any interest payment under the Note when due, Lender may, without prior written notice to the Borrower or further authorization from the Borrower, withdraw funds in the Interest Reserve Account to satisfy such interest payment and no default or Event of Default shall occur hereunder so long as the Borrower replenishes the funds in the Interest Reserve Account to the Minimum Balance within five (5) Business Days of Lender's withdrawal as set forth herein. For the avoidance of doubt, amounts on deposit in the Specified Account and the Interest Reserve Account shall be counted for purposes of determining the Borrower's compliance with the Minimum Deposit Relationship requirement set forth in Section 7(a) hereof.

(v) The Borrower hereby represents and warrants to the Lender that all customers party to the Existing Eligible Subscription Sales Contracts that will become Assigned Sales Contracts on the Effective Date are required to make payments thereunder into the Specified Account pursuant to the terms thereof. The Borrower shall ensure that all Future Existing Eligible Subscription Sales Contracts provide that the customers party thereto must make payments thereunder by wire transfer of immediately available funds to the Specified Account. If any payment is made under an Assigned Sales Contract in a manner other than via wire transfer of immediately available funds to the Specified Account, the Borrower shall hold such payment in escrow for the benefit of the Lender and shall promptly deposit such amounts paid into the Specified Account. The Borrower shall not amend, supplement or modify (i) the Underwriting Criteria or (ii) an Eligible Subscription Sales Contract, in each case, in any manner which would have a material and adverse effect on the Lender's rights and remedies hereunder or on the ability of the Borrower to satisfy the Obligations in full (any such amendment, supplement or modification, a "Material Amendment") without the Lender's prior written consent. The Borrower acknowledges and agrees that any amendment, waiver or supplement to an Eligible Subscription Sales Contract which (A) except with respect to a Modified Eligible Subscription Sales Contract (as defined below) results in a customer making a payment thereunder on a date which exceeds ninety (90) days from such payment's original due date, (B) provides that the customer can make payments thereunder to an account other than the Specified Account, (C) prohibits the Borrower's assignment of Eligible Subscription Sales Contracts pursuant to the terms of this Section 4(j) or (D) reduces the amount which a customer is obligated to pay thereunder, in each case, shall be deemed to be a "Material Amendment" and shall require the Lender's prior written consent.

(vi) Solely upon the occurrence and during the continuance of an Event of Default hereunder or under any other Main Street Loan Document, Borrower hereby authorizes the Lender to collect any and all amounts owing to the Borrower under the Assigned Sales Contracts; to enforce the Assigned Sales Contracts against the counterparties thereto; to consummate the transactions contemplated by the Assigned Sales Contracts; to bring or defend any suits in connection with the Assigned Sales Contracts, in the Borrower's name or the Lender's own name; and to perform such other acts in connection with the Assigned Sales Contracts as the Lender, in its sole discretion, may deem proper, including the further assignment or transfer of the Assigned Sales Contracts. Further thereto, the Borrower hereby appoints the Lender as its true and lawful attorney-in-fact, which appointment is hereby coupled with an interest and is therefore irrevocable, with full power of substitution, to, solely upon the occurrence and during the continuance of an Event of Default hereunder or under any Main Street Loan Document, (a) ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be due or become due or payable under the Assigned Sales Contracts, (b) enforce any of the Assigned Sales Contracts, (c) execute any and all requests and notices or other demands for the payment of all or any part of the amounts due under the Assigned Sales Contracts, (d) endorse the name of the Borrower on all commercial paper or other instruments given in payment of all or any part of the Assigned Sales Contracts, and (e) in the sole discretion of the Lender, file any claim or take any other action or proceeding, either in its own name or in the name of the Borrower or otherwise, which the Lender may deem necessary or appropriate to protect and preserve the rights, titles and interests of the Lender hereunder or of the Borrower under the Assigned Sales Contracts, and without limiting the foregoing, solely during the occurrence and during the continuance of an Event of Default, the Lender shall have and is hereby given full power and authority to transfer the Assigned Sales Contracts into the name of the Lender or its nominee and/or to receive or demand all or any part of the amounts due under the Assigned Sales Contracts without prior notice or further consent by the Borrower or the customers party thereto. The Lender agrees that it shall not take any actions referenced in this Section 4(j)(vi), otherwise exercise any right under any Assigned Sale Contract or contact any customer under any Assigned Sales Contract unless an Event of Default has occurred and is then continuing and notice from Lender to Borrower has been delivered that Lender has elected to exercise remedies in respect of the Assigned Sales Contracts. The remedies available to the Lender under this Section 4(j)(v) are in addition to, and not in substation of, the remedies available to the Lender under any Main Street Loan Document (including Section 9 of the Main Street Loan Agreement), as a secured creditor under the UCC, and under applicable law (including equitable remedies).

(vii) For purposes of this Section 4(j):

A. "Eligible Subscription Sales Contract" means, collectively, any Subscription Sales Contract that satisfies the Eligibility Criteria and any Modified Eligible Subscription Sales Contract.

B. "Eligibility Criteria" shall mean, with respect to each Subscription Sales Contract, that (1) such Subscription Sales Contract was entered into no earlier than January 1, 2022, (2) the customer party to such Subscription Sales Contract is not more than ninety (90) days past-due on any payment due to the Borrower under such Subscription Sales Contract, (3) such Subscription Sales Contract is in effect and a valid and binding obligation of the Borrower and the customer party to such Subscription Sales Contract, (4) the customer party to such Subscription Sales Contract has not filed for bankruptcy or notified the Borrower of its inability to satisfy its payment obligations under such Subscription Sales Contract, (5) neither the Borrower nor the customer party to such Subscription Sales Contract has terminated or taken any material action towards terminating such Subscription Sales Contract and (6) solely with respect to Subscription Sales Contracts executed after January 1, 2023, such Subscription Sales Contract was underwritten in accordance with the Borrower's credit standards as in effect on the date of the Modification, which credit standards have been delivered to, and approved by, the Lender prior to or as of the date of the Modification or as modified in accordance with Section 4(j)(v) (such credit standards, the "Underwriting Criteria").

C. "Modified Eligible Subscription Sales Contract" shall mean any Subscription Sales Contract that satisfies the Eligibility Criteria other than (a) clause (2) thereof; provided that the aggregate Contract Amount of Eligible Subscription Sales Contracts which are Modified Eligible Subscription Sales Contracts pursuant to this clause (a) cannot exceed $3,000,000 at any time; and (b) clause (2) thereof; provided that no more than forty (40) Eligible Subscription Sales Contracts may be Modified Eligible Subscription Sales Contracts pursuant to this clause (b) at any time.

D. "Subscription Sales Contract" means all customer subscription sales contracts entered into by the Borrower and its customers."

(viii) Section 6(e) is hereby amended by deleting the first sentence thereof in its entirety and replacing it with the following:

"Borrower and/or the Guarantor shall not have a Change of Control without the prior written approval of the Lender, which approval shall not be unreasonably withheld, provided that Lender hereby approves of any Change of Control involving EW Healthcare Partners and its affiliates."

(ix) Section 6 is hereby amended by adding a new sub-section (hh) immediately after Section 6(gg), which shall read as follows:

"(hh) Key Person Event. Borrower shall ensure that none of Rajiv De Silva (Chief Executive Officer), Domenic Della Penna (Chief Financial Officer) or Hemanth Varghese (President) voluntarily terminate their employment with Borrower; provided that no default or Event of Default shall occur as a result of such voluntary termination of employment if, (i) the Borrower provides to the Lender written notice thereof no later than the earlier of (A) the effective date of such voluntary termination and (B) twenty-four (24) hours prior to the date in which Borrower is required to provide notice of such voluntary termination to its shareholders and (ii) within ninety (90) days following such voluntary termination, such Person is replaced with another individual acceptable to the Lender (evidenced by Lender providing written notice of such acceptance to the Borrower)."

(x) Section 6 is hereby amended by adding a new sub-section (ii) immediately after Section 6(hh), which shall read as follows:

"(ii) NASDAQ. Original Guarantor shall at all times maintain listed status with NASDAQ."

(xi) Section 7(a) is hereby deleted in its entirety and replaced with the following:

"Depository Relationship. At all times during the term of the Loan, the Borrower shall maintain with Lender (i) its primary depository account(s), including its primary Operating Account(s), and (ii) its primary Treasury Management Services. As used herein, "Operating Account(s)" shall mean bank accounts that facilitate the collection of sales, including accounts receivable, and the payment of expenses and payroll disbursements; and "Treasury Management Services" shall mean commercial banking platforms that facilitate the origination of wire transfers and ACH transactions, the transfer of funds between accounts, positive pay decisioning, remote capture of check deposits and/or other electronic banking services. In addition, (i) as of October 24, 2023, Borrower shall have a deposit ledger balance with Lender of not less than $3,000,000 and (ii) commencing with the month ending November 30, 2023 the Borrower shall maintain a minimum average daily deposit ledger balance with the Lender together with funds in all other Related Accounts (as defined below) in an amount equal to or greater than $3,000,000 as of the end of each month (the "Minimum Deposit Relationship"), to be tested on a monthly basis in accordance with Section 7(i)(ii). The Minimum Deposit Relationship may be satisfied by reference to the aggregate funds on deposit at any given time in all accounts of the Loan Parties maintained with Lender plus the aggregate funds on deposit at any given time in all accounts of the Loan Parties maintained with any other bank or financial institution that are subject to a deposit account control agreement (or similar agreement) in favor of Lender (collectively, the "Related Accounts"). To the extent such Related Accounts are included in the calculation of the Minimum Deposit Relationship, Lender may exercise its right of setoff against any such Related Accounts. Notwithstanding the foregoing, if the Minimum Deposit Relationship is not satisfied in accordance with the foregoing for any test date on or prior to March 31, 2024, Borrower shall have until the date that is 14 days following the applicable test date (or such longer period as Lender may agree) to obtain or provide additional funds such that the aggregate deposit ledger balance of the Loan Parties with the Lender together with funds in all other Related Accounts equals or exceeds $3,000,000 (or such greater amount agreed to by the Lender and the Borrower pursuant to Section 4(j)(ii)) (the "Liquidity Cure") and if Borrower completes such Liquidity Cure no default or Event of Default shall have occurred hereunder with respect to such failure to satisfy the Minimum deposit Relationship."

(xii) Section 7 is hereby amended by adding a new subsection (h) immediately after Section 7(g), which shall read as follows:

"(h) The Borrower shall deliver to the Lender on each Friday a weekly rolling 13-week cash flow report for the immediately succeeding 13-week period in form and detail reasonably satisfactory to the Lender in its sole discretion."

(xiii) Section 7 is hereby amended by adding a new subsection (i) immediately after Section 7(h), which shall read as follows:

"(i) The Borrower shall deliver to the Lender no later than on the 20th day of each calendar month (i) a draft monthly balance sheet and income statement of the Borrower for the immediately preceding 1-month period and (ii) a certificate certifying that the Minimum Deposit Relationship has been maintained for such month period, which certificate must include detailed calculations demonstrating compliance with the Minimum Deposit Relationship."

(xiv) Section 7 is hereby amended by adding a new subsection (j) immediately after Section 7(i), which shall read as follows:

"(j) The Borrower shall ensure that its operating loss (if any) for the trailing 12-month period ending on the dates set forth in the table below does not exceed the amount set forth next to such date. The Borrower shall, concurrently with the delivery of the financial statements required to be delivered to the Lender pursuant to Section 7(c) hereof, deliver a compliance certificate certifying compliance with the requirements set forth in this Section 7(j) and including reasonably detailed calculations of its operating loss (if any) for such period:

Testing Date	Maximum Operating Loss Amount
September 30, 2023	$34,003,668
December 31, 2023	$25,966,955
March 31, 2024	$22,048,811
June 30, 2024	$19,219,850
September 30, 2024	$15,472,820"

(xv) Section 8(b) is hereby deleted in its entirety and replaced with the following:

"(b)(i) Any Grantor fails to comply with such Grantor's obligations under Sections 4(a) through 4(i) of this Agreement or the security interest over the Collateral created pursuant to Section 4 hereof ceases to be a valid, binding, first priority, perfected security interest, (ii) any Obligor party to the Modification fails to comply with any of such Obligor's obligations under the Modification, (iii) the Borrower fails to comply with its obligations under Sections 4(j), 6(hh), 6(ii), 7(a), 7(h), 7(i) or 7(j) beyond any applicable notice and cure period (if any) or (iv) any Loan Party fails to perform any other obligation under any Loan Document to which such Loan party is a party beyond any applicable notice and cure periods; or"

(xvi) Section 8(c) is hereby amended by deleting the first parenthetical thereof in its entirety and replacing it with the following: "(other than the items set forth in subsections (b) or (d) through (q) below, in each case, for which there will be no grace periods other than as specifically stated therein)"

(xvii) Section 8(n) is hereby deleted in its entirety and replaced with the following:

"A Change of Control occurs, other than as permitted by Section 6(e) hereof; or"

(xviii) Section 9 is hereby amended by adding a new subsection (d) immediately after subsection (c), which shall read as follows:

"(d) Notwithstanding anything herein to the contrary, if an Event of Default under Section 8(b) with respect to any of Sections 4(j), 6(hh), 6(ii), 7(a), 7(h), 7(i) or 7(j) hereof occurs and is continuing, the Deferred Principal Payments shall become due and payable on the later of (i) the original due date of such Deferred Principal Payment and (ii) the date of the occurrence of such Event of Default, without any further action or notice by the Lender. For purposes hereof, "Deferred Principal Payments" shall mean, collectively, (i) the annual payment of principal, inclusive of Capitalized Interest (as defined in the Original Main Street Note), originally due by the Borrower on December 8, 2023 pursuant to Section C of the Original Main Street Note, in an amount equal to fifteen percent (15%) of the outstanding principal balance of the Original Main Street Note (inclusive of Capitalized Interest) as of December 8, 2023 and (ii) a portion of the annual payment of principal, inclusive of Capitalized Interest (as defined in the Original Main Street Note), originally due by the Borrower on December 8, 2024 pursuant to Section C of the Original Main Street Note, in an amount equal to seven and a half percent (7.5%) of the outstanding principal balance of the Original Main Street Note (inclusive of Capitalized Interest) as of December 8, 2024."

(xix) Section 10(l) is hereby deleted in its entirety and replaced with the following:

"(l) Notices. All notices from the Loan Parties to the Lender and the Lender to any Loan Party required or permitted by any provision of this Agreement or any other Loan Document (other than an expressly set forth therein) shall be in writing and sent either by (i) electronic mail to the e-mail address set forth below or (ii) registered or certified mail or nationally recognized overnight delivery service and addressed as follows:

TO LENDER: CITY NATIONAL BANK OF FLORIDA
100 S.E. 2nd Street, 13th Floor
Miami, Florida, 33131
Attention: Legal Department
E-mail: assetbasedloanreview@citynational.com
ard@citynational.com
legaldepartment@citynational.com

TO THE LOAN PARTIES: VENUS CONCEPT USA, INC.
4001 SW 47th Ave, Suite 206
Davie, Florida, 33314
Attention: Domenic Della Penna
Email: ddellapenna@venusconcept.com

Such addresses may be changed by such notice to the other party. Notice given as hereinabove provided shall be deemed (x) if given pursuant to clause (i) above, received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment) and (y) if given pursuant to clause (ii) above, given on the date of its deposit in the United States Mail and, unless sooner, actually received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice."

(xx) Section 10(m) is hereby deleted in its entirety and replaced with the following:

"(m) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their heirs, legal representatives, successors and assigns, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by such Loan Party without such Lender consent shall be null and void)."

(xxi) Section 10 is amended by adding a new sub-clause (s) immediately after Section 10(r) which shall read as follows:

"(s) Appointment of Borrower as Agent. Each of the Guarantors and the Israeli Pledgor (i) hereby duly and irrevocably appoints the Borrower as its respective agent for purpose of receiving any notice (including notices of service of process) sent by the Lender hereunder or under any other Loan Document and (ii) agrees that the failure of the Borrower to give any such notice to the applicable Loan Party shall not (A) constitute a waiver of the applicable Loan Party's obligations under the Loan Documents (including any such notice), (B) constitute an extension of any cure period which commences on the date such notice is sent or delivered, as applicable, or (C) affect or impair the validity of any notice of service of process or of any judgment based thereon. For the avoidance of doubt, any notice sent by the Lender to the Borrower for delivery to another Loan Party shall be deemed as received by the applicable Loan Party once delivered to the Borrower as set forth in Section 10(l) hereof."

(b) Effective as of the Effective Date (as defined below), the Main Street Note is hereby amended as follows:

(i) Section A is hereby deleted in its entirety and replaced with the following:

"(a) Interest shall accrue on the unpaid principal balance of this Note from October 4, 2023 at a variable rate per annum equal to the Term SOFR Rate (as defined below), plus three and one quarter percent (3.25%) (the "Interest Rate Margin") (as the same may be modified as set forth below, the "Interest Rate"). The Interest Rate is subject to adjustment from time to time based on changes in Term SOFR. Such adjustments shall be made on the 8th day of every month (the "Reset Date"), beginning October 8, 2023.

(b) As used herein, "Term SOFR Rate" means the rate of interest per annum equal to the 1-Month Term SOFR, as published by CME Group Benchmarks Administration Limited (or a successive administrator designated by the relevant authority) for the date that is two (2) U.S. Government Securities Business Days prior to the Reset Date. The Interest Rate will be effective on and from October 4, 2023, based on the most recent rate information available, and will be effective until day immediately preceding the next Reset Date. The interest rate shall thereafter be adjusted on each Reset Date to the current Term SOFR Rate or, if applicable, the current Term SOFR Successor Rate (as defined below), plus the Interest Rate Margin, or, if applicable, the Successor Interest Rate Margin (as defined below), based on the most recent rate information available on the date that the interest rate is adjusted and such rate shall be effective until the day immediately preceding the next Reset Date.

(c) If the Lender determines in good faith (which determination shall be conclusive, absent manifest error) that: (A) adequate and fair means do not exist for ascertaining Term SOFR; (B) Term SOFR does not accurately reflect the cost to the Lender of the Loan; or (C) a Regulatory Change (as hereinafter defined) shall, in the reasonable determination of the Lender, make it unlawful or commercially unreasonable for the Lender to use Term SOFR as the index for purposes of determining the Interest Rate, then: (i) Term SOFR shall be replaced with an alternative or successor rate or index chosen by the Lender in its reasonable discretion (the "Term SOFR Successor Rate"); and (ii) the Interest Rate Margin may also be adjusted by Lender in its reasonable discretion, giving due consideration to market convention for determining rates of interest on comparable loans (the "Successor Interest Rate Margin"). "Regulatory Change" shall mean a change in any applicable law, treaty, rule, regulation or guideline, or the interpretation or administration thereof, by the administrator of the relevant benchmark or its regulatory supervisor, any governmental authority, central bank or other fiscal, monetary or other authority having jurisdiction over Lender or its lending office.

(d) For purposes hereof, "U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities."

(c) Section C is hereby amended by deleting the second sentence thereof and replacing it with the following:

"In addition to the monthly payments of accrued interest, on December 8, 2024 (the "Principal Payment Date"), the Borrower shall make an annual payment of principal, inclusive of Capitalized Interest (as defined below) in an amount equal to seven and a half percent (7.5%) of the outstanding principal balance of this Note (inclusive of Capitalized Interest) as of the Principal Payment Date."

SECTION 2. Joinder.

(a) As of the Effective Date, the New Guarantor hereby irrevocably, absolutely and unconditionally becomes a party to the Main Street Guaranty as a Guarantor and agrees to be bound by all the terms, conditions, obligations, liabilities and undertakings of each Guarantor or to which each Guarantor is subject thereto, including without limitation, the joint and several, unconditional, absolute, continuing and irrevocable guarantee to the Lender, for its own benefit and as agent for its affiliates, of the payment and performance in full of the Obligations whether now existing or hereafter arising, all with the same force and effect as if the New Guarantor were a signatory to the Main Street Guaranty.

(b) As of the Effective Date, each Joinder Party hereby irrevocably, absolutely and unconditionally becomes a party to the Main Street Loan Agreement as an All-Assets Grantor or as the Israeli Grantor (as applicable) and agrees to be bound by all terms, conditions, obligations, liabilities and undertakings of each Grantor or to which each Grantor is subject thereunder, including without limitation the grant pursuant to Section 4(a) of the Main Street Loan Agreement of a security interest to the Lender, for its own benefit and as agent for its affiliates, in the property and rights constituting Collateral of such Grantor or in which such Grantor has or may have or acquire an interest or the power to transfer rights therein, whether now owned or existing or hereafter created, acquired or arising and wheresoever located, as security for the payment and performance of the Obligations, all with the same force and effect as if such Joinder Party were a signatory to the Main Street Loan Agreement.

(c) Each Loan Party hereby represents and warrants for itself that:

(i) (A) such Loan Party's (A) exact legal name is that set forth in Exhibit D hereto, (B) such Loan Party is an organization of the type, and is organized in the jurisdiction, set forth Exhibit D hereto, (iii) Exhibit D hereto accurately sets forth such Loan Party's organizational identification number (or accurately states that such Loan Party has none), such Loan Party's place of business (or, if more than one, its chief executive office), and its mailing address and (iv) all other information set forth on Exhibit D hereto relating to such Loan Party is accurate and complete.

(ii) The Collateral of such Loan Party consisting of securities have been duly authorized and validly issued, and are fully paid and non-assessable and subject to no options to purchase or similar rights. Such Loan Party does not hold any commercial tort claims except as indicated on Exhibit E. None of such Loan Party's Collateral constitutes, or is the proceeds of, (i) farm products, (ii) as-extracted collateral, (iii) manufactured homes, (iv) health-care-insurance receivables, (v) timber to be cut, (vi) aircraft, aircraft engines, satellites, ships or railroad rolling stock. None of the account debtors or other persons obligated on any of the Collateral of such Loan Party is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral. Each Loan Party has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(iii) At the time such Loan Party's Collateral becomes subject to the lien and security interest created by Section 4(a) of the Main Street Loan Agreement, as applicable, such Loan Party will be the sole, direct, legal and beneficial owner thereof, free and clear of any lien, security interest, encumbrance, claim, option or right of others except for the security interest created by the Main Street Loan Agreement and Permitted Liens.

(iv) The pledge of such Loan Party's Collateral pursuant to Section 4(a) of the Main Street Loan Agreement creates a valid and perfected first priority security interest in such Loan Party's Collateral, securing the payment and performance when due of the Obligations.

(v) Such Loan Party has full power, authority and legal right to enter into this Modification and perform its obligations hereunder and under the Main Street Loan Documents to which it is a party and to pledge such Loan Party's Collateral pursuant to Section 4(a) of the Main Street Loan Agreement.

(vi) Each of this Modification and the Main Street Loan Documents to which such Loan Party is a party has been duly authorized, executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).

(vii) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the pledge by such Loan Party of such Loan Party's Collateral pursuant to Section 4(a) of the Main Street Loan Agreement or for the execution and delivery of the this Modification by such Loan Party or the performance by such Loan Party of its obligations hereunder and under the Main Street Loan Documents to which it is a party.

(viii) The execution and delivery of this Modification by such Loan Party and the performance by such Loan Party of its obligations hereunder and under the Main Street Loan Documents to which it is a party, will not violate any provision of any applicable law or regulation or any order, judgment, writ, award or decree of any court, arbitrator or governmental authority, domestic or foreign, applicable to such Loan Party or any of its property, or the organizational or governing documents of such Loan Party or any agreement or instrument to which such Loan Party is a party or by which it or its property is bound.

(d) Each of the Original Guarantor and the Israeli Grantor hereby represents and warrants, for itself, that all information set forth on Exhibit A and Exhibit C, as applicable, relating to its respective IP Collateral is accurate and complete as of the date hereof.

(e) The Borrower hereby represents and warrants, for itself, that all information to be set forth on Exhibit B relating to the Borrower IP Collateral shall be accurate and complete as of the day such Exhibit B is delivered as required by Section 6(d) hereof.

SECTION 3. Conditions Precedent. This Modification and its provisions shall become effective on the first date on which all of the following conditions precedent shall have been satisfied (the "Effective Date"), as such satisfaction is determined by the Lender and evidenced by the Lender's confirmation of the same to the Borrower, either in writing or by e-mail:

(a) On or before the Effective Date, the Lender shall have received the following documents, each of which shall be satisfactory to the Lender in form and substance:

(i) This Modification, executed and delivered by a duly authorized officer of each Loan Party;

(ii) That certain subordination of debt agreement, dated as of the date hereof, between each Junior Creditor, the Lender and the Israeli Grantor (the "**New Main Street Subordination Agreement**"), executed and delivered by a duly authorized officer of each party thereto;

(iii) A copy of the Borrower's Underwriting Criteria;

(iv) an Assigned Sales Contract Schedule, listing all Existing Eligible Subscription Sales Contracts assigned to the Lender on the Effective Date pursuant to Section 4(j) of the Main Street Loan Agreement;

(v) schedules listing the Original Guarantor IP Collateral and the Israeli Collateral, which schedules shall be included in Exhibit A and Exhibit C hereto, as applicable;

(vi) IP security agreements, executed and delivered by the Original Guarantor and the Israeli Grantor, as applicable, with respect to the Original Guarantor IP Collateral and the Israeli IP Collateral, in each case, for recordation with the Commissioner for Patents and the Commissioner for Trademarks, as applicable;

(vii) The following supporting documents with respect to each Loan Party (A) a copy of its constituent documents certified as of a date reasonably close to the Effective Date to be a true and accurate copy by the Secretary of State or similar governmental authority of its jurisdiction of formation, (B) a certificate of the Secretary of State or similar governmental authority of each Loan Party's jurisdiction of formation as to its existence and good standing, (C) a certificate of the Secretary of State or similar governmental authority of each jurisdiction (other than its jurisdiction of formation) in which each Loan Party does business as to its qualification as a foreign entity in such jurisdiction, (D) a copy of its by-laws, partnership agreement or operating agreement, certified by its secretary or assistant secretary, general partner, manager or other appropriate person to be a true and accurate copy in effect on the Effective Date, (E) a certificate of its secretary or assistant secretary, general partner, manager or other appropriate person as to the incumbency and signatures of its officers or other persons who have executed any documents on behalf of such Loan Party in connection with the transactions contemplated by this Modification and (F) a copy of the resolutions or unanimous written consent of its board of directors, sole manager, sole member or governing body, as applicable, certified by its secretary or assistant secretary to be a true and accurate copy of the resolutions or unanimous written consent of such board of directors, sole manager, sole member or governing body, as applicable, or other appropriate resolutions or consents of its partners or members certified by its general partner or manager (as applicable) to be true and correct copies thereof duly adopted, approved or otherwise delivered by its partners or members (to the extent necessary and applicable), each of which is certified to be in full force and effect on the Effective Date, authorizing the execution and delivery by it of this Modification and any other document related to the Main Street Loan Documents delivered on the Effective Date and the performance by it of all its obligations hereunder and thereunder.

(b) On the Effective Date, (i) each of the Borrower and the Initial Guarantor shall be in compliance with all the terms and provisions set forth in the Original Main Street Loan Documents to which each is a party, (ii) (x) the representations and warranties made by the Borrower in the Original Main Street Loan Documents and (y) the representations and warranties made by each Loan Party in each Main Street Loan Document (including, for the avoidance of doubt, this Modification and the New Main Street Subordination Agreement) to which such Loan Party is a party, in each case, are true and correct in all material respects and (iii) no Default or Event of Default under any Main Street Loan Document (including this Modification and the New Main Street Subordination Agreement) shall exist.

(c) The Borrower shall have paid to or as directed by the Lender any and all fees, costs and expenses incurred by the Lender in connection with the transactions contemplated herein, including the negotiation and preparation of this Modification and all of the documents related thereto, including all costs associated with due diligence, field audit fees, and the Lender's legal fees, costs and expenses.

SECTION 4. Reaffirmation by Borrower. The Borrower hereby reaffirms all of the terms, provisions, and representations contained in the Main Street Loan Documents (including, for the avoidance of doubt, the continued effectiveness of the security interest in favor of the Lender, for its own benefit and as agent for its affiliates, over the Borrower's Collateral created pursuant to Section 4(a) of the Original Main Street Loan Agreement) and the Certifications. The Borrower hereby agrees and confirms that, as of the Effective Date, the Main Street Loan Documents are in full force and effect and are binding upon and enforceable against Borrower in accordance with their respective terms and provisions. As used in the Main Street Loan Documents, the Parties agree that the term "Loan Agreement" shall mean the Main Street Loan Agreement, as modified by this Modification. The Parties hereby agree that this Modification shall constitute a "Loan Document" as such term is used in the Main Street Loan Documents. The Borrower represents, warrants and covenants that (a) the execution, delivery and performance of this Modification has been duly authorized by all requisite action of the Borrower, and (b) the representations and warranties made by the Borrower in the Main Street Loan Documents, including without limitation, in Section 5 of the Main Street Loan Agreement, in Section 2(c) of this Modification and in the Certifications, are true and correct on and as of the Effective Date.

SECTION 5. Reaffirmations.

(a) Reaffirmation of Main Street Guaranty. The Initial Guarantor hereby absolutely and unconditionally (i) consents to (x) the execution, delivery and performance by the Borrower and the Joinder Parties of this Modification and (y) the implementation and consummation of the amendments, agreements and transactions contemplated by this Modification, and (b) reaffirms its obligations under the Main Street Guaranty.

(b) Reaffirmation of Existing Main Street Subordination Agreement. Each of the Borrower, the Guarantor, the New Guarantor and each Junior Creditor hereby (i) expressly ratify and reaffirm the continued subordination of the Junior Debt (as defined in the applicable Existing Main Street Subordination Agreement) to the Senior Debt (as defined in the applicable Existing Main Street Subordination Agreement) in accordance with, and its liabilities, obligations and agreements under, the terms of the applicable Existing Main Street Subordination Agreement, (ii) acknowledge and agree that (A) all terms and conditions contained in the Existing Main Street Subordination Agreement, the subordination effected thereby and the rights and obligations of each Junior Creditor, the Lender, the Borrower, the Guarantor and the New Guarantor (as applicable) arising thereunder, continue to be, and shall continue to be from and after the Effective Date, in full force and effect, (B) the Existing Main Street Subordination Agreements continues to be the valid and binding obligation of each Junior Creditor, the Borrower, the Guarantor and the New Guarantor (as applicable) enforceable in accordance with its terms, (C) the Obligations shall continue to constitute "Senior Debt" (as defined in the applicable Existing Main Street Subordination Agreement), subject to the terms of the applicable Existing Main Street Subordination Agreement, (D) the definition of "Junior Debt" (as defined in the applicable Existing Main Street Subordination Agreement) shall be deemed to include, without limitation, obligations of the Borrower, the Guarantor and the New Guarantor (as applicable) owed to each Junior Creditor pursuant to the Junior Debt Instruments (as defined in the applicable Existing Main Street Subordination Agreement), and (E) as of the Effective Date, to the knowledge of the Borrower, the Guarantor and the New Guarantor (as applicable) and each Junior Creditor, no default or event of default has occurred and is continuing under the Junior Debt Instruments (as defined in the applicable Existing Main Street Subordination Agreement), the Main Street Loan Agreement and the other Main Street Loan Documents.

SECTION 6. Post-Closing Obligations.

(a) The Interest Reserve Account shall be established and funded with the Minimum Balance no later than within seven (7) Business Days from the Effective Date.

(b) The Borrower shall pay to the Lender a modification fee equal to $65,000.00 on or before January 8, 2024.

(c) Each Grantor shall deliver the landlord waivers with respect to the Designated Addresses required to be delivered pursuant to Section 4(e) of the Main Street Loan Agreement within ninety (90) days following the date hereof.

(d) The Lender shall, at the Borrower's sole cost and expense, be entitled to perform field audits at any time during the term of the Loan, but no more than once per year (or twice if both such field audits are solely to validate Assigned Sales Contracts) so long as no Event of Default shall have occurred and then be continuing.

(e) The Borrower shall (i) deliver to the Lender a schedule listing all of the Borrower IP Collateral, which schedule shall be included as Exhibit B to this Modification without any further action by the Loan Parties or the Lender and (ii) execute an IP security agreement with respect to the Borrower IP Collateral for recordation with the Commissioner for Patents, the Commissioner for Trademarks and the Register of Copyrights, as applicable, in each case ((i) and (ii)), within forty-five (45) days following the date hereof.

SECTION 7. No Implied Waiver or Course of Dealing. Except as expressly amended, consented to or waived in this Modification, nothing contained herein or in any course of dealing between the Parties shall be deemed or construed as a waiver, expressed or implied, of any of the terms and provisions of the Main Street Loan Documents or to otherwise impair the rights and remedies available to the Lender thereunder.

SECTION 8. Successors and Assigns. This Modification shall inure to the benefit of and be binding on the Parties hereto and their heirs, legal representatives, successors and assigns, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by such Loan Party without such Lender consent shall be null and void).

SECTION 9. Limited Effect. Except as expressly amended and modified by this Modification, the Original Main Street Loan Documents shall continue to be, and shall remain, in full force and effect in accordance with their respective terms; provided, that, upon the Effective Date, each (a) reference therein and herein to "Loan Documents" or "Main Street Loan Documents" shall be deemed to include, in any event, this Modification, (b) each reference to the "Loan Agreement" in any of the Main Street Loan Documents shall be deemed to be a reference to the Original Main Street Loan Agreement as amended hereby, (c) each reference to the "Note" in any Main Street Loan Document shall be deemed to be a reference to the Original Main Street Note as amended hereby, (d) each reference to the "Guaranty" in any Main Street Loan Document shall be deemed to be a reference to the Original Guaranty as amended hereby and (e) each reference in any Original Main Street Loan Document to "this Agreement", "this Guaranty" or "this Note", as applicable, or "hereof", "herein" or words of similar effect in referring to such Original Main Street Loan Document shall be deemed to be references to such Original Main Street Loan Document as amended by this Modification. This Modification shall not constitute a novation of any Original Main Street Loan Document but shall constitute modifications thereof.

SECTION 10. Counterparts. This Modification may be executed in any number of counterparts, each of which shall be deemed an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Modification may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the Parties hereto may execute this Modification by signing any such counterpart. This Modification may be executed and delivered via facsimile or electronic mail via .pdf., and when executed and delivered shall be deemed an original.

SECTION 11. Enforceability. Should any one or more of the provisions of this Modification be determined to be illegal or unenforceable as to one or more of the Parties hereto, all other provisions shall nevertheless remain effective and binding upon the Parties hereto.

SECTION 12. Governing Law. This Modification and its validity, construction and performance shall be governed in all respects by the laws of the State of Florida, without giving effect to principles of conflict of laws. The Parties hereto consent to the jurisdiction of the courts of the State of Florida located in Miami-Dade County, Florida and the federal courts of the United States located in Miami-Dade County, Florida for the purpose of any action or proceeding instituted by any party relating to this Modification, and waive as a defense in any such action or proceeding any assertion that they are not subject to such jurisdiction or that such action or proceeding may not be brought in such courts.

SECTION 13. Further Assurances. From time to time, upon the request of Lender, the Loan Parties shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as Lender may deem reasonably necessary or desirable to confirm this Modification and the terms and conditions hereof, to carry out the purpose and intent hereof or to enable Lender to enforce any of its rights hereunder.

SECTION 14. No Defenses, Set-offs, Claims or Counterclaims. Each Loan Party acknowledges and agrees that, as of the Effective Date, they have no defenses, counterclaims, offsets, cross-complaints, causes of action, rights, claims or demands of any kind or nature whatsoever, including without limitation, any usury or lender liability claims or defenses, arising out of the Main Street Loan Documents, or any past or present relationship between or among any of them, the Lender, or any of their respective past, present and/or future parent, subsidiary and affiliated entities and, with respect to each of the foregoing, their respective past and present officers, directors, shareholders, partners, limited partners, members, representatives, principals, owners, affiliates, attorneys, accountants, agents and employees, and their successors, heirs and assigns and each of them, that can be asserted either to reduce or eliminate all or any part of the Obligations, or to seek affirmative relief or damages of any kind or nature from Lender.

SECTION 15. Waiver and Release. As of the Effective Date, each of the Loan Parties, on their own behalf and on behalf of each of their respective past, present and future predecessors, successors, subsidiaries, parent entities, assigns, shareholders, partners, members, owners, other principals, affiliates, managers, and, with respect to each Loan Party and each of the other foregoing entities and individuals, each of their respective predecessors, successors, assigns, and past and present shareholders, partners, members, owners, other principals, affiliates, managers, employees, officers, directors, attorneys, agents, other representatives, insurers and any other individuals and entities claiming or acting by, through, under or in concert with any of the Loan Parties (collectively, the "**Loan Party Releasors**"), hereby fully and forever release, relinquish, discharge and acquit Lender and their respective past, present, and future predecessors, successors, subsidiaries, parent entities, assigns, participants, shareholders, partners, members, owners, other principals, affiliates, managers, and, with respect to each of the foregoing entities and individuals, each of their respective predecessors, successors, assigns, participants and past and present shareholders, partners, members, owners, other principals, affiliates, managers, employees, officers, directors, attorneys, agents, other representatives, insurers and any other individuals and/or entities claiming or acting by, through, under or in concert with each such entity or individual (collectively, the "**Lender Party Releasees**"), of and from and against any and all claims, demands, obligations, duties, liabilities, damages (including, without limitation, special, punitive, indirect or consequential damages), expenses, claims of offset, indebtedness, debts, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, choses in action, rights of indemnity or liability of any type, kind, nature, description or character whatsoever, arising prior to the Effective Date, directly or indirectly, in any manner from and/or out of (i) any Main Street Loan Document, including this Modification, (ii) Lender's acts, statements, conduct, representations and omissions made in connection therewith and the negotiation of this Modification, and (iii) any fact, matter, transaction or event relating thereto, whether known or unknown, suspected or unsuspected, which could, might or may be claimed to have existed, whether liquidated or unliquidated, each though fully set forth herein at length (collectively, the "**Released Claims**").

As of the Effective Date, the Loan Party Releasors hereby waive the provisions of any applicable laws restricting the release of the Released Claims which the Loan Party Releasors do not know or suspect to exist at the time of release, which, if known, would have materially affected the decision to agree to these releases. The Loan Party Releasors hereby agree, represent and warrant to Lender that they realize and acknowledge that factual matters now unknown may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Loan Party Releasors further agree, represent and warrant that the releases provided herein have been negotiated and agreed upon in light of that realization and that the Loan Party Releasors nevertheless hereby intend to release, discharge and acquit the Lender Party Releasees set forth hereinabove from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to the Main Street Loan Documents and all dealings in connection therewith.

The Loan Party Releasors hereby acknowledge that they have not relied upon any representation of any kind made by the Lender or any affiliate of Lender in making the foregoing release.

The Loan Party Releasors represent and warrant to Lender that they have not heretofore assigned or transferred, or purported to assign or to transfer, to any person or entity any matter released by such party hereunder or any portion thereof or interest therein, and each Loan Party Releasor agrees to indemnify, protect, defend and hold each of the Lender Party Releasees harmless from and against any and all claims based on or arising out of any such assignment or transfer or purported assignment or transfer by such party.

SECTION 16. WAIVER OF JURY TRIAL. EACH LOAN PARTY HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MODIFICATION OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH LOAN PARTY HEREBY WAIVES ANY RIGHT WHICH IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION REFERRED TO IN THE PRECEDING SENTENCE ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. EACH LOAN PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OR ATTORNEY OF THE LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THIS MODIFICATION BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN. EACH LOAN PARTY REPRESENTS THAT IT REVIEWED THESE WAIVERS AND AFTER CONSULTATION WITH LEGAL COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES SUCH RIGHTS. IN THE EVENT OF LITIGATION, A COPY OF THIS MODIFICATION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Modification is made effective as of the day and year first above written.

BORROWER:

VENUS CONCEPT USA INC., a Delaware corporation

By: /s/ Rajiv De Silva
Name: Rajiv De Silva
Title: President and Assistant Secretary

ORIGINAL GUARANTOR:

VENUS CONCEPT INC., a Delaware corporation

By: /s/ Rajiv De Silva
Name: Rajiv De Silva
Title: Chief Executive Officer

NEW GUARANTOR:

VENUS CONCEPT CANADA CORP., a Corporation incorporated under the laws of the Province of Ontario

By: /s/ Hemanth Varghese
Name: Hemanth Varghese
Title: President and General Manager

ISRAELI GRANTOR:

VENUS CONCEPT LTD., a company formed under the Companies Law of Israel

By: /s/ Rajiv De Silva
Name: Rajiv De Silva
Title: Chief Executive Officer

LENDER:

CITY NATIONAL BANK OF FLORIDA

By: /s/ Luis Moran
Name: Luis Moran
Title: Vice President

JUNIOR CREDITORS:

MANDRYN HEALTH PARTNERS, LP, a Delaware limited partnership

By: MADRYN HEALTH ADVISORS, LP, its general partner

By: MADRYN HEALTH ADVISORS GP, LLC, its general partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

MANDRYN HEALTH PARTNERS, (CAYMAN MASTER), LP, a Cayman Islands limited partnership

By: MADRYN HEALTH ADVISORS, LP, its general partner

By: MADRYN HEALTH ADVISORS GP, LLC, its general partner

By: /s/ Avinash Amin
Name: Avinash Amin
Title: Member

Exhibit 99.1

Venus Concept Inc. Announces Debt Restructuring, Preliminary Third Quarter 2023 Revenue Results and Updates Fiscal Year 2023 Revenue Guidance

Provides significant financial flexibility and support for the Company's path to cash flow breakeven by reducing total debt, deferring principal and interest payments, and lowering near-term cash needs

TORONTO, October 5, 2023 (GLOBE NEWSWIRE) – Venus Concept Inc. ("Venus Concept" or the "Company") (NASDAQ: VERO), a global medical aesthetic technology leader, today announced that it has finalized an agreement with its lenders, City National Bank of Florida ("CNB") and Madryn Asset Management, LP and affiliates ("Madryn"), to restructure its existing debt obligations, improving the Company's overall financial position by deferring certain principal and interest payments under its senior debt and exchanging a portion of its convertible notes for preferred stock. The debt restructuring supports the Company's strategic turnaround efforts, by strengthening its capital structure, improving its liquidity position, and enhancing the path to cashflow breakeven in the second half of 2024.

The loan modification and exchange agreements provide for, among other things:

- Deferral of the approximately $7.7 million annual payment of principal plus accrued interest, previously due December 8, 2023, under the Company's Main Street Priority Loan Facility with CNB ("MSLP Note") until loan maturity on December 8, 2025;
- Deferral of approximately $3.9 million, or 50% of the annual payment of principal plus accrued interest, previously due December 8, 2024, under the MSLP Note until loan maturity on December 8, 2025;
- Exchange of $5.0 million of the Company's Secured Subordinated Convertible Notes with Madryn for newly-created Series X Senior Convertible Preferred Stock, which pays a dividend in kind, on a quarterly basis, equal to an annual rate of 12.5%; and
- Remaining outstanding Secured Subordinated Convertible Notes with Madryn subject to a new conversion price of $24 per share and interest payable in kind, on a quarterly basis, at an annual rate of 90-day Adjusted SOFR + 8.5%.

"We appreciate the valuable partnership and continued support from our lenders, City National Bank of Florida and Madryn Asset Management," said Rajiv De Silva, Chief Executive Officer of Venus Concept. "These debt restructuring activities provide Venus Concept with substantial additional liquidity to support maintenance of ongoing operations, execution of our near-to-intermediate term strategic turnaround objectives and funding of priority investments in key R&D initiatives. The debt restructuring, along with our previously announced ongoing multi-tranche equity funding from EW Healthcare Partners are key to our plan to significantly improve the cash flow and profitability profile of the Company and return to long-term, sustainable, growth."

"CNB and Madryn have been critical to the Company's evolution and we are grateful for the role that the Main Street Lending Program and our lenders have played in financing the company over the last several years. We will continue to look for ways to improve our balance sheet as we progress towards achieving cash flow breakeven in the second half of 2024," added Domenic Della Penna, Executive Vice President and Chief Financial Officer of Venus Concept.

Additional information regarding the amended credit agreements and the Senior Preferred Stock will be set forth in a Current Report on Form 8-K, which Venus Concept expects to file with the SEC today.

Canaccord Genuity acted as financial advisor to the Company in the debt restructuring.

The offer and sale of the foregoing securities are being made in a transaction not involving a public offering and have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or applicable state securities laws. The securities may not be offered or sold in the United States absent registration or pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. The Company has agreed to file a registration statement covering the resale of the Common Stock issuable upon conversion of the Series X Senior Convertible Preferred Stock.

This press release does not constitute an offer to sell or the solicitation of an offer to buy the securities in the described offering, nor shall there be any offer, solicitation or sale of the securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Preliminary Third Quarter 2023 Revenue and Updated Fiscal Year 2023 Revenue Guidance:

Preliminary total revenue for the third quarter of 2023 is expected to be in the range of $17.0 million to $18.0 million, compared to total revenue of $21.5 million in the prior year period. The Company now expects total revenue for the twelve months ending December 31, 2023 to be in the range of $80.0 million to $82.0 million, compared to prior guidance which called for total revenue in a range of $90.0 million to $95.0 million. The preliminary third quarter total revenue results versus expectations and updated fiscal year 2023 total revenue guidance are primarily a result of the accelerated impact of the Company's strategic restructuring activities in international markets.

"We are pleased with the progress we have made in our strategic turnaround plan in 2023. Our restructuring efforts to reduce expenses are exceeding expectations, and repositioning of the business in the US and internationally supports growth in 2024," said Rajiv De Silva. "While revenue expectations for the year are lower than expected, primarily due to our accelerated restructuring of certain international markets, we are pleased with the performance in the US market. Our primary objective for 2023 has been to reduce cash burn by 50% or more year over year, which we are still on track to achieve due to our cost restructuring efforts."

Cautionary Statement Regarding Forward-Looking Statements

This communication contains "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. Any statements contained herein that are not of historical facts may be deemed to be forward-looking statements. In some cases, you can identify these statements by words such as such as "anticipates," "believes," "plans," "expects," "projects," "future," "intends," "may," "should," "could," "estimates," "predicts," "potential," "continue," "guidance," and other similar expressions that are predictions of or indicate future events and future trends. These forward-looking statements include, but are not limited to, statements about the anticipated benefits of the debt restructuring, including the Company's goal to achieve cash flow breakeven in the second half of 2024. These forward-looking statements are based on current expectations, estimates, forecasts, and projections about our business and the industry in which the Company operates and management's beliefs and assumptions and are not guarantees of future performance or developments and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this communication may turn out to be inaccurate. Factors that could materially affect our business operations and financial performance and condition include, but are not limited to, general economic conditions, including the global economic impact of COVID-19, and involve risks and uncertainties that may cause results to differ materially from those set forth in the statements and those risks and uncertainties described under Part II Item 1A—"Risk Factors" in our Quarterly Reports on Form 10-Q and Part I Item 1A—"Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022. You are urged to consider these factors carefully in evaluating the forward-looking statements and are cautioned not to place undue reliance on the forward-looking statements. The forward-looking statements are based on information available to us as of the date of this communication. Unless required by law, the Company does not intend to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

About Venus Concept

Venus Concept is an innovative global medical aesthetic technology leader with a broad product portfolio of minimally invasive and non-invasive medical aesthetic and hair restoration technologies and reach in over 60 countries and 14 direct markets. Venus Concept's product portfolio consists of aesthetic device platforms, including Venus Versa, Venus Legacy, Venus Velocity, Venus Fiore, Venus Viva, Venus Glow, Venus Bliss, Venus BlissMAX, Venus Epileve, Venus Viva MD and AI.ME. Venus Concept's hair restoration systems include NeoGraft® and the ARTAS iX® Robotic Hair Restoration system. Venus Concept has been backed by leading healthcare industry growth equity investors including EW Healthcare Partners (formerly Essex Woodlands), HealthQuest Capital, Longitude Capital Management, Aperture Venture Partners, and Masters Special Situations.

Investor Relations Contact:

ICR Westwicke on behalf of Venus Concept:

Mike Piccinino, CFA

VenusConceptIR@westwicke.com