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): May 15, 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.

Multi-Tranche Private Placement

On May 15, 2023, Venus Concept Inc. (the "**Company**") entered into a stock purchase agreement (the "**Stock Purchase Agreement**") with EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (collectively, the "**Investors**"). Under the Stock Purchase Agreement, the Company may issue and sell to the Investors up to $9,000,000 in shares of newly-created senior convertible preferred stock, par value $0.0001 per share (the "**Senior Preferred Stock**"), in multiple tranches from time to time until December 31, 2025, subject to a minimum aggregate purchase amount of $500,000 in each tranche (the "**Private Placement**"). Other than the Initial Placement (as defined below), sales of Senior Preferred Stock in the Private Placement are purely discretionary and must be approved by both the Company and the Investors.

The purchase price for each share of Senior Preferred Stock floats at a price equal to the product of (a) the lower of (i) the closing price of the Company's common stock, par value $0.0001 per share ("**Common Stock**"), on the trading day immediately preceding the applicable closing date and (ii) the average closing price of the Common Stock for the five trading days immediately preceding the applicable closing date, multiplied by (b) two (the "**Purchase Price**"). The Senior Preferred Stock is convertible into shares of Common Stock on a 1-for-2.6667 basis at the option of (x) the Investors at any time or (y) the Company within 30 days following the occurrence of specified trigger events. The terms of the Senior Preferred Stock are further described below under Item 5.03 of this Current Report on Form 8-K.

The initial sale in the Private Placement occurred on May 15, 2023, under which the Company sold the Investors 280,899 shares of Senior Preferred Stock for an aggregate purchase price of $2,000,000 (the "**Initial Placement**"). The Company expects to use the proceeds of the Initial Placement, after the payment of transaction expenses, for general working capital purposes.

Subject to the terms and conditions of the Stock Purchase Agreement, the Company is required, upon the request of the Purchasers, to call one or more shareholder meetings for the purpose of eliminating any limitations on the convertibility of the Senior Preferred Stock imposed by the rules and regulations of the Nasdaq Capital Market. On May 15, 2023, the Company secured agreements from certain of its investors, currently holding an aggregate of 59.2% 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.

Contemporaneously with the execution of the Stock Purchase Agreement, the Company and the Investors entered into a Registration Rights Agreement, dated May 15, 2023 (the "**Registration Rights Agreement**"), under which the Company is required to file one or more demand shelf registration statements with respect to the shares of Common Stock issuable upon conversion of Senior Preferred Stock that has been sold under the Stock Purchase Agreement. Pursuant to the Registration Rights Agreement, the Company must file a registration statement for the offer and resale of the Common Stock underlying the Senior Preferred Stock then issued no later than July 15, 2023, and cause to be declared by the U.S. Securities and Exchange Commission (the "**SEC**") as promptly as possible thereafter, but in no event later than 90 days thereafter.

The shares of Senior Preferred Stock issued or issuable by the Company under the Stock Purchase Agreement, as well as the shares of Common Stock issuable upon conversion of the Senior 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 applicable exemption from registration requirements. The Company relied on, and will rely on, the private placement exemption from registration provided by Section 4(a)(2) of the Securities Act and by Rule 506 of Registration D, promulgated by the SEC, and on similar exemptions under applicable state laws.

The Stock Purchase Agreement and the Registration Rights Agreement contain customary representations, warranties and agreements by the Company, indemnification obligations of the Company, including for liabilities under the Securities Act of 1933, as amended (the "**Securities Act**"), and other obligations of the parties. The representations, warranties, and covenants contained in such agreements were made only for purposes of such agreements 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 such agreements; 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 such representations, warranties, and covenants, or any description thereof, as characterizations of the actual state of facts or condition of the Company.

The foregoing descriptions of the Stock Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Stock Purchase Agreement and the Registration Rights Agreement, copies of which are filed herewith as Exhibits 10.1 and 10.2, respectively.

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 of Company or Bylaws; Change in Fiscal Year.

Certificate of Elimination of Nonvoting Preferred Stock

On May 15, 2023, the Company filed with the Delaware Secretary of State a Certificate of Elimination (the **Certificate of Elimination**") with respect to the Company's nonvoting convertible preferred stock (the "**Nonvoting Preferred Stock**"). All shares of Nonvoting Preferred Stock were previously converted into Common Stock, and thus no such shares are outstanding, nor will any such shares be issued in the future. Accordingly, the Company filed the Certificate of Elimination to eliminate the Nonvoting Preferred Stock from the Company's authorized capital, thereby returning such shares to the status of authorized but unissued shares of "blank check" preferred stock of the Company.

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

Certificate of Designations of Senior Preferred Stock

On May 15, 2023, the Company filed with the Delaware Secretary of State a Certificate of Designations of with respect to the Senior Preferred Stock (the "**Certificate of Designations**"), thereby creating the Senior Preferred Stock.

The Certificate of Designations authorizes the issuance of up to 3,000,000 shares of Senior Preferred Stock. The Senior Preferred Stock is convertible into shares of Common Stock on a 1-for-2.6667 basis at the option of (a) the Investors at any time or (b) the Company within 30 days following the date on which the 30-day volume-weighted average price of the Common Stock exceeds the product of (i) the Purchase Price for the shares of Senior Preferred Stock sought to be converted, multiplied by (ii) 2.75. In addition, the Certificate of Designations provides that, while the Senior Preferred Stock is outstanding but not later than December 31, 2025, the holders of Senior Preferred Stock, which includes the Investors and any of their affiliates holding shares of Senior Preferred Stock, have the right to exchange their shares of Senior Preferred Stock under certain conditions if the Company issues or sells other securities that such holders of Senior Preferred Stock reasonably believe contain more favorable terms, taken as a whole.

Each share of Senior Preferred Stock carries a liquidation preference, senior to the Common Stock and the Company's voting convertible preferred stock, par value $0.0001 per share ("**Junior Preferred Stock**"), in an amount equal to the product of the Purchase Price for such share, multiplied by 2.50. Each share of Senior 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 an as-converted basis, pari passu with the Common Stock and Junior Preferred Stock.

The Senior Preferred Stock is non-voting; provided, however, that as long as any shares of Senior 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 Senior Preferred Stock, (a) increase the authorized number of shares of Senior 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 Senior Preferred Stock designated hereunder; (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 Senior Preferred.

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, which is filed herewith as Exhibit 3.2.

Item 7.01. Regulation FD Disclosure.

On May 15, 2023, the Company issued a press release regarding the Private Placement. A copy of the press release is attached 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 Act of 1933, as amended, 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, statements about the expecting timing of the initial closing of the sale of Senior Preferred Stock and whether or not any subsequent sales of the Senior Preferred Stock will occur. 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 Elimination of Nonvoting Convertible Preferred Stock
3.2	Certificate of Designations of Senior Convertible Preferred Stock
10.1	Stock Purchase Agreement, dated May 15, 2023, by and among Venus Concept Inc., EW Healthcare Partners, L.P. and EW Healthcare Partners-A L.P.
10.2	Registration Rights Agreement, dated May 15, 2023, by and among Venus Concept Inc., EW Healthcare Partners, L.P. and EW Healthcare Partners-A L.P.
99.1	Press release dated May 15, 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: May 15, 2023

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

Exhibit 3.1

CERTIFICATE OF ELIMINATION
OF
NONVOTING CONVERTIBLE PREFERRED STOCK
OF
VENUS CONCEPT INC.

Venus Concept Inc., a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the "**DGCL**"), hereby certifies as follows:

FIRST: Pursuant to the authority granted to the Board of Directors of the Corporation (the "**Board**") pursuant to the Corporation's Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**") and Section 151(g) of the DGCL, the Board previously authorized the issuance of, and established, the designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions of 5,000,000 shares of nonvoting convertible preferred stock, par value $0.0001 per share (the "**Nonvoting Preferred Stock**"), as evidenced by the Certificate of Designation with respect to such Nonvoting Preferred Stock filed with the Secretary of State of the State of Delaware on December 14, 2021 (the "**Certificate of Designation**").

SECOND: None of the authorized shares of Nonvoting Preferred Stock are outstanding and none will be issued pursuant to the Certificate of Designation.

THIRD: The Board has duly adopted the following resolutions approving the elimination of the Nonvoting Preferred Stock, which resolutions remain in full force and effect as of the date hereof:

> RESOLVED, that none of the authorized shares of the Nonvoting Preferred Stock are outstanding and none will be issued subject to the Certificate of Designation previously filed with the Secretary of State of the State of Delaware on December 14, 2021 with respect to such Nonvoting Preferred Stock;
>
> FURTHER RESOLVED, that any officer of the Corporation (the "**Authorized Officers**") be, and each of them hereby is, empowered, authorized and directed, in the name and on behalf of the Corporation, to execute and file a Certificate of Elimination with the Secretary of State of the State of Delaware pursuant to Section 151(g) of the DGCL, substantially in the form provided to the Board, setting forth a copy of these resolutions (the "**Certificate of Elimination**");
>
> FURTHER RESOLVED, that when the Certificate of Elimination setting forth these resolutions becomes effective, it shall have the effect of eliminating from the Certificate of Incorporation all matters set forth in the Certificate of Designation with respect to the Nonvoting Preferred Stock and all of the shares that were designated as Nonvoting Preferred Stock shall be returned to the status of authorized but unissued shares of preferred stock of the Corporation, without designation as to series; and
>
> FURTHER RESOLVED, that the Authorized Officers be, and each of them individually hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take all other actions and to execute and deliver such other documents, in addition to those set forth in the foregoing resolutions, as they may deem necessary or advisable in order to effect the purposes of the foregoing resolutions, and that all such actions heretofore so taken be, and they hereby are, in all respects ratified, confirmed and approved.

FOURTH: Pursuant to the provisions of Section 151(g) of the DGCL, all matters set forth in the Certificate of Designation with respect to the Nonvoting Preferred Stock are hereby eliminated from the Certificate of Incorporation, and the shares that were designated as Nonvoting Preferred Stock are hereby returned to the status of authorized but unissued shares of preferred stock of the Corporation, without designation as to series.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Elimination to be signed by its duly authorized officer on this 15th day of May, 2023.

VENUS CONCEPT INC.

By: /s/ Michael Mandarello
Name: Michael Mandarello
Title: General Counsel and Corporate Secretary

Exhibit 3.2

CERTIFICATE OF DESIGNATIONS OF
SENIOR 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 May 15, 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 Senior Convertible Preferred Stock (the "**Senior 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 is 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 shall not include 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 $0.001 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 Senior Preferred, and its successors and assigns.

"**Conversion Date**" means, with respect to any share of Senior Preferred, the date on which such share of Senior Preferred has been converted pursuant to Article II, Section 4(a) or Article II, Section 4(b).

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

"**Converted Stock Equivalent Amount**" means, for each share of Senior Preferred, 2.6667 shares of Common Stock; provided that if, after issuance of any shares of Senior 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 Senior Preferred shall be adjusted as if such action applied to the shares of Common Stock represented by the Converted Stock Equivalent Amount.

"**Holder**" means the Person in whose name shares of the Senior 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 Senior Preferred for the purpose of making payment and settling the related conversions and for all other purposes.

"**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 Senior Preferred at any time, an amount equal to the product of the Purchase Price for such share, multiplied by 2.5.

"**Mandatory Conversion**" means a mandatory conversion of shares of Senior Preferred pursuant to Article II, Section 4(b).

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

"**Mandatory Conversion Trigger**" means, for any share of Senior Preferred at any time when the Exchange Cap is no longer in effect, the first date on which the volume-weighted average price of the Common Stock for thirty (30) consecutive trading days, as reported on the Trading Market, is greater than or equal to the Mandatory Conversion Threshold for such share.

"**Mandatory Conversion Threshold**" means, for any share of Senior Preferred at any time, the dollar amount obtained by multiplying the Purchase Price for such share by 2.75, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock.

"**Optional Conversion**" means an optional conversion of Senior Preferred pursuant to Article II, Section 4(a).

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

"**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.

"**Purchase Price**" has the meaning given to such term in the SPA.

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

"**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 Senior Preferred as to dividend rights and/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).

"**SPA**" means that certain Stock Purchase Agreement, dated as of May 15, 2023, by and between the Corporation and the purchasers identified on the signature pages thereto.

"**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 Senior 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 Senior Preferred at any time, an amount equal to the excess, if any, of (a) the Liquidation Preference with respect to such share of Senior Preferred as of such time, over (b) the aggregate amount of all distributions made in respect of such share of Senior 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
SENIOR PREFERRED

1. **Designation and Number of Shares**. There shall be a series of preferred stock designated "Senior Convertible Preferred Stock." The number of authorized shares of Senior Preferred shall be 3,000,000. The Senior Preferred will initially be issued in book entry form.

2. **Dividends**.

(a) General. Each Holder shall be entitled to receive, with respect to the shares of Senior 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 Senior 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 Senior Preferred, taking into account any adjustment to the Converted Stock Equivalent Amount as provided herein; provided 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." The Corporation shall not declare a dividend or distribution to the holders of the Common Stock unless a dividend or distribution (as described above) is also made to the Holders in accordance with this Article II, Section 2(a). Notwithstanding anything set forth in this Article II, Section 2(a), 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 Senior 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 Senior Preferred equal to the number of shares of Common Stock that would otherwise be subject to such right or warrant. The Senior Preferred shall have no fixed dividend rate. Each declared dividend or distribution shall be payable to the holders of record of Senior Preferred at the same time as dividends or distributions are payable to the holders of record of Common Stock. The Corporation shall not declare or pay a dividend or distribution to the holders of the Senior Preferred other than as expressly provided in this Article II, Section 2(a).

(b) Priority of Dividends. The Senior Preferred shall rank junior with regard to dividends to the Senior Stock (if any). The Senior Preferred shall have the same priority, with regard to dividends, as the Common Stock and the Junior Preferred.

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:

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

(ii) second, 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

(iii) 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) until such time as each preference stated in Article II, Section 3(a) has been paid in full in the order of priority stated in Article II, Section 3(a). 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, as determined in good faith by the Board based on such factors as the Board, in the exercise of its reasonable business judgment, considers relevant. 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) Optional Conversion. Subject to Section 4(f), at any time, each Holder may, in its sole discretion, elect that all, or any whole number of shares that is less than all, of their shares of Senior Preferred be converted pursuant to an Optional Conversion, in which case each share of Senior Preferred subject to such Optional Conversion shall be converted into the Converted Stock Equivalent Amount; provided that cash will be paid in lieu of fractional shares pursuant to Article III, Section 7. Upon the conversion of Senior Preferred pursuant to an Optional Conversion, the shares of Senior Preferred converted pursuant to the Optional Conversion shall not be deemed outstanding for any purpose, and such converting Holders shall have no rights with respect to the Senior Preferred, rather only the right to receive the shares of Common Stock or other securities issuable upon the conversion of such Senior Preferred. Notwithstanding the foregoing, a Holder delivering an Optional Conversion Notice hereunder in connection with an Organic Change may specify in such Optional Conversion Notice that its election to effect such conversion is contingent upon the consummation of such Organic Change, in which case such Optional 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 Optional Conversion Notice shall be deemed to be withdrawn.

(b) Mandatory Conversion. Upon the occurrence of the Mandatory Conversion Trigger, the Corporation may, in its sole discretion within 30 days following the occurrence of the Mandatory Conversion Trigger, elect that all (but not less than all) of the outstanding shares of Senior Preferred that are subject to such Mandatory Conversion Trigger be converted pursuant to a Mandatory Conversion, in which case each such share of Senior Preferred shall be converted into the Converted Stock Equivalent Amount; provided that cash will be paid in lieu of fractional shares pursuant to Article III, Section 7. The Corporation will send the Mandatory Conversion Notice to each Holder that holds shares of Senior Preferred that are subject to such Mandatory Conversion Trigger promptly following the Conversion Date (i.e., as established by the Corporation within 30 days following the occurrence of the Mandatory Conversion Trigger). Upon the conversion of Senior Preferred pursuant to a Mandatory Conversion, the shares of Senior Preferred converted pursuant to the Mandatory Conversion shall not be deemed outstanding for any purpose, and the Holders shall have no rights with respect to such shares of Senior Preferred, but rather only the right to receive the shares of Common Stock or other securities issuable upon the conversion of such shares of Senior Preferred.

(c) Exchange. Notwithstanding the anything to the contrary herein, if, while the Senior Preferred are outstanding but not later than December 31, 2025, the Corporation issues or sells other securities to Persons other than the Required Holders (as defined below) and their Affiliates ("**Other Securities**"), and the Required Holders reasonably believe that the terms and conditions appurtenant to such issuance or sale, taken as a whole, are more favorable to such other Persons than are the terms and conditions of the Senior Preferred, upon written notice to the Corporation by the Required Holders, the Required Holders (and any such other Holders who elect to participate) will be permitted (but not required) to exchange all, but not less than all, of their Senior Preferred for such Other Securities. The Corporation shall provide the Required Holders with written notice describing the material terms of the offering of such Other Securities at least five (5) Business Days prior to such issuance or sale. Such exchange shall occur in accordance with an exchange ratio based on the respective purchase prices of the Senior Preferred and the Other Securities. The Corporation and the Holders exchanging their Senior Preferred pursuant to this Article II, Section 4(c) shall execute and deliver such documents and instruments and take all further action as may be reasonably necessary in order to consummate the exchange contemplated hereby. Upon such exchange, the shares of Senior Preferred exchanged thereby shall not be deemed outstanding for any purpose, and such exchanging Holders shall have no rights with respect to such shares, rather only the right to receive the Other Securities issuable pursuant to such exchange. For the avoidance of doubt, this Article II, Section 4(c) shall not apply to any transaction that constitutes a Change of Control or Liquidation Event.

(d) Transfer Procedures. Upon the physical surrender of the certificate representing a share of Senior Preferred, if any, converted pursuant to Article II, Section 4(a) or Article II, Section 4(b) to the Corporation, the Corporation will, or will cause the Transfer Agent to, issue and deliver a new certificate, registered as the Holder making the Transfer may request, subject to applicable securities laws, representing the aggregate number of shares of Common Stock issued upon conversion of the shares of Senior Preferred being Converted pursuant to Article II, Section 4(a) or Article II, Section 4(b) and represented by such certificate (provided that, if the transfer agent for the Common Stock 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 shares of Common Stock 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 Senior 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(d) 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.

(e) Certificates for Remaining Senior Preferred. In the event that less than all of the shares of Senior Preferred represented by a certificate are Converted pursuant to Article II, Section 4(a), the Corporation shall promptly issue a new certificate, if the Senior Preferred are then certificated, registered in the name of the Transferor Holder representing such remaining shares of Senior Preferred not subject to such Transfer.

(f) 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 Senior 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 Senior Preferred without breaching the Corporation's obligations under the rules and regulations of the Trading Market (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 Senior 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 Senior Preferred initially purchased by such Holder under the SPA, divided by (2) the aggregate number of shares of Senior Preferred initially purchased by the Holders (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 Senior 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 Senior 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 Senior 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 Senior 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 Senior Preferred then held by each such Holder.

(g) Requirements for Conversion. To convert any share of Senior Preferred pursuant to an Optional Conversion, the Holder of such share must (i) complete, sign and deliver to the Corporation an Optional Conversion Notice; (ii) deliver physical certificate(s), if any, representing such Senior Preferred to the Corporation (at which time such Optional 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. In connection with any Mandatory Conversion, each Holder hereby covenants and agrees to (A) deliver physical certificate(s), if any, representing the applicable shares of Senior Preferred to the Corporation; (B) furnish any endorsements and transfer documents that the Corporation may require; and (C) if applicable, pay any documentary or other taxes.

(h) No Responsibility of the Corporation. In connection with any Transfer or conversion of any shares of Senior Preferred pursuant to or as permitted by Article II, Section 4(a) or Article II, Section 4(b), (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 any such Transfer or the issuance of shares of Common Stock in connection with any such conversion.

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

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

(j) No Effect on Other Obligations. Nothing contained in this Article II, Section 4 shall be deemed to eliminate or otherwise modify any other requirements applicable to Transfers under this Certificate of Designations or applicable law.

(k) Conversion Date. Effective immediately prior to the close of business on any applicable Conversion Date, such converted shares of Senior Preferred shall represent only the right to receive shares of Common Stock issuable upon conversion of such shares.

(l) Record Holder as of Conversion Date. The Person or Persons entitled to receive the Common Stock issuable upon conversion of Senior Preferred or other property issuable upon conversion of the Senior Preferred on any applicable Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Common Stock immediately upon any Optional Conversion or Mandatory Conversion.

5. **Voting Rights**.

(a) General. The Holders shall be entitled to notice of all shareholder meetings at which holders of Common Stock shall be entitled to vote; provided, however, that notwithstanding any such notice, except as required by applicable law or as expressly set forth herein, the Senior Preferred shall not be entitled to vote on any matter presented to the shareholders of the Corporation for their action or consideration.

(b) Approval Rights. In addition to 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 Senior Preferred are convertible (assuming for this purpose that each share of Senior Preferred is convertible into the Converted Stock Equivalent Amount), which for this purpose must include EW Healthcare Partners, LP or any of its Affiliates holding shares of Senior Preferred (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 Senior 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 Senior 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; (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 Senior 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, which for this purpose must include the Required Holders, 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 Senior Preferred entitled to vote thereon were present and voted (including the Required Holders) and shall be delivered to the Corporation by delivery to the Corporate Secretary of the Corporation at its principal executive office.

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 Senior Preferred into a greater number of shares, or combine (by combination, reverse stock split or otherwise) its outstanding shares of Senior Preferred into a smaller number of shares.

7. **Organic Change**.

(a) 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 Senior Preferred will remain outstanding and, thereafter, (i) the consideration due upon conversion of any Senior 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 (including without limitation the Mandatory Conversion Threshold) 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 Senior 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 Senior 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 Senior 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 Senior Preferred as provided in this Certificate of Designations to holders of such Senior 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 Senior Preferred then outstanding.

(b) Use of Acquired Shares. Notwithstanding the foregoing, the Corporation shall be entitled to deliver upon conversion of shares of Senior Preferred, as herein provided, 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 Senior 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 Senior 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 Senior 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 Senior Preferred into Common Stock in accordance with the provisions hereof, the Corporation covenants to list such Common Stock issuable upon conversion of the Senior 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 Senior 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 Senior Preferred or of Common Stock issued or issuable upon conversion of Senior Preferred in any manner which interferes with the timely conversion of Senior 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 Senior 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 Senior 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 Senior Preferred or shares of Common Stock or other securities issued on account of Senior 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 Senior Preferred, shares of Common Stock or other securities in a name other than that in which the shares of Senior 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 Senior 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.

[Remainder of page intentionally blank.

Signature page follows.]

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 15th day of May, 2023.

VENUS CONCEPT INC.

By: /s/ Michael Mandarello
Name: Michael Mandarello
Title: General Counsel and Corporate Secretary

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

Exhibit A

OPTIONAL CONVERSION NOTICE

Venus Concept Inc.
Senior Convertible Preferred Stock

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

☐ all of the shares of Senior Convertible Preferred Stock
☐ _____* shares of Senior 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 B

MANDATORY CONVERSION NOTICE

Venus Concept Inc.
Senior Convertible Preferred Stock

Reference is made to the Certificate of Designations (the "**Certificate of Designations**") with respect to the Senior Convertible Preferred Stock (the "**Senior Preferred**") of Venus Concept Inc. (the "**Corporation**"). Capitalized terms used but not otherwise defined in this notice have the meanings given to such terms in the Certificate of Designations.

The Corporation hereby provides notice to _____ (the "**Holder**") that _____ of the shares of Senior Convertible Preferred Stock held by the Holder have been automatically converted pursuant to a Mandatory Conversion. The Conversion Date is _____. As required by the Certificate of Designations, the Holder is required to surrender to the Corporation such shares of Senior Preferred, if certificated, in accordance with Section 9 of the Certificate of Designations.

Sincerely,

Venus Concept, Inc.

By: _____
Name: _____
Title: _____

Exhibit 10.1

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "Agreement") is dated as of May 15, 2023, between Venus Concept Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, the "Purchaser" and collectively, the "Purchasers," and together with the Company, the "Parties").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

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 Purchaser 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 Designation (as defined herein); and (b) the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.5.

"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 ascribed 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 Purchaser 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 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.

"Capped Shares" shall have the meaning ascribed to such term in Section 4.14.

"Capital Stock" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition. Unless the context otherwise requires, Capital Stock shall refer to Capital Stock of the Company.

"Certificate of Designation" means the Certificate of Designation of Senior Preferred Stock to be filed prior to the Initial Closing by the Company with the Secretary of State of the State of Delaware, in the form of Exhibit A attached hereto.

"Closing" means each of the Initial Closing and any Subsequent Closing.

"Closing Date" means each of the Initial Closing Date and any Subsequent Closing Date.

"Closing Shares" means the shares of Senior Preferred Stock sold in any Closing.

"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 ascribed to such term in the Preamble.

"Company Closing Certificate" means (a) if delivered in connection with the Initial Closing, a certificate of the Company, dated as of the Initial Closing Date, certifying that the conditions set forth in Section 2.4(a)(ii) have been met as of the Initial Closing Date, or (b) if delivered in connection with a Subsequent Closing, a certificate of the Company, dated as of such Subsequent Closing Date, certifying that the conditions set forth in Section 2.4(b)(ii) have been met as of such Subsequent Closing Date, in either case in a form reasonably acceptable to the Purchasers.

"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 Purchasers.

"Company Legal Opinion" means (a) if delivered in connection with the Initial Closing, a legal opinion of Company Counsel, dated as of the Initial Closing Date, or (b) if delivered in connection with a Subsequent Closing, a legal opinion of Company Counsel, dated as of such Subsequent Closing Date, in either case in the form of Exhibit B attached hereto.

"Effective Date" means, with respect to any Underlying Shares, the earliest of the date that (a) the initial Registration Statement covering such Underlying Shares has been declared effective by the Commission, (b) all of such 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 applicable Closing Date, provided that a holder of Underlying Shares is not an Affiliate of the Company, or (d) all of such 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 Underlying Shares pursuant to such exemption, which opinion shall be in form and substance reasonably acceptable to such holders.

"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 ascribed to such term in Section 3.1(k).

"Exchange Cap" means any limitation on the convertibility of the Senior Preferred Stock pursuant to the rules and regulations of the Nasdaq Capital Market, as set forth in the Certificate of Designation, including if such conversion would (i) result in a "change of control" within the meaning of the rules and regulations of the Nasdaq Capital Market, (ii) result in the issuance of more than 19.9% of the shares of Common Stock issued and outstanding as of the date of issuance; or (iii) otherwise require the Company to seek shareholder approval of such issuance.

"Expense Cap" shall have the meaning ascribed to such term in Section 5.2.

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

"FDA" means the Food and Drug Administration.

"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.

"Initial Closing" means the sale of the Closing Shares pursuant to Section 2.1(a).

"Initial Closing Date" shall have the meaning ascribed to such term in Section 2.1(a).

"Initial Subscription Amount" means, as to each Purchaser, the aggregate amount to be paid for Closing Shares purchased in the Initial Closing as specified below such Purchaser's name on the signature page of this Agreement and next to the heading "Initial Subscription Amount," in United States dollars and in immediately available funds.

"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.

"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.

"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 Purchasers 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.

"Maximum Aggregate Subscription Amount" means Nine Million Dollars ($9,000,000).

"Maximum Rate" shall have the meaning ascribed to such term in Section 5.17.

"Minimum Subsequent Subscription Amount" means Five Hundred Thousand Dollars ($500,000).

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

"Open Source Licenses" shall have the meaning ascribed to such term in Section 3.1(b).

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

"Permitted Liens" means any security interest in favor of (a) Madryn Health Partners, LP or the other secured parties pursuant to that certain Guaranty and Security Agreement, dated as of December 9, 2020, as amended, by and among the Company, Madryn Health Partners, LP and the other parties thereto or (b) City National Bank of Florida pursuant to that certain Security Agreement, dated as of March 20, 2020, as amended, by and among the Company and City National Bank of Florida.

"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.

"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.

"Purchase Price" shall have the meaning ascribed to such term in Section 2.2.

"Purchaser" shall have the meaning ascribed to such term in the Preamble.

"Purchaser Closing Certificate" means (a) if delivered in connection with the Initial Closing, a certificate of each Purchaser, dated as of the Initial Closing Date, certifying that the conditions set forth in Section 2.4(a)(i) have been met as of the Initial Closing Date, or (b) if delivered in connection with a Subsequent Closing, a certificate of each Purchaser, dated as of such Subsequent Closing Date, certifying that the conditions set forth in Section 2.4(b)(i) have been met as of such Subsequent Closing Date, in either case in a form reasonably acceptable to the Company.

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.8.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Initial Closing Date, among the Company and the Purchasers, in the form of Exhibit C attached hereto.

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

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

"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.

"Securities" means the Senior Preferred Stock and the Underlying Shares.

"Securities Act" shall have the meaning ascribed to such term in the Preamble.

"Senior Preferred Stock" means the shares of the Company's Senior Convertible Preferred Stock issued from time to time hereunder, having the rights, preferences and privileges set forth in the Certificate of Designation.

"Shareholder Approval" shall have the meaning ascribed to such term in Section 4.14.

"Shareholder Meeting" shall have the meaning ascribed to such term in Section 4.14.

"Shareholder Meeting Deadline" shall have the meaning ascribed to such term in Section 4.14.

"Shareholder Approval Notice" shall have the meaning ascribed to such term in Section 4.14.

"Shareholder Resolutions" shall have the meaning ascribed to such term in Section 4.14.

"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).

"Solvent" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto).

"Subscription Amount" means each of the Initial Subscription Amounts and any Subsequent Subscription Amounts.

"Subsequent Closing" means the sale of the Closing Shares pursuant to Section 2.1(b).

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

"Subsequent Closing Notice" means a notice, in the form of Exhibit D attached hereto, pursuant to which, (a) the Company may, in its sole discretion from time to time from the date hereof until December 31, 2025 request that the Purchasers subscribe for Closing Shares at a Subsequent Closing, and (b) the Purchasers may, in their sole discretion upon written notice to the Company within three (3) Business Days of receipt thereof, accept or reject such request (and if no such notice is delivered by the Purchasers within such time period, such Subsequent Closing Notice shall be deemed rejected and shall be null and void).

"Subsequent Subscription Amount" means, as to each Purchaser, the aggregate amount to be paid for Closing Shares purchased in any Subsequent Closing, in United States dollars and in immediately available funds; provided, however, that in no event shall the aggregate Subsequent Subscription Amounts in any Subsequent Closing be less than the Minimum Subsequent Subscription Amount; provided further, however, that in no event shall the aggregate Subscription Amounts under this Agreement be greater than the Maximum Aggregate Subscription Amount.

"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 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.

"Termination Date" shall have the meaning ascribed to such term in Section 5.1.

"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 Designation, the Registration Rights Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"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.

"Underlying Shares" means the shares of Common Stock issuable upon conversion of any shares of Senior Preferred Stock that have been issued hereunder.

"Voting Agreement and Consent" means the Voting Agreement and Consent, dated as of the Initial Closing Date, among the Company and the Voting Parties, in the form of Exhibit E attached hereto.

"Voting Parties" means each of EW Healthcare Partners, LP and EW Healthcare Partners-A, LP, Marlin Fund, Limited Partnership; Marlin Fund II, Limited Partnership; Marlin Fund III, Limited Partnership; Marlin Master Fund Offshore II, LP, MSS VC SPV LP and Healthquest Partners II, L.P.

ARTICLE II.
PURCHASE AND SALE

2.1. Closings.

(a) Initial Closing. Upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, the number of Closing Shares as set forth for each Purchaser on the signature pages hereto. Each Purchaser acquiring Closing Shares at the Initial Closing shall deliver to the Company, via wire transfer, immediately available funds equal to such Purchaser's Initial Subscription Amount pursuant to Section 2.3(a)(ii)(2), and the Company shall deliver to each Purchaser its respective Closing Shares pursuant to Section 2.3(a)(i)(2), and the Company and each Purchaser shall deliver the other items set forth in Section 2.3(a) deliverable at the Initial Closing. The Initial Closing shall occur remotely immediately following satisfaction of the covenants and conditions set forth in Section 2.4(a), it being understood and agreed that the Initial Closing shall occur no later than 11:59 p.m. (New York City time) on the date hereof (such date, the "Initial Closing Date").

(b) Subsequent Closings. The Company may, in its sole discretion from time to time from the date hereof until December 31, 2025, deliver a Subsequent Closing Notice to the Purchasers, and the Purchasers may, in their sole discretion upon written notice to the Company within three (3) Business Days of receipt thereof, accept or reject such Subsequent Closing Notice (and if no such notice is delivered by the Purchasers within such time period, such Subsequent Closing Notice shall be deemed rejected and shall be null and void). Once a Subsequent Closing Notice has been accepted in accordance with the preceding sentence, upon the terms and subject to the conditions set forth herein, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, the number of Closing Shares as set forth for each Purchaser in such Subsequent Closing Notice, which for the avoidance of doubt, shall be on a pro rata basis consistent with the Purchasers' Closing Shares at the Initial Closing, unless otherwise agreed to by the Parties. Each Purchaser acquiring Closing Shares at a Subsequent Closing shall deliver to the Company, via wire transfer, immediately available funds equal to such Purchaser's Subsequent Subscription Amount pursuant to Section 2.3(b)(ii)(1), and the Company shall deliver to each Purchaser its respective Closing Shares pursuant to Section 2.3(b)(i)(1), and the Company and each Purchaser shall deliver the other items set forth in Section 2.3(b) deliverable at such Subsequent Closing. Each Subsequent Closing shall occur remotely immediately following satisfaction of the covenants and conditions set forth in Section 2.4(b) (each such date, a "Subsequent Closing Date"). Notwithstanding the foregoing, upon written notice to the Company accompanying any Subsequent Closing Notice, any Purchaser may designate one or more of its Affiliates to purchase Closing Shares in a Subsequent Closing, in which case such Affiliate shall execute a joinder to this Agreement, in a form reasonably acceptable to the Company, and shall thereafter constitute a "Purchaser" hereunder for all purposes.

2.2. Purchase Price. The purchase price for each Closing Share to be purchased under this Agreement shall be equal to the product of (a) the lower of (x) the closing price of the Common Stock (as reflected on Nasdaq.com) on the Trading Day immediately preceding the applicable Closing Date or (y) the average closing price of the Common Stock (as reflected on Nasdaq.com) for the five (5) Trading Days immediately preceding the applicable Closing Date, multiplied by (b) two (2) (the "Purchase Price"). For the avoidance of doubt, the number of Closing Shares to be issued to each Purchaser at a Closing shall be equal to the quotient or (i) such Purchaser's Subscription Amount, divided by (ii) the Purchase Price.

2.3. Closing Deliveries.

(a) Initial Closing.

(i) On or prior to the Initial Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

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

(2) for each Purchaser, evidence of a book entry transfer evidencing a number of shares of Senior Preferred Stock as set forth on such Purchaser's signature page hereto, registered in the name of such Purchaser, and evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of the State of Delaware;

(3) the Company's wire instructions;

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

(5) the Voting Agreement and Consent, duly executed by the Company and the Voting Parties;

(6) a Company Legal Opinion, duly executed by Company Counsel; and

(7) a Company Closing Certificate, duly executed by an authorized officer of the Company.

(ii) On or prior to the Initial Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:

(1) this Agreement, duly executed by such Purchaser;

(2) such Purchaser's Initial Subscription Amount by wire transfer to the account specified in writing by the Company;

(3) the Registration Rights Agreement, duly executed by such Purchaser; and

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

(5) a Purchaser Closing Certificate, duly executed by an authorized officer of such Purchaser.

(b) Subsequent Closings.

(i) On or prior to each Subsequent Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(1) for each Purchaser, evidence of a book entry transfer evidencing a number of shares of Senior Preferred Stock as set forth for such Purchaser in the applicable Subsequent Closing Notice, registered in the name of such Purchaser;

(2) the Company's wire instructions (if different from the most recent wire instructions delivered pursuant to Section 2.3(a)(i)(3) or this Section 2.3(b)(i)(2));

(3) a Company Legal Opinion, duly executed by Company Counsel; and

(4) a Company Closing Certificate, duly executed by an authorized officer of the Company.

(ii) On or prior to each Subsequent Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:

(1) such Purchaser's Subsequent Subscription Amount by wire transfer to the account specified in writing by the Company (it being understood and agreed that (A) in no event shall the aggregate Subsequent Subscription Amounts in any Subsequent Closing be less than the Minimum Subsequent Subscription Amount, and (B) in no event shall the aggregate Subscription Amounts under this Agreement be greater than the Maximum Aggregate Subscription Amount); and

(2) a Purchaser Closing Certificate, duly executed by an authorized officer of the Purchaser.

2.4. Closing Conditions.

(a) Initial Closing.

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

(1) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Initial Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(2) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Initial Closing Date shall have been performed; and

(3) the delivery by each Purchaser of the items set forth in Section 2.3(a)(ii) of this Agreement.

(ii) The respective obligations of the Purchasers hereunder in connection with the Initial Closing are subject to the following conditions being met:

(1) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the Initial Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(2) all obligations, covenants and agreements of the Company required to be performed at or prior to the Initial Closing Date shall have been performed;

(3) the delivery by the Company of the items set forth in Section 2.3(a)(i) of this Agreement;

(4) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;

(5) all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Closing Shares, including without limitation, those required by the Trading Market, if any, shall have been obtained by the Company; and

(6) from the date hereof to the Initial Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market, and, at any time prior to the Initial Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Closing Shares at the Initial Closing.

(b) Subsequent Closings.

(i) The obligations of the Company hereunder in connection with each Subsequent Closing are subject to the following conditions being met:

(1) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on such Subsequent Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(2) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to such Subsequent Closing Date shall have been performed; and

(3) the delivery by each Purchaser of the items set forth in Section 2.3(b)(ii) of this Agreement.

(ii) The respective obligations of the Purchasers hereunder in connection with each Subsequent Closing are subject to the following conditions being met:

(1) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on such Subsequent Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(2) all obligations, covenants and agreements of the Company required to be performed at or prior to such Subsequent Closing Date shall have been performed;

(3) the delivery by the Company of the items set forth in Section 2.3(b)(i) of this Agreement;

(4) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;

(5) all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Closing Shares, including without limitation, those required by the Trading Market, if any, shall have been obtained by the Company; and

(6) from the date hereof to such Subsequent Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market, and, at any time prior to such Subsequent Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Closing Shares at such Subsequent Closing.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties of the Company. The Company hereby makes the following representations and warranties to each Purchaser, except as disclosed in the Company's filings with the Commission following December 31, 2022 (with respect to such filings, excluding any disclosures set forth in any risk factors or "forward looking statements" within the meaning of the Securities Act):

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

The execution, delivery and performance by the Company of the Transaction Documents to which it is a party do not and will not (i) conflict with the Company's or any of its Subsidiaries' organizational documents, including their respective certificate of incorporation and bylaws, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) 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, (iv) 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 (v) 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.

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(s), no further action is required by the Company, the Board of Directors or the Company's shareholders in connection herewith or therewith.

(b) Intellectual Property. 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.

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 (i) distributed to third parties at no charge or a minimal charge, (ii) licensed to third parties for the purpose of creating modifications or derivative works, or (iii) subject to the terms of such Open Source License.

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.

No settlement or consents, covenants not to sue, nonassertion 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.

(c) 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.

(d) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other Governmental Authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to the Registration Rights Agreement and the declaration of effectiveness by the Commission of the Registration Statement, (ii) the notice and/or application(s) to the applicable Trading Market for the issuance and sale of the Securities and the listing of the shares of Common Stock for trading thereon in the time and manner required thereby, and (iii) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws.

(e) Litigation. There 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). Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any action, suit, investigation or proceeding involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the Knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(f) No Broker's Fees. 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 Purchasers for a brokerage commission, finder's fee or like payment in connection with the Transaction Documents and the transactions contemplated thereby.

(g) Financial Statements. As of their respective dates, the financial statements of the Company included in the Company's filings with the Commission complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with GAAP, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of the Company to Purchaser, which is not included in the Company's filings with the Commission contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in its filings with the Commission (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in compliance with GAAP and the rules and regulations of the Commission. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

(h) No General Solicitation. Neither the Company nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has engaged directly or indirectly in any form of general solicitation or general advertising (within the meaning of Rule 502(c) of Regulation D) in connection with the offering, issuance and sale of the Senior Preferred Stock in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

(i) Accredited Investors. Neither the Company nor any of its Subsidiaries has offered or sold any of the Closing Shares to any person or entity whom it reasonably believes is not an "accredited investor" (as defined in Rule 501(a) of Regulation D).

(j) Solvency. The Company is, and upon consummation of the transactions contemplated by the Transaction Documents will be, Solvent. The Company and each of its Subsidiaries, when taken as a whole, is, and upon consummation of the transactions contemplated by the Transaction Documents will be, Solvent. Neither the Company nor any Subsidiary is in default with respect to any indebtedness.

(k) 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.

(l) Internal Accounting and Disclosure Controls. The Company and each of its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the Commission, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. Neither the Company nor any of its Subsidiaries has received any notice or correspondence from any accountant, Governmental Authority or other Person relating to any potential material weakness or significant deficiency in any part of the internal controls over financial reporting of the Company or any of its Subsidiaries.

(m) Regulatory Compliance. 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.

None of the Company, any of its Subsidiaries, or any of the Company's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of the Company, any of its Subsidiaries, or to the Knowledge of the Company, any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

(n) Sarbanes-Oxley Act. The Company and each Subsidiary is in compliance in all material respects with any and all applicable requirements of the Sarbanes-Oxley Act of 2002, as amended, and any and all applicable rules and regulations promulgated by the Commission thereunder.

(o) Tax Returns and Payments; Pension Contributions. The Company and each of its Subsidiaries have timely filed all required tax returns and reports (or extensions thereof), and the Company and each of its Subsidiaries, have timely paid all foreign, federal, state, and local Taxes, assessments, deposits and contributions 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 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 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.

(p) 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 Purchaser, 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 Purchaser, 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).

(q) 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).

(r) Valid Issuance. The Closing Shares (a) 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, (b) will not, as of each applicable Closing Date, be subject to any preemptive, participation, rights of first refusal or other similar rights, and (c) assuming the accuracy of each Purchaser's representations and warranties hereunder, (i) will be issued exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and (ii) will be issued in compliance with all applicable state and federal laws concerning the issuance of the Closing Shares.

The Underlying Shares have been duly and validly authorized and reserved by the Company (to the extent required to be converted under the terms hereof) and, when issued upon conversion in accordance with this Agreement and the Certificate of Designation, 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.

(s) 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. In addition, (A) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or Capital Stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or Capital Stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or Capital Stock of the Company or any of its Subsidiaries; (B) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act (except pursuant to the Registration Rights Agreement); (C) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (D) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities; and (E) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement.

(t) 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(t)).

(u) Operations in the Ordinary Course. Except as set forth in or contemplated by the Company's filings with the Commission since March 31, 2023, since March 31, 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.

(v) 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.

(w) Transactions with Affiliates. None of the officers or directors of the Company or any Subsidiary and, to the Knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the Knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, shareholder, member or partner, in each case in excess of $120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(x) No Integrated Offering. Assuming the accuracy of the Purchasers' 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 this 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.

(y) Listing Rules. Except for the Shareholder Approval(s), 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.

(z) Rule 506(d) Bad Actor Disqualification Representations and Covenants.

(i) No Disqualification Events. Neither the Company, nor any of its predecessors, affiliates, any manager, executive officer, other officer of the Company participating in the offering, 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, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity as of the date of this Agreement and on each Closing Date (each, a "Company Covered Person" and, together, "Company 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"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine (A) the identity of each person that is a Company Covered Person; and (B) whether any Company Covered Person is subject to a Disqualification Event. The Company has complied with its disclosure obligations under Rule 506(e).

(ii) Other Covered Persons. The Company is not aware of any person (other than any Company Covered Person) who has been or will be paid (directly or indirectly) remuneration in connection with the purchase and sale of the Securities who is subject to a Disqualification Event (each, an "Other Covered Person").

(iii) Reasonable Notification Procedures. With respect to each Company Covered Person, the Company has established procedures reasonably designed to ensure that the Company receives notice from each such Company Covered Person of (A) any Disqualification Event relating to that Company Covered Person, and (B) any event that would, with the passage of time, become a Disqualification Event relating to that Company Covered Person; in each case occurring up to and including each Closing Date.

(iv) Notice of Disqualification Events. The Company will notify the Purchasers immediately in writing upon becoming aware of (A) any Disqualification Event relating to any Company Covered Person and (B) any event that would, with the passage of time, become a Disqualification Event relating to any Company Covered Person and/or Other Covered Person.

3.2. Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby makes the following representations and warranties to the Company:

(a) Organization; Authority. Such Purchaser 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 Purchaser 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 Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, 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) Own Account. Such Purchaser 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 Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Closing Shares, it was, and as of the date hereof it is, and on each date on which it converts any Senior Preferred Stock, 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.

(d) Experience of Such Purchaser. Such Purchaser, 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 Purchaser 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 Purchaser 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 Purchaser or its advisors, if any. Such Purchaser acknowledges and understands that its investment in the Securities involves a significant degree of risk.

(e) General Solicitation. Such Purchaser 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 Purchaser's knowledge, any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser 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.

(g) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser'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 Purchaser'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 Purchaser and whom such Purchaser has taken reasonable actions to cause them to maintain such confidentiality, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

(h) No Governmental Review. Such Purchaser 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.

(i) No Conflicts. The execution, delivery and performance by such Purchaser of this Agreement and the consummation by such Purchaser of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Purchaser 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 Purchaser 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 Purchaser, 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 Purchaser to consummate the transactions contemplated hereby.

(j) No Legal, Tax or Investment Advice. Such Purchaser understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Purchasers in connection with the purchase of the Securities constitutes legal, tax or investment advice. Such Purchaser 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.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1. Transfer Restrictions.

(a) The 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 Purchaser 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 Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the 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."

The Company acknowledges and agrees that a Purchaser 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 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 Purchaser 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 Purchaser'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 Securities, including, if the 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.

(c) Instruments, whether certificated or uncertificated, evidencing the 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 each 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 Senior Preferred Stock is converted at a time when there is an effective registration statement to cover the resale of the 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 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 each Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, as soon as practicable and no later than five Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate or book entry (at the election of such Purchaser, provided 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 Purchaser 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 Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser.

4.2. Furnishing of Information; Public Information. Until no Purchaser 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 Purchaser 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 Purchaser and make publicly available in accordance with Rule 144(c) such information as is required for such Purchaser to sell the Closing Shares, including without limitation, under Rule 144. The Company further covenants that it will take such further action as such Purchaser may reasonably request, to the extent required from time to time to enable such Purchaser to sell such Closing Shares without registration under the Securities Act, including without limitation, within the requirements of the exemption provided by Rule 144.

4.3. 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.

4.4. 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 Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company, or any of its officers, directors, employees or agents. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser 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 Purchaser, or without the prior consent of each Purchaser, 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 Purchasers, or to the extent consistent with past practice, (a) use the name of a Purchaser or any of its Affiliates (or any other derivative name of a Purchaser 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 Purchaser with prior notice of such disclosure permitted under this clause (b).

4.5. 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 Purchaser 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 Purchaser 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 Purchasers.

4.6. 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 4.4, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser 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 Purchaser 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 Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such purchaser 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 Purchaser 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 Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.7. Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (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.

4.8. Indemnification of Purchasers. Subject to the provisions of this Section 4.8, the Company will defend, indemnify and hold each Purchaser 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 Purchaser (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 "Purchaser 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 Purchaser 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 Purchaser 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 Purchaser Parties, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Parties may have with any such shareholder or any violations by such Purchaser Parties of state or federal securities laws or any conduct by such Purchaser Parties which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser 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 Purchaser Party. Any Purchaser 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 Purchaser 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 Purchaser 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 Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to (A) any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents, or (B) any conduct by such Purchaser Party which constitutes gross negligence or willful misconduct. The indemnification required by this Section 4.8 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 Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.9. 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.

4.10. 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 each Closing, the Company shall apply to list or quote all of the applicable Underlying Shares on such Trading Market and promptly secure the listing of all of such 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 Underlying Shares, and will take such other action as is necessary to cause all of the 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.

4.11. Conversion Procedures. The form of Notice of Conversion included in the Certificate of Designation sets forth the totality of the procedures required of the Purchasers in order to convert the Senior Preferred Stock. 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 Senior Preferred Stock, unless required by the Transfer Agent. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Senior Preferred Stock. The Company shall honor conversions of the Senior Preferred Stock and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents, including any limits on convertibility as set forth in the Certificate of Designation.

4.12. Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, 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 4.4. Each Purchaser, severally and not jointly with the other Purchasers, 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 4.4, such Purchaser 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 Purchaser 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 4.4, (ii) no Purchaser 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 4.4 and (iii) no Purchaser 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 4.4. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser'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.

4.13. 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 Purchaser. 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 Purchasers at each 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 Purchaser.

4.14. Shareholder Approval.

(a) Upon written notice delivered by the Purchasers to the Company (a "**Shareholder Approval Notice**") at any time when there are shares of Senior Preferred Stock issued and outstanding which cannot be converted into Underlying Shares due to the Exchange Cap (such Underlying Shares, the "**Capped Shares**"), the Company shall file with the Commission, and provide to each shareholder entitled to vote at an annual or special meeting of shareholders of the Company, a proxy statement, in a form reasonably acceptable to the Purchasers, soliciting the affirmative vote of such shareholders in favor of resolutions ("**Shareholder Resolutions**") approving the issuance of all Capped Shares (a "**Shareholder Approval**") at such annual or special meeting (a "**Shareholder Meeting**"). The Company shall hold such Shareholder Meeting no later than seventy-five (75) days after the date of the Shareholder Approval Notice (the "**Shareholder Meeting Deadline**"). The Board of Directors shall recommend that the Company's shareholders vote in favor of such Shareholder Resolutions at such Shareholder Meeting, subject to satisfaction of their fiduciary duties, and the Company shall use reasonable best efforts to obtain such Shareholder Approval, it being acknowledged and agreed that reasonable best efforts may include adjourning or postponing such Shareholder Meeting to solicit additional votes in favor of such Shareholder Approval.

(b) The Purchasers may deliver up to three (3) Shareholder Approval Notices pursuant to this Section 4.14; provided, however, that no Shareholder Approval Notice may be delivered, or will be effective, unless both (i) no prior Shareholder Meeting has been held within six (6) months prior to the Shareholder Meeting Deadline; and (ii) either (A) the aggregate Purchase Price corresponding to the Capped Shares or (B) the aggregate market value of the Capped Shares on the Trading Market (calculated at the time of the Shareholder Approval Notice) exceeds two million dollars ($2,000,000).

(c) For the avoidance of doubt, maximum conversions of the Senior Preferred Stock may occur to the extent not limited by the Exchange Cap, subject to the terms and conditions of this Agreement and the Certificate of Designation.

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 Initial Closing upon which no Purchaser holds any shares of Senior Preferred Stock (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) prior to the Termination Date.

5.2. Fees and Expenses. At the Initial Closing, the Company shall pay the reasonable and documented fees and expenses of Barnes & Thornburg, LLP, the counsel for Purchaser ("Purchaser Counsel"), in an amount not to exceed $75,000 (the "Expense Cap"). 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 Purchaser), stamp taxes and other similar taxes and duties levied in connection with the delivery of any Securities to the Purchasers. In addition, the Company shall pay the reasonable and documented fees and expenses of Purchaser Counsel in connection with any amendment, modification, waiver or consent required or requested by the Company following the Initial Closing, which fees and expenses shall not be subject to the Expense Cap.

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 Purchasers holding a majority of the Securities then outstanding, which for this purpose must include EW Healthcare Partners, L.P. or any of its Affiliates holding Securities, or, in the case of a waiver, by the Party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) 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 Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser, Any amendment effected in accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5.6. Headings. 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.

5.7. 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 Purchaser (other than by merger). Any Purchaser (including any assignee of a Purchaser in accordance with Section 2.1(b) hereof) may assign any or all of its rights under this Agreement to any Person to whom such Purchaser 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 "Purchasers."

5.8. No Third-Party Beneficiaries. This Agreement is intended for the benefit of the Parties and their respective successors and permitted assigns (including any assignee of a Purchaser in accordance with Section 2.1(b) hereof) 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 4.8.

5.9. 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 4.8, 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.

5.10. Survival. The representations and warranties contained herein shall survive the applicable Closing and the delivery of the Securities.

5.11. 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.

5.12. 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.

5.13. 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 Purchaser 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 Purchaser 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 the Senior Preferred Stock, the applicable Purchaser shall be required to return any Underlying Shares subject to any such rescinded Notice of Conversion concurrently therewith.

5.14. 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.

5.15. Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers 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.

5.16. Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser 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.

5.17. Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18. Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereof or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers 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 Purchaser 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 Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser 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 Purchasers 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 Purchasers. 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 Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers.

5.19. Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20. 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.

5.21. 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. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to 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.

5.22. **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.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the Parties have caused this Stock Purchase 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: CEO

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

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

EW HEALTHCARE PARTNERS, L.P.

By: Essex Woodlands Fund IX-GP, L.P., its General Partner

By: Essex Woodlands IX, LLC, its General Partner

By: /s/ R. Scott Barry

Name: R. Scott Barry
Title: Manager

Initial Subscription Amount: $1,922,649.20

Senior Preferred Stock: 270,035

Address for Notice:

EW Healthcare Partners, L.P.
21 WaterWay Ave, Suite 225
The Woodlands, TX 77380
Attn: R. Scott Barry
Email: sbarry@ewhealthcare.com

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

Barnes & Thornburg LLP
One N. Wacker Drive, Suite 4400
Chicago, IL 60606-2833
Attn: Bruce A. Zivian; Taylor K. Wirth
Email: bzivian@btlaw.com; Taylor.Wirth@btlaw.com

EW HEALTHCARE PARTNERS-A, L.P.

By: Essex Woodlands Fund IX-GP, L.P., its General Partner

By: Essex Woodlands IX, LLC, its General Partner

By: /s/ R. Scott Barry

Name: R. Scott Barry
Title: Manager

Initial Subscription Amount: $77,351.68

Senior Preferred Stock: 10,864

Address for Notice:

EW Healthcare Partners-A, L.P.
21 WaterWay Ave, Suite 225
The Woodlands, TX 77380
Attn: R. Scott Barry
Email: sbarry@ewhealthcare.com

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

Barnes & Thornburg LLP
One N. Wacker Drive, Suite 4400
Chicago, IL 60606-2833
Attn: Bruce A. Zivian; Taylor K. Wirth
Email: bzivian@btlaw.com; Taylor.Wirth@btlaw.com

EXHIBIT A

CERTIFICATE OF DESIGNATION

EXHIBIT B

LEGAL OPINION OF COMPANY COUNSEL

1. The Company is a validly existing corporation and in good standing under the laws of the State of Delaware.

2. The execution and delivery of the Transaction Documents by the Company and the issuance and sale of the Securities pursuant to the Purchase Agreement do not (a) constitute a material default under or a breach of any Reviewed Agreement, (b) violate any provision of the articles or bylaws of the Company, or (c) materially violate any U.S. Federal, New York or Trading Market statute, law, rule or regulation, as applicable, which, in our experience is typically applicable to transactions of the nature contemplated by the Transaction Documents.

3. All consents, approvals, authorizations, or orders of, and filings, registrations, and qualifications with any U.S. Federal regulatory authority or governmental body required for the issuance of the Securities has been made or obtained, other than filings required to be made under U.S. federal or "blue sky" laws, applicable Canadian securities laws and applicable stock exchange requirements that may be made properly after the issuance of the Securities.

4. The offer and sale of the Securities are exempt from the registration requirements of the Securities Act.

5. The execution and delivery of the Transaction Documents and the issuance of the Securities have been duly authorized by the Company, and the Transaction Documents have been duly executed and delivered by the Company.

6. The Company is not, and, after giving effect to the issue and sale of the Securities, will not be, required to be registered as an "investment company" under the 1940 Act.

7. The Securities have been duly authorized and upon issuance and delivery against payment therefore in accordance with the terms of the Purchase Agreement, will be validly issued, fully paid and nonassessable.

EXHIBIT C

REGISTRATION RIGHTS AGREEMENT

EXHIBIT D

SUBSEQUENT CLOSING NOTICE

_____, 202__

This notice is provided pursuant to Section 2.1(b) of the Stock Purchase Agreement, dated as of May 15, 2023 (as amended from time to time, the "**SPA**"), among Venus Concept, Inc. (the "**Company**") and the purchasers party thereto (the "**Purchasers**"). Capitalized terms not otherwise defined in this notice have the meanings given to such terms in the SPA.

Subject to the terms and conditions set forth in the SPA, the Company hereby requests that the Purchasers collectively purchase the number of shares of Senior Preferred Stock set forth below. As set forth in the SPA, the Purchasers may, in their sole discretion upon written notice to the Company within three (3) Business Days of receipt of this notice, accept or reject the foregoing request (and if no such notice is delivered by the Purchasers within such time period, this notice shall be deemed rejected and shall be null and void).

Shares of Senior Preferred Stock:

_____

Capped Shares:

_____

Sincerely,

Venus Concept, Inc.

By: _____
Name: _____
Title: _____

EXHIBIT E

VOTING AGREEMENT AND CONSENT

Exhibit 10.2

RESALE REGISTRATION RIGHTS AGREEMENT

THIS RESALE REGISTRATION RIGHTS AGREEMENT, dated as of May 15, 2023 (this "**Agreement**"), has been entered into by and between **VENUS CONCEPT INC.**, a Delaware corporation (the "**Company**") and the Purchasers (as defined below).

BACKGROUND

Pursuant to the Stock Purchase Agreement, dated as of the date hereof (the "**SPA**"), by and between the Purchasers (as defined below) and the Company, the Purchasers have agreed to purchase from the Company up to $9,000,000 in shares of senior convertible preferred stock of the Company (the "**Preferred Stock**"), and the Company has agreed to provide to the Purchasers 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 Conversion Shares (as defined below).

AGREEMENT

In light of the above, the Company and the Purchasers 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.

"**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 SEC staff, or any comments, requirements or requests of the SEC 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.

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

"**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). For the avoidance of doubt, the Demand Registration Statement may, at the Company's election, be the Registration Statement filed pursuant to Section 2(a).

"**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.

"**Filing Deadline**" means July 15, 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."

"**Maximum Successful Underwritten Offering Size**" means, with respect to any Demand Offering sought to be structured as an 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 Demand Offering without adversely affecting the success of such offering.

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

"**Majority Holders**" means any one or more Holders holding more than 50% of the Registrable Securities, which for this purpose must include EW Healthcare Partners, LP or any of its Affiliates (as defined in the SPA) holding Registrable Securities.

"**Person**" or "**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.

"**Purchaser**" is any of one of the Purchasers.

"**Purchasers**" means the purchasers of the Preferred Stock identified on the signature pages to the SPA and each successor and assignee that becomes party to the SPA.

"**Registrable Securities**" means any Conversion Shares and any shares of capital stock issued or issuable with respect to Conversion 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 Conversion Shares or shares of capital stock issued or issuable with respect to Conversion Shares which cannot be registered for resale on a Registration Statement under Commission Guidance due to the associated Preferred Stock not being issued and outstanding as of, or within a sufficient period of time after, the applicable Effective Date.

"**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 Statemen**t" means the initial registration statement described above in this paragraph (the "**Initial Registration Statement**") and any additional registration statement or registration statements that are needed to sell additional 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).

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

"**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.

"**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 their 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 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 diligent 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 diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced by reducing or eliminating any securities to be included other than Registrable Securities.

(iv) In the event of a cutback under this Section 2(a), the Company shall give the 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 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 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 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, including by reason of its withdrawal or termination pursuant to Section 3(e), 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 applicable 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 applicable 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 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, 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 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 Registrations.

(i) Right to Demand Registration. Subject to the other provisions of this Section (2)(e), Holders will have the right, 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); provided, however, that no Demand Registration Notice may be delivered, or will be effective if:

(1) a prior Demand Offering was commenced within the past six (6) months and remains in process at the time such Demand Registration Notice is delivered;

(2) the Company has already effected three (3) Demand Offerings under this Section 2(e)(i); or

(3) the Demand Registration Notice is delivered during a Suspension Period.

Notwithstanding the foregoing, the Demanding Notice Holders may only deliver a Demand Registration Notice in accordance with this Section 2(e)(i) if either (i) the aggregate Purchase Price (as defined in the SPA) of the Preferred Stock of such Holder(s) corresponding to the Registrable Securities to be included in the requested Demand Offering or (ii) the aggregate market value of the Registrable Securities be included in the requested Demand Offering exceeds two million dollars ($2,000,000).

(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 related 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, which for this purpose must include EW Healthcare Partners, LP or any of its Affiliates holding Registrable Securities (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 three (3) Demand Offerings 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 any 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 Offerings Structured as Underwritten Offerings. 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)-(iv) 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 the Company shall determine to prepare and file with the Commission a registration 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 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 in Connection with Piggyback Registration. 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(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 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 SPA, 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 reasonable best efforts to cause all Conversion 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 the 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 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, defend 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 indemnify, defend 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 several 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 Purchaser, to the address described in Section 5.4 of the Purchase 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 or entity 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 hereto have executed this Resale Registration Rights Agreement as of the date first written above.

COMPANY:

VENUS CONCEPT INC.

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

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

PURCHASERS:

EW HEALTHCARE PARTNERS, L.P.

By: Essex Woodlands Fund IX-GP, L.P., its General Partner

By: Essex Woodlands IX, LLC, its General Partner

By: /s/ R. Scott Barry
Name: R. Scott Barry
Title: Manager

EW HEALTHCARE PARTNERS-A, L.P.

By: Essex Woodlands Fund IX-GP, L.P., its General Partner

By: Essex Woodlands IX, LLC, its General Partner

By: /s/ R. Scott Barry
Name: R. Scott Barry
Title: Manager

ANNEX A

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).

Securities may be sold directly or through agents designated from time to time. We will name any agent involved in the offering and sale of such shares and we will describe any commissions paid to the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, the agent will act on a best-efforts basis for the period of its appointment.

Agents may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments made by the agents, under agreements between us and the agents.

Agents may receive compensation in the form of discounts, concessions or commissions from us or our purchasers, as their agents in connection with the sale of securities. These agents may be considered to be underwriters under the Securities Act. As a result, discounts, commissions or profits on resale received by the agents may be treated as underwriting discounts and commissions. Each accompanying prospectus supplement will identify any such agent and describe any compensation received by them from us.

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.

ANNEX B

VENUS CONCEPT INC.

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of 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 May 15, 2023 (the "Registration Rights Agreement"), among the Company and the Purchasers (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 99.1

Venus Concept Inc. Announces Multi-Tranche Private Placement of Senior Convertible Preferred Stock for up to $9 Million with EW Healthcare Partners

TORONTO, May 15, 2023 (GLOBE NEWSWIRE) – Venus Concept Inc. ("Venus Concept" or the "Company") (NASDAQ: VERO), a global medical aesthetic technology leader, today announced that it has entered into a stock purchase agreement (the "Stock Purchase Agreement") with funds affiliated with EW Healthcare Partners (the "Investors"). Pursuant to the Stock Purchase Agreement, the Company may issue and sell to the Investors up to $9,000,000, before offering expenses, in shares of senior convertible preferred stock (the "Senior Preferred Stock"), in multiple tranches from time to time until December 31, 2025. Offering proceeds will be used for working capital and general corporate purposes.

At the initial closing, expected to occur today, the Investors will purchase 280,899 Senor Preferred Stock at a price of $7.12 per share for total gross proceeds to the Company of $2.0 million. Following the initial closing, each subsequent tranche request submitted by the Company to the Investors is subject to acceptance by the Investors.

The purchase price for each share of Senior Preferred Stock purchased in each tranche floats at a price equal to the product of (a) the lower of (i) the closing price of the Company's common stock on the trading day immediately preceding the applicable tranche closing date and (ii) the average closing price of the Company's common stock for the five trading days immediately preceding the applicable closing date, multiplied by (b) two. Each share of Senior Preferred Stock is convertible into common shares on a 1-for-2.6667 basis at the option of (i) the Investors at any time or (ii) the Company within 30 days following the occurrence of specified trigger events.

"We appreciate the continued support from EW Healthcare Partners, a longstanding investor in the Company," said Rajiv De Silva, Chief Executive Officer of Venus Concept. "This financing provides Venus Concept with valuable capital to execute our near-to-intermediate term strategic objectives. We look forward to working with EW Healthcare Partners to access funding from this multi-tranche private placement as needs arise."

Additional information regarding the Stock Purchase Agreement 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 exclusive placement agent and financial advisor to the Company in the offering.

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, and will be sold in a private placement pursuant to Section 4(a)(2) and/or Regulation D of the Securities Act. 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 Shares acquired by the investors in the private placement, including the Common Shares issuable upon conversion of the Senior 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.

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 expecting timing of the initial closing of the sale of Senior Preferred Stock and whether or not any subsequent sales of the Senior Preferred Stock will occur. 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