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): January 18, 2024

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.

Note Purchase Agreement

On January 18, 2024, Venus Concept Inc. (the "**Company**"), Venus Concept USA Inc. ("**Venus USA**"), Venus Concept Canada Corp. ("**Venus Canada**") and Venus Concept Ltd. ("**Venus Israel**," and together with Venus USA and Venus Canada, the "**Guarantors**") entered into a Note Purchase and Registration Rights Agreement (the "**Note Purchase Agreement**") with EW Healthcare Partners, L.P. ("**EW**") and EW Healthcare Partners-A, L.P. ("**EW-A**," and together with EW, the "**Investors**"). Pursuant to the Note Purchase Agreement, the Company issued and sold to the Investors $2,000,000 in aggregate principal amount of secured subordinated convertible notes (the "**Notes**").

The terms of the Notes are described below under "Notes." The Notes are secured by a Guaranty and Security Agreement, dated January 18, 2024 (the "**Security Agreement**"), the terms of which are described below under "Security Agreement."

Under the Note Purchase Agreement, the Company is required to file one or more demand shelf registration statements registering the resale of the shares of the Company's common stock ("**Common Stock**") issuable upon conversion of the Notes. The Company is required to file the initial registration statement no later than March 18, 2024 and cause such registration statement to be declared effective by the U.S. Securities and Exchange Commission (the "**SEC**") as soon as practicable thereafter.

The Note Purchase Agreement contains customary representations, warranties and covenants by the Company, as well as 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 the Note Purchase Agreement were made only for purposes of such agreement; are solely for the benefit of the parties; may be subject to qualifications and limitations agreed upon by the parties in connection with negotiating such agreement; and may be subject to materiality and knowledge qualifiers applicable to the parties that differ from those applicable to the investors generally. Investors should not rely on such representations, warranties or covenants, or any description thereof, as characterizations of the actual state of facts or condition of the Company.

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

Notes

The Notes accrue interest at a rate equal to the 90-day adjusted term Secured Overnight Financing Rate (SOFR) plus 8.50% per annum; *provided, however,* that if there is an Event of Default (as defined below), the then-applicable interest rate will increase by 4.00% per annum. Interest is payable in kind in arrears on the last business day of each calendar quarter of each year after the original issuance date, beginning on March 31, 2024. The Notes mature on December 9, 2025, unless earlier redeemed or converted, at which time all outstanding principal and interest is payable in cash, except as described below.

At any time prior to the maturity date, a holder may convert the Notes at their option into shares of Common Stock at the then-applicable conversion rate. The initial conversion rate is 799.3605 shares of Common Stock per $1,000 principal amount of Notes, which represents an initial conversion price of approximately $1.251 per share of Common Stock. Accordingly, a maximum of 1,598,721 shares of Common Stock may be issued upon conversion of the Notes at the initial conversion rate. The conversion rate is subject to customary anti-dilution adjustments.

If a holder seeks to convert the Notes, but such conversion cannot be fully effectuated due to the application of the rules of the Nasdaq Capital Market, the Company is required to use commercially reasonable efforts to file a proxy statement with the SEC within 75 days after such desired conversion seeking requisite stockholder approval to issue all shares of Common Stock in excess of such limitation imposed by the Nasdaq Capital Market.

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

The Investors have certain rights to require a successor entity to assume the Notes upon certain corporate events that constitute a "**Fundamental Transaction**," as defined in the Notes. A Fundamental Transaction includes certain business combination transactions involving the Company. In the event of a **Change of Control**, as defined in the Notes, the Notes are redeemable at the option of the holder at par plus accrued and unpaid interest on the Notes subject to redemption, without a premium. A Change of Control includes acquisitions of 50% or more of the voting equity of the Company, other than by certain existing stockholders.

The Notes have customary provisions relating to the occurrence of "**Events of Default**," as defined in the Notes. An Event of Default includes the following: (i) the Company's failure to deliver the required number of shares of Common Stock issuable upon conversion of the Notes within ten trading days after the applicable conversion date; (ii) the Company's failure to pay the holder any principal, interest or any other amount due under any other transaction agreement; (iii) a default under that certain Loan and Security Agreement, dated December 8, 2020, among Venus USA, as borrower, the Company, as guarantor, and City National Bank of Florida, as agent and lender; (iv) certain events of bankruptcy, insolvency and reorganization involving any obligor, or any of the Company's subsidiaries; (v) the rendering of certain final judgments against the Company or any guarantor for the payment of more $500,000, where such judgment remains unpaid for a period of thirty (30) consecutive days; (vi) the Company's failure to comply with certain covenants in the Notes; (vii) any representation or warranty of the Company in any transaction document is incorrect or misleading in any material respect when given; (viii) the failure of any obligor to comply with any covenants in the transaction documents which is not cured within 30 days; (ix) the failure of any material provision of the transaction document to be enforceable against the Company or its subsidiaries party thereto; and (x) the Company's Common Stock ceasing to be quoted on the Nasdaq Capital Market.

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

In the case of conversion of the Notes on the maturity date, any redemption date or any date of any required payment upon an Event of Default, as applicable, on which the entire outstanding principal of Notes is to be repaid, redeemed or prepaid in full, the Company, at the option of the holder, may satisfy its obligation to pay cash by delivering a combination of cash and shares of Common Stock, with such shares of Common Stock valued in accordance with the then-effective conversion rate.

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

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

The foregoing description of the Notes does not purport to be complete and is qualified in its entirety by reference to the full text of the form of Note, copies of which are filed hereto as Exhibit 10.2 and Exhibit 10.3.

Security Agreement

On January 18, 2024, the Company and the Guarantors entered into the Security Agreement with EW, as collateral agent. Pursuant to the Security Agreement, the Guarantors jointly and severally guaranteed to the Investors the prompt payment of all outstanding amounts under the Notes when due. The Guarantors also granted to the Investors a security interest in substantially all of their assets to secure the obligations under the Notes.

Pursuant to the Security Agreement, during the continuance of an Event of Default under the Notes, if the Company is unable to repay all outstanding amounts under the Notes, the Investors may, subject to the terms of the CNB Subordination Agreement (as defined below), foreclose on the collateral to collateralize such indebtedness. Any such foreclosure could significantly affect the Company's ability to operate its business.

The Security Agreement contains various covenants that limit the Company's ability to engage in specified types of transactions. Subject to limited exceptions, these covenants include restrictions on the Company's ability, to incur, create or permit to exist additional indebtedness, or liens, and to make certain changes to its ownership structure, in each case without the Investor's consent.

The foregoing description of the Security Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Security Agreement, a copy of which is filed hereto as Exhibit 10.4.

CNB Subordination Agreement

On January 18, 2024, the Company and the Guarantors entered into a Subordination of Debt Agreement (the "**CNB Subordination Agreement**") with City National Bank of Florida ("**CNB**") and the Investors.

The CNB Subordination Agreement provides that the Notes are subordinated to the Company's existing secured indebtedness with CNB, in a manner consistent with the subordination of the Secured Subordinated Convertible Notes, dated October 4, 2023 (the "**Madryn Notes**"), issued to Madryn Health Partners, LP and Madryn Health Partners (Cayman Master) (collectively, "**Madryn**") pursuant to those certain existing Subordination of Debt Agreements, dated as of December 8, 2020 entered into by the Company and the Guarantors, CNB, and Madryn (the "**Existing Subordination Agreements**"). The Notes and the Madryn Notes are secured by the same collateral, except that the Notes also receive a first priority perfected security interest and lien on the Company's right to receive certain amounts from the Internal Revenue Service in respect of certain employee retention credits claimed by the Company (defined in the Notes as the "ERC Claim").

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

Loan Modification Agreement

On January 18, 2024, the Company and the Guarantors entered into a Loan Modification Agreement (the "**Loan Modification Agreement**") with CNB and Madryn. The Loan Modification Agreement amends the Loan and Security Agreement, dated December 8, 2020, between Venus USA and CNB (the "**Original Main Street Loan Agreement**") to, among other things, satisfy the 2023 Minimum Deposit Requirements (as defined in the Loan Modification Agreement) and defer the testing of the Minimum Deposit Relationship obligations set forth in the Original Main Street Loan Agreement for the monthly periods ending on January 31, 2024, February 28, 2024 and March 31, 2024 until April 30, 2024.

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

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

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 above is incorporated by reference into this Item 3.02. The Notes were issued to the Investors in reliance upon Section 4(a)(2) of the Securities Act in transactions not involving any public offering. Any shares of Common Stock that may be issued upon conversion of the Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders.

Item 7.01. Regulation FD Disclosure.

On January 19, 2024, the Company issued a press release regarding the entry into the Note Purchase Agreement and the issuance of the Notes. 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 issuance of the Notes, the entry into the Note Purchase Agreement and Security Agreement, the CNB Subordination Agreement and the Loan Modification Agreement and any potential conversion of the Notes. 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
10.1	Note Purchase and Regristration Rights Agreement, dated January 18, 2024, by and among Venus Concept Inc., Venus Concept USA Inc., Venus Concept Canada Corp., Venus Concept Ltd., EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.
10.2	Form of Secured Subordinated Convertible Note Issued by Venus Concept Inc. to EW Healthcare Partners, L.P.
10.3	Form of Secured Subordinated Convertible Note Issued by Venus Concept Inc. to EW Healthcare Partners-A, L.P.
10.4	Guaranty and Security Agreement, dated January 18, 2024, by and among Venus Concept Inc., Venus Concept USA Inc., Venus Concept Canada Corp., Venus Concept Ltd. and EW Healthcare Partners, L.P., as Collateral Agent.
10.5	Subordination of Debt Agreement, dated January 18, 2024, by and among Venus Concept Inc., Venus Concept USA Inc., Venus Concept Canada Corp., Venus Concept Ltd., City National Bank of Florida, EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P.
10.6	Loan Modification Agreement, dated January 18, 2024, by and among Venus Concept Inc., Venus Concept USA Inc., Venus Concept Canada Corp., Venus Concept Ltd., City National Bank of Florida, Madryn Health Partners, LP and Madryn Health Partners (Cayman Master).
99.1	Press release dated January 19, 2024.
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: January 19, 2024

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

Exhibit 10.1

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED AS OF JANUARY 18, 2024.

NOTE PURCHASE AND REGISTRATION RIGHTS AGREEMENT

THIS NOTE PURCHASE AND REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of January 18, 2024, by and among Venus Concept Inc., a Delaware corporation with principal executive offices located at 235 Yorkland Blvd, Suite 900, Toronto, Ontario M2J 4Y8 (the "Company"), the Guarantors (as defined below) and each investor identified on the signature pages hereto (each, an "Investor" and collectively, the "Investors"), and EW Healthcare Partners, L.P., as collateral agent (in such capacity, the "Collateral Agent").

RECITALS

A. The Company, the Guarantors and each Investor are executing and delivering this Agreement in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506(b) of Regulation D ("Regulation D") as promulgated by the United States Securities and Exchange Commission (the "SEC") under the Securities Act.

B. Each Investor, severally and not jointly, wishes to purchase, and the Company wishes to issue and sell to each Investor, upon the terms and conditions stated in this Agreement, one or more secured convertible notes of the Company in substantially the form attached hereto as Exhibit A (collectively, the "Notes" and each, individually, a "Note") in the aggregate principal amount set forth across from such Investor's name under the heading "Principal Amount of Note" on the Schedule of Investors, which Notes shall be convertible on the terms stated therein into shares of the common stock, $0.0001 par value, of the Company (the "Common Stock," and the shares of Common Stock issuable pursuant to the terms of the Notes, including, without limitation, upon conversion or otherwise, collectively, the "Note Shares"). The Notes, the Note Shares and the Guarantees are collectively referred to herein as the "Securities."

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, the Guarantors and the Investors, intending to be legally bound hereby, agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

"ABL Facility" means that certain Fourth Amended and Restated Loan Agreement, dated as of August 26, 2021, among Venus Concept USA, Inc., Venus Concept Canada Corp., Venus Concept Inc., and City National Bank of Florida, as such agreement may be amended, restated, amended and restated or otherwise modified from time to time.

"Act" has the meaning set forth in Section 9.17.

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

"Agreement" has the meaning set forth in the Preamble.

"Allowable Grace Period" has the meaning set forth in Section 5.1(c)(xiv).

"Assignment Conditions" means collectively, (a) all interests (except as limited by this definition) of the Investors and all Notes must be assigned to one Person and, to the extent so requested, to such Person's Affiliates except as otherwise consented to in writing by the Company, (b) the Company has provided prior written consent to assignment of the Notes (which consent may be withheld in the Company's sole discretion), (c) the assignment of the Notes must be in accordance with an exemption from the registration requirements of the Securities Act and any applicable state securities laws and the Investors shall deliver to the Company a certification to such effect and shall execute and deliver all documents and agreements reasonably requested by the Company in connection therewith, including an opinion of counsel to the Investor if requested by the Transfer Agent, (d) immediately upon an assignment of the Notes, the Security Documents (other than the Guaranty and Security Agreement), the security interests granted therein and any liens against the Company, the Guarantors and the Collateral shall be terminated, released and discharged and the Investors will execute and deliver to the Company all documents and agreements requested by the Company in connection therewith and (e) any and all costs incurred by the Company or the Guarantors in connection with the assignment of the Notes shall be at the sole cost and expense of the Investors; provided, that, notwithstanding anything to the contrary set forth herein, if an Event of Default under Section 4.1(b), (c), (d) or (e) of the Notes has occurred and is continuing, the Company shall not have any consent right under (b) above with respect to any assignment, transfer or sale of the Note or this Agreement by any Investor, and subpart (d) of this definition shall not be applicable.

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

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

"Claims" has the meaning set forth in Section 7.1(a).

"Closing" means the closing of the issuance and sale of the Notes pursuant to Section 2.1.

"Closing Date" means January 18, 2024.

"CNB" means City National Bank of Florida.

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

"Collateral Agent" has the meaning set forth in the Preamble.

"Common Stock" has the meaning set forth in the Recitals.

"Company" has the meaning set forth in the Preamble.

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

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

"Exchange Cap" the maximum number of shares of Common Stock which the Company may issue upon conversion of the Notes without breaching the Company's obligations under the rules and regulations of the Trading Market.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations thereunder, official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any intergovernmental agreements entered into thereunder.

"Filing Deadline" means (a) with respect to the initial Registration Statement required to be filed pursuant to Section 5.1(a), the 60th calendar day after the Closing Date and (b) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

"FINRA" has the meaning set forth in Section 3.2(c).

"Foreign Investor" has the meaning set forth in Section 4.6(c).

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

"Governmental Authority" means the government of the United States, Canada, Israel or any other nation, or of any political subdivision thereof, whether state, provincial, territorial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Grace Period" has the meaning set forth in Section 5.1(c)(xiv).

"Guarantees" means the guaranty provided by each Guarantor pursuant to the Guaranty and Security Agreement.

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

"Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Closing Date, in substantially the form attached hereto as Exhibit B, by and among the Company, the Guarantors from time to time party thereto, and each holder of Notes.

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

"Indemnified Damages" has the meaning set forth in Section 7.1(a).

"Indemnified Party" has the meaning set forth in Section 7.1(b).

"Indemnified Person" has the meaning set forth in Section 7.1(a).

"Information" means all information received from an Obligor or any Subsidiary of an Obligor relating to the Obligors or any Subsidiary of an Obligor or any of their respective businesses, other than any such information that is available to the Investors on a nonconfidential basis prior to disclosure by such Obligor or any Subsidiary of such Obligor. Any Person required to maintain the confidentiality of Information as provided in Section 9.3 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

"Investor" has the meaning set forth in the Preamble.

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

"Israeli Investment Services Law" means the Israeli Regularization of Investment Advice, Investment Marketing and Investment Portfolio Management Law 5755-1995.

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

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

"Israeli Joint Investments in Trust Law" means the Israeli Joint Investments in Trust Law, 5754-1994.

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

"Israeli VAT Law" means the Israeli Value Added Tax Law, 5735-1975.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Madryn Intercreditor Agreement" means that certain Pari Passu Intercreditor Agreement dated as of the Closing Date by and among Madryn Health Partners, LP, Madryn Health Partners (Cayman Master), LP, EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P. and acknowledged and consented to by the Company.

"Material Adverse Effect" means a material adverse effect on (a) the legality, validity or enforceability of this Agreement of any of the Transaction Documents, (b) on the business, assets, properties, liabilities (actual or contingent) or financial condition of the Company and its subsidiaries, taken as a whole, or (c) on the Obligors' (taken as whole) ability to perform their obligations hereunder or under any of the Transaction Documents in any material respect on a timely basis.

"Material Contract" means any contract of the Company or any Subsidiary that has been filed as an exhibit to the SEC Reports pursuant to Item 601(b)(10) of Regulation S-K.

"Maximum Rate" has the meaning set forth in Section 9.18.

"MSPLP Facility" means that certain Loan and Security Agreement, dated as of December 8, 2020, among Venus Concept USA Inc., as borrower, the Company, as guarantor, and CNB, as agent and lender, together with any extension, renewal, refinancing or replacement thereof.

"Note Shares" has the meaning set forth in the Recitals.

"Notes" has the meaning set forth in the Recitals.

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

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

"PPSA" means the Personal Property Security Act (Ontario); provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral granted pursuant to the Transaction Documents is governed by the Personal Property Security Act as in effect in a Canadian jurisdiction other than the Province of Ontario, or the Civil Code of Quebec, "PPSA" means the Personal Property Security Act as in effect from time to time in such other jurisdiction, as applicable, for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Press Release" has the meaning set forth in Section 4.3.

"Recipient" means the Collateral Agent, any Investor, and any other recipient of any payment by or on account of any obligation of any Obligor under any Transaction Document.

"Registrable Securities" means (a) the Note Shares, and (b) any shares of capital stock issued or issuable with respect to the Note Shares and the Notes, including, without limitation, (i) as a result of any stock split, dividend, distribution, recapitalization or similar transaction and (ii) shares of capital stock of a Successor Entity (as defined in the Notes) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on conversion of the Notes.

"Registration Statement" means a registration statement or registration statements of the Company filed under the Securities Act covering Registrable Securities, including, in each case, 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, if any, in such registration statement.

"Regulation D" has the meaning set forth in the Recitals.

"Required Registration Amount" means 100% of the maximum number of Note Shares issuable upon conversion of the Notes (assuming for purposes hereof that any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes, except for the Exchange Cap).

"Responsible Officer" means the chief executive officer, president, general counsel, associate general counsel, senior vice president of finance or chief financial officer, in each case, of an Obligor. Any document delivered hereunder that is signed by a Responsible Officer of an Obligor shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Obligor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Obligor.

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

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

"Schedule of Investors" means the list of Investors attached hereto as Annex A.

"SEC" has the meaning set forth in the Recitals.

"SEC 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.

"SEC Reports" has the meaning set forth in Section 3.1(s).

"Securities Act" has the meaning set forth in the Recitals.

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

"Subordination Agreements" means, collectively, (a) those certain Subordination of Debt Agreements dated as of the Closing Date by and among one or more of the Obligors, EW Healthcare Partners, L.P., EW Healthcare Partners-A, L.P., and CNB and (b) each other subordination agreement, if any, entered into in connection with the transaction contemplated hereby in form and substance reasonably satisfactory to the Investors.

"Subsidiary" means any Person (a) in which the Company, directly or indirectly, owns more than 50% of the outstanding voting capital stock or any voting equity or similar interest of such Person or (b) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by the Company.

"Taxes" has the meaning set forth in Section 4.6(a).

"Trading Day" means (a) a day on which the Common Stock is traded on a Trading Market (other than the OTCBB), or (b) if the Common Stock is not listed or quoted on a Trading Market (other than the OTCBB), a day on which the Common Stock is traded in the over-the-counter market, as reported by the OTCBB, or (c) if the Common Stock is not listed or quoted on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported by the OTC Markets Group Inc. (or any similar organization or agency succeeding to its functions of reporting prices); provided, that, in the event that the Common Stock is not listed or quoted as set forth in clauses (a), (b) and (c) hereof, then Trading Day shall mean a Business Day.

"Trading Market" means whichever of the New York Stock Exchange, the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market or the OTCBB on which the Common Stock is listed or quoted for trading on the date in question.

"Transaction Documents" means this Agreement, including the Schedules, Annexes and Exhibits attached hereto, the Notes, the Security Documents, the Subordination Agreements, the Madryn Intercreditor Agreement, each of the other agreements or instruments entered into or executed by the parties hereto in connection with the transactions contemplated by the foregoing, and each other document that identifies itself as a "Transaction Document".

"Transfer Agent" means Computershare, or any successor transfer agent for the Company.

"VAT" means (a) any tax imposed in compliance with the Israeli VAT Law; or (b) any other consumption or value-added tax (Israeli or other foreign) which may be imposed or levied from time to time.

"Violations" has the meaning set forth in Section 7.1(a).

ARTICLE II
CLOSING

2.1 Closing. The Company hereby authorizes the issuance and sale to each Investor of Notes on the terms set forth herein. Subject to the terms and conditions set forth in this Agreement, at the Closing, the Company shall issue and sell the Notes to each Investor, and each Investor shall, severally and not jointly, purchase and accept the Notes in the principal amount set forth across from such Investor's name under the heading "Principal Amount of Note" on the Schedule of Investors, at a price equal to the principal face amount thereof. The Closing shall occur on the Closing Date and shall take place by delivery of the items to be delivered at Closing by facsimile or other electronic transmission.

2.2 Closing Deliverables.

(a) At the Closing, the Company shall deliver or cause to be delivered to each Investor a duly executed Note in the principal amount set forth across from such Investor's name under the heading "Principal Amount of Note" on the Schedule of Investors.

(b) At the Closing, each Investor shall deliver or cause to be delivered to the Company (i) a completed and executed Investor Signature Page to this Agreement and (ii) a wire transfer in immediately available funds in an amount equal to the amount set forth across from such Investor's name under the heading "Purchase Price" on the Schedule of Investors, pursuant to wire transfer instructions separately provided by the Company to such Investor.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Obligors. The Obligors hereby represent and warrant to the Investors, as of the date hereof and as of the Closing Date, as follows:

(a) Existence, Qualification, Power. Each Obligor (i) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (to the extent such concept is applicable in the jurisdiction of its incorporation) and where the jurisdiction of its incorporation, or a jurisdiction of its registration, is Israel, is not a designated as a "breaching company" by the Israeli Companies Registrar, (ii) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business as described in the SEC Reports and (B) execute, deliver and perform its obligations under the Transaction Documents to which it is a party, including the issuance of the Securities in accordance with the terms of the Transaction Documents and (iii) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (ii)(A) or (iii), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; No Contravention. The execution, delivery and performance by the Company and each Guarantor of each Transaction Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not (i) contravene the terms of any of such Person's organization documents, (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (A) any contractual obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (iii) violate, in any material respect, any law (including, without limitation, Regulation U or Regulation X issued by the Federal Reserve Board), except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (ii)(A) to the extent that such conflict, breach, contravention or payment could not reasonably be expected to have a Material Adverse Effect. The issuance and sale of the Note Shares has been duly authorized by all necessary action on the part of the Company, and (other than the filing with the SEC of one or more Registration Statements in accordance with Article V, the filing with the SEC of a Form D and any other filings as may be required by state securities agencies, and the filing of any requisite notices and/or application(s) to any Trading Market for the issuance and sale of the Note Shares and the listing of the Note Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby) no further consent, filing, authorization or action is required from or with any United States federal or state or foreign regulatory authority or governmental body or any Trading Market by the Company.

(c) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company or any Guarantor of this Agreement or any other Transaction Document (including the issuance and sale of the Securities) other than (i) those that have already been obtained and are in full force and effect, (ii) filings to perfect the Liens created by the Transaction Documents, (iii) filings required by applicable state securities laws, (iv) the filing of a Notice of Sale of Securities on Form D with the SEC under Regulation D of the Securities Act, (v) the filing of any requisite notices and/or application(s) to any Trading Market for the issuance and sale of the Note Shares and the listing of the Note Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby, (vi) the filing of one or more Registration Statements in accordance with Article V and (vii) any required shareholder approval for an issuance of the Note Shares in excess of the Exchange Cap.

(d) Binding Effect. Each Transaction Document has been duly executed and delivered by the Company and each Guarantor that is party thereto. Each Transaction Document constitutes a legal, valid and binding obligation of the Company and each Guarantor that is party thereto, enforceable against each such Person in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

(e) Valid Issuance; Listing Requirements. The Notes and the Guarantees are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens (other than Liens in favor of the Investors or restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of stockholders. Upon issuance or conversion in accordance with the Notes, the Note Shares, when issued, will be validly issued, fully paid and nonassessable, free and clear of all Liens (other than restrictions on transfer arising under applicable securities laws) and will not be subject to preemptive or similar rights of stockholders, with the holders being entitled to all rights accorded to a holder of Common Stock. The Company is in material compliance with all applicable requirements of the 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(e)). Notwithstanding the foregoing, the representations contained in this Section 3.1(e) are qualified by reference to the Company's failure to satisfy the minimum stockholders' equity requirement as required for continued listing under Nasdaq Listing Rule 5550(b), as disclosed in the SEC Reports. The issuance by the Obligors of the Securities shall not have the effect of delisting or suspending the Common Stock from the Trading Market after taking into account Section 3.3 of the Notes.

(f) No Material Adverse Effect. Since December 31, 2023, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Margin Regulations; Investment Company Act. The Company is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Federal Reserve Board), or extending credit for the purpose of purchasing or carrying margin stock. None of the Obligors is or is required to be registered as an "investment company" under the Investment Company Act of 1940. No Israeli Guarantor or Subsidiary thereof (i) is a "fund", "trustee" or "fund manager," each within the meaning of, or is otherwise subject to, the Israeli Joint Investments in Trust Law, (ii) engages in "investment advice," "investment marketing" or "portfolio management," each within the meaning of, or is otherwise subject to, the Israeli Investment Services Law; or (iii) engages in the "provision of credit" or provision of "financial services," each within the meaning of, or is otherwise subject to, the Israeli Financial Services Law.

(n) [Reserved].

(o) [Reserved].

(p) [Reserved].

(q) Sanctions Concerns; Anti-Corruption Laws; PATRIOT Act.

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

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

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

(r) [Reserved].

(s) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the twelve months preceding the Closing Date (the "SEC Reports"). As of their respective dates (or, if amended or superseded by a filing prior to the Closing Date, then on the date of such filing), the SEC Reports filed by the Company complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed (or, if amended or superseded by a filing prior to the Closing Date, then on the date of such filing) by the Company, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing (or, if amended or superseded by a filing prior to the Closing Date, then on the date of such filing). Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or may be condensed or summary statements, and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. All Material Contracts to which the Company or any Subsidiary is a party or to which the property or assets of the Company or any Subsidiary are subject are included as part of or identified in the SEC Reports.

(t) [Reserved].

(u) Private Placement. Assuming the accuracy of the Investors' representations and warranties set forth in Section 3.2 and their compliance with their agreements contained in the Transaction Documents, no registration under the Securities Act is required for the offer and sale of the Securities by the Obligors to the Investors pursuant to the terms of this Agreement. Subject to limitations contained in the Notes, the issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market, which, for the avoidance of doubt, as of the Closing Date, is the NASDAQ Capital Market.

(v) Registration Rights. Other than as set forth in this Agreement and as disclosed in the SEC Reports, no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(w) No Integrated Offering. Assuming the accuracy of the Investors' representations and warranties set forth in in Section 3.2 and their compliance with their agreements contained in the Transaction Documents, neither the Company, nor any of its affiliates (as defined in Rule 405 of the Securities Act), 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 any Obligor for purposes of the Securities Act which would require the registration of any such securities under the Securities Act.

(x) No General Solicitation. None of the Obligors or any person acting on behalf of any of the Obligors has offered or sold any of the Securities by any form of general solicitation or general advertising. Each Obligor has offered, and may offer, the Securities for sale only to the Investors and other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(y) Accountants. MNP LLP, whose reports on the consolidated financial statements of the Company are filed with the SEC as part of the Company's most recent Annual Report on Form 10-K filed with the SEC, are and, during the periods covered by their report, were independent registered public accounting firms within the meaning of the Securities Act and the Public Company Accounting Oversight Board (United States).

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

(aa) Acknowledgment Regarding Investor's Purchase of Securities. Each Obligor acknowledges and agrees that each Investor is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that no Investor is (i) an officer or director of the Company or any of its Subsidiaries, (ii) prior to the issuance and exchange of the Notes, an "affiliate" (as defined in Rule 144) of the Company or any of its Subsidiaries or (iii) prior to the issuance and exchange of the Notes, a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Exchange Act). Each Obligor further acknowledges that no Investor is acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by an Investor or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to such Investor's purchase of the Securities.

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

(cc) Manipulation of Price. Neither the Company nor any of its Subsidiaries has, and no Person acting on their behalf has, directly or indirectly, (i) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company or any of its Subsidiaries to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company or any of its Subsidiaries in connection with the transactions contemplated by the Transaction Documents, or (iv) paid or agreed to pay any Person for research services with respect to any securities of the Company or any of its Subsidiaries.

(dd) Security Interest in Collateral. Prior to any assignment by the Investors of the Notes, the provisions of this Agreement and the other Transaction Documents (after giving effect to post-closing obligations) create legal, valid and enforceable Liens on, and security interests in, all of the right, title and interest of the Company and the Guarantors which are organized in the United States in and to all the Collateral owned by the Company or any such Guarantor in favor of the Collateral Agent, for the benefit of the Collateral Agent and the Investors, and upon (i) the making of the filings, recordings and other similar actions specified in the Security Documents, and (ii) the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Liens shall constitute perfected and continuing Liens on, and security interests in, the Collateral, securing the Obligations (as defined in the Guaranty and Security Agreement), enforceable against the Company, the Guarantors and all third parties, and, except as set forth on Schedule 3.1(dd), having priority over all other Liens on the Collateral.

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

3.2 Representations and Warranties of the Investors. Each Investor hereby, as to itself only and for no other Investor, represents and warrants to the Obligors, as of the date hereof and as of the Closing Date, as follows:

(a) Organization; Authority. Such Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, limited liability company, partnership or other 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 purchase by such Investor of the Notes hereunder and the consummation of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership or other action on the part of such Investor. This Agreement and the Transaction Documents to which such Investor is a party or has or will execute have been duly executed and delivered by such Investor and constitute the valid and binding obligations of such Investor, enforceable against it in accordance with their terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) No Public Sale or Distribution. Such Investor is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under the Securities Act or under an exemption from such registration and in compliance with applicable federal, state and foreign securities laws, and such Investor does not have a present arrangement to effect any distribution of the Securities to or through any person or entity; provided, however, that, by making the representations herein, such Investor does not agree, or make any representation or warranty, to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act.

(c) Investor Status. Such Investor is an "accredited investor" as defined in Rule 501(a) under the Securities Act. Such Investor is not a registered broker dealer registered under Section 15(a) of the Exchange Act, or a member of the Financial Industry Regulatory Authority, Inc. ("FINRA") or an entity engaged in the business of being a broker dealer.

(d) Experience of Such Investor; Risk of Loss. Such Investor 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 Investor understands that it must bear the economic risk of its investment in the Securities indefinitely, and is able to bear such risk and is able to afford a complete loss of such investment.

(e) Access to Information. Such Investor acknowledges that it has been furnished with all materials relating to the business, finances and operations of the Obligors and materials relating to the offer and sale of the Securities that have been requested by such Investor. Such Investor has been afforded the opportunity to ask questions to the Obligors and receive answers from representatives of the Obligors concerning the Obligors and the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors, if any, or its representatives shall modify, amend or affect such Investor's right to rely on the Obligors' representations and warranties contained herein or in any other Transaction Document.

(f) No Governmental Review. Such Investor understands that no U.S. 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.

(g) Reliance on Exemptions. Such Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Obligors are relying upon the truth and accuracy of, and such Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Investor set forth herein and in the other Transaction Documents in order to determine the availability of such exemptions and the eligibility of such Investor to acquire the Securities.

(h) Transfer or Resale. Such Investor acknowledges and understands that: (i) the Securities have not been and are not being registered under the Securities Act, any U.S. state securities laws or the laws of any foreign country or other jurisdiction, and may not be offered for sale, sold, assigned or transferred other than pursuant to Section 4.1; and (ii) except as set forth in Article V, neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(i) Legends. Such Investor acknowledges and understands that each of the certificates representing the Securities, except as set forth below, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend as set forth in Section 4.1(b), which shall only be removed as set forth in Section 4.1(d).

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) Each Investor covenants that the Notes shall not be transferred or assigned to any Person, other than an Affiliate of each original Investor, unless the Assignment Conditions and the terms of Section 9.8 are satisfied prior to any such transfer or assignment. Each holder covenants that the Securities will be disposed of only pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, and in compliance with applicable state securities laws. In connection with any transfer of Securities other than (i) pursuant to an effective registration statement, (ii) to the Company, or (iii) pursuant to Rule 144 (provided, that, the holder provides the Company with reasonable assurances (in the form of a seller representation letter) that the Securities may be sold pursuant to such rule) or Rule 144A (as promulgated under the Securities Act), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, 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. The Company hereby consents to and agrees to register on the books of the Company and with its Transfer Agent, without any such legal opinion, except to the extent that the Transfer Agent requests such legal opinion, any transfer of Securities by an Investor to an Affiliate of such Investor; provided, that, such transfer does not involve a "sale" within the meaning of Section 2(a)(3) of the Securities Act; and provided, further, that, such Affiliate does not request any removal of any existing legends on any certificate evidencing such Securities.

(b) The Investors agree to the imprinting, until no longer required by Section 4.1(d), of the following legend on any certificate evidencing any of the Securities:

THESE SECURITIES [*for Notes, insert*: AND THE SECURITIES ISSUABLE UPON CONVERSION HEREOF] HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

Additionally, for the Notes, insert: THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED AS OF JANUARY 18, 2024.

Additionally, for the Notes, insert: THIS INSTRUMENT IS SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN THE NOTE PURCHASE AND REGISTRATION RIGHTS AGREEMENT DATED AS OF JANUARY 18, 2024, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(c) [Reserved].

(d) Certificates evidencing the Securities shall not be required to contain such legend or any other legend (i) with respect to Notes Shares, following any sale of such Note Shares pursuant to an effective registration statement under the Securities Act, (ii) at the time of any sale pursuant to Rule 144 if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company and the Transfer Agent to the effect that the Securities can be sold under Rule 144 or (iii) if the holder provides the Company with a legal opinion (and the documents upon which the legal opinion is based) reasonably acceptable to the Company and the Transfer Agent to the effect that the legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the staff of the SEC (the "Staff")); provided, however, that, the Company shall not be required to remove the restrictive legend on any Note Shares registered on a Registration Statement until the earlier of one year after the issuance of the Notes and such time that the holder intends to sell such Note Shares. The Company will no later than three (3) Trading Days following the delivery by an Investor to the Company or the Transfer Agent (if delivery is made to the Transfer Agent a copy shall be contemporaneously delivered to the Company) of (A) a legended certificate representing the applicable Securities and any necessary instruments of transfer and (B) evidence reasonably satisfactory to the Company and its counsel and the Transfer Agent of the occurrence of any of clauses (i) through (iii) above (including any applicable investor and broker representation letters and the delivery of any legal opinion referred to therein, as applicable), deliver or cause to be delivered to such Investor (or a transferee of such Investor, as applicable) a certificate or book-entry (including shares transferred via DWAC or similar methodology by DTC) representing such Securities 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 expand the restrictions on transfer set forth in this Section 4.1(d).

4.2 **Use of Proceeds**. The Company and its Subsidiaries shall use the net proceeds from the sale of the Notes and the Guarantees (a) to satisfy the Minimum Deposit Relationship (as defined MSPLP Facility) and (b) for transaction expenses and for working capital and other general corporate purposes. None of the Company or any of its Subsidiaries shall use such proceeds in violation of FCPA or OFAC regulations.

4.3 **Securities Laws Disclosure; Publicity**. The Company shall, on or before 9:30 a.m., New York time, on the first (1st) Business Day after the date the Notes are issued, issue a press release (the "Press Release"), the contents of which shall be subject to prior review of, and reasonable and timely comments by, the Investors, disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before 9:30 a.m., New York time, no later than the fourth (4th) Business Day after the date the Notes are issued, the Company shall file a Current Report on Form 8-K describing all the material terms of this Agreement and the Notes.

4.4 **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 Investor 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 Investor could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents.

4.5 **Form D and Blue Sky**. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D. The Company, on or before the Closing Date, 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 Investors at the Closing pursuant to this Agreement under applicable securities or "blue sky" laws of the states of the United States (or to obtain an exemption from such qualification). The Company shall make all filings and reports, or shall rely on an available exemption, relating to the offer and sale of the Securities required under applicable securities or "blue sky" laws of the states of the United States following the Closing Date and shall provide copies to any Investor who so requests.

4.6 Taxes.

(a) Except as required by applicable law, all payments of principal and interest on the Notes and all other amounts payable under the Transaction Documents shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes, VAT and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding (i) taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (A) imposed by the jurisdiction under which a Recipient is organized or a jurisdiction in which the Recipient conducts business (other than solely as the result of entering into any of the Transaction Documents or taking any action thereunder), or (B) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Investor, its applicable lending office located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (ii) U.S. federal or foreign withholding taxes imposed on amounts payable to or for the account of a Recipient with respect to an applicable interest on the Notes pursuant to a law in effect on the date on which such Recipient acquires such interest on the Notes except in each case to the extent that, pursuant to this Section 4.6, amounts with respect to such taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto, (iii) Canadian withholding taxes imposed or assessed solely as a result of (A) such Recipient not dealing at arm's length with an Obligor within the meaning of the Income Tax Act (Canada) at the time of payment or (B) such Recipient being or not dealing at arm's length (within the meaning of the Income Tax Act (Canada)) with a "specified shareholder" of an Obligor (within the meaning of subsection 18(5) of the Income Tax Act (Canada)) at the time of payment and (iv) U.S. federal withholding tax imposed under FATCA (all non-excluded items being called "Taxes"). If any withholding or deduction of any Taxes from any payment by or on account of any obligation of any Obligor hereunder is required in respect of any Taxes pursuant to any applicable law, then the sum payable by the applicable Obligor shall be increased by such additional amount or amounts as is necessary to ensure that the net amount actually received by the applicable Recipient will equal the full amount such Recipient would have received had no such withholding or deduction been required.

(b) The Company or the Guarantors, as applicable, shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Taxes (including Taxes imposed on or attributable to amounts payable under this Section 4.6) payable or paid by such Recipient or required to be withheld or deducted from a payment by such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(c) Any Investor that is entitled to an exemption from or reduction of withholding Taxes with respect to payments made under any Transaction Document shall deliver to the Company, at the time or times reasonably requested by the Company, such properly completed and executed documentation reasonably requested by the Company as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Investor, at the time or times reasonably requested by the Company, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Company as will enable the Company to determine whether or not such Investor is subject to backup withholding, information reporting requirements, or withholding under FATCA. Each Investor that is not a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code (each such Investor a "Foreign Investor") shall execute and deliver to the Company on or prior to the date that such Investor becomes a party hereto (and from time to time thereafter upon the reasonable request of the Company), one or more (as the Company may reasonably request) duly completed and executed copies of United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by the Company certifying as to such Investor's entitlement to any available exemption from or reduction of withholding or deduction of taxes. Each Investor that is a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code shall execute and deliver to the Company on or prior to the date such Investor becomes a party hereto (and from time to time thereafter upon the reasonable request of the Company), one or more (as the Company may reasonably request) duly completed and executed copies of United States Internal Revenue Service Form W-9 certifying that such Investor is not subject to United States backup withholding. The Company shall not be required to pay additional amounts to any Investor pursuant to this Section 4.6 with respect to taxes attributable to the failure of such Foreign Investor to comply with this paragraph or Section 4.6(d).

(d) Each Investor agrees that if any form or certification it previously delivered pursuant to this Section 4.6 expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Company of its inability to do so.

(e) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.6 (including by the payment of additional amounts pursuant to this Section 4.6), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 4.6 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 4.6(e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority in the event that such indemnified party is required to repay such refund to such Governmental Authority). Notwithstanding anything to the contrary in this Section 4.6(e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 4.6(e) the payment of which would place the indemnified party in a less favorable net after-tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had never been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts had never been paid. This paragraph shall not be construed to require any indemnified party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the indemnifying party or any other Person.

(f) VAT.

(i) All amounts expressed in any Transaction Document to be payable by an Israeli Guarantor or other Obligor are deemed to be exclusive of any VAT which is chargeable on the payment of such amount, which VAT shall be the responsibility of the payor.

(ii) Where any Transaction Document requires an Israeli Guarantor or other Obligor to reimburse or indemnify another Person for any cost or expense, such Israeli Guarantor or other Obligor shall reimburse or indemnify (as the case may be) the Person for the full amount of such cost or expense, including such part thereof as represents VAT.

(iii) An Israeli Guarantor or any other Obligor shall promptly, upon request, provide the Collateral Agent or Investor, as the case may be, details of the Israeli Guarantor's or other Obligor's VAT registration and such other information as is reasonably requested in connection with any applicable VAT reporting requirements or demands made upon the Collateral Agent or Investor.

4.7 **Israeli Security Matters**. Within 150 calendar days following the Closing Date (or such later date as Collateral Agent may agree), the Company and the Israeli Guarantor shall (i) create and timely perfect the Investors' security interest on their Israeli assets and/or equity interests granted as collateral pursuant to the Transaction Documents, and (ii) duly apply (A) to the Israeli Companies Registrar, within 21 days of the date of creation of those security interests, to ensure registration of such security interests by the Companies Registrar with effect as of creation of the security interests, (B) to the Israeli Patents Authority to ensure registration of such security interests in patents or patent applications within 21 days of the date of creation of those security interests, and (C) to the Israeli Pledges Registrar to ensure registration of security interests created by any other Obligor in any shares or other equity interests issued by any Israeli Guarantor.

4.8 **Canadian Security Matters**. Within 150 calendar days following the Closing Date (or such later date as Collateral Agent may agree), the Company and Venus Concept Canada Corp. shall create and perfect the Investors' security interest on their Canadian assets and/or equity interests granted as collateral pursuant to the Transaction Documents.

ARTICLE V
REGISTRATION RIGHTS

5.1 Resale Registration.

(a) Mandatory Registration. The Company shall prepare and, as soon as reasonably practicable, but in no event later than the Filing Deadline, file with the SEC, an initial Registration Statement on Form S-3 or such other form under the Securities Act as is then available to the Company, providing for the resale from time to time by the Investors of at least the number of Registrable Securities equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC. Notwithstanding anything to the contrary contained herein, the Filing Deadline with respect to any Registration Statement shall be automatically extended by a number of days necessary to address any comments to such Registration Statement by any Investor's counsel, which comments have required that the Company not file such Registration Statement as set forth in clause (B) of Section 5.1(c)(iii). Such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, shall contain (except as otherwise directed by the Investors) the "Selling Stockholders" and "Plan of Distribution" sections in substantially the form attached hereto as Annex B. The Company agrees to use reasonable efforts to cause the initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, to be declared effective by the SEC as soon as practicable following such filing. The Company shall promptly, and in any event within three (3) Trading Days, notify the Investors of the effectiveness of a Registration Statement.

(b) SEC Guidance. Notwithstanding the registration obligations set forth in Section 5.1(a), if the SEC informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415 or the Exchange Cap, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Investors thereof and use its reasonable best efforts to file amendments to the initial Registration Statement as required by the SEC, covering the maximum number of Registrable Securities permitted to be registered by the SEC, on Form S-3 (or Form S-1, if Form S-3 is not available) or such other form available to register for resale the Registrable Securities as a secondary offering; provided, however, that prior to filing such amendment, the Company shall be obligated to use its reasonable best efforts to advocate with the SEC for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Limitations. Notwithstanding any other provision of this Agreement, if the SEC or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used its reasonable best efforts to advocate with the SEC for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by an Investor as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced by reducing or eliminating any securities to be included other than Registrable Securities. In the event of a cutback under this Section 5.1(c), the Company shall give each Investor at least five (5) Trading Days prior written notice along with the calculations as to such Investor's allotment. In the event the Company amends the Registration Statement in accordance with the foregoing, the Company will use its reasonable best efforts to file with the SEC, as promptly as allowed by the SEC or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 (or Form S-1, if Form S-3 is not available) or such other form available to register for resale those Registrable Securities that were not registered for resale on the initial Registration Statement, as amended.

(d) Related Obligations. The Company shall use reasonable efforts to effect the registration of all the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(i) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use reasonable efforts to cause such Registration Statement to become effective as soon as practicable after such filing. Subject to Allowable Grace Periods, the Company shall keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (A) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 5.1(g)) without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable), as determined by legal counsel for the Company, or (B) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "Registration Period"). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The Company shall submit to the SEC, within five (5) days after the Staff advises the Company (orally or in writing, whichever is earlier) that the Staff either will not review a particular Registration Statement or has no further comments on such Registration Statement (as the case may be), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than forty-eight (48) hours after the submission of such request.

(ii) Subject to Section 5.1(c)(xiv), the Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the Securities Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the Securities Act with respect to the registration of all Registrable Securities of the Company required to be covered by such Registration Statement until the completion of the applicable Registration Period; provided, however, that, by 5:30 p.m. (New York time) on or prior to the fifth (5th) Business Day immediately following the effective date of each Registration Statement, the Company shall file with the SEC in accordance with Rule 424(b) under the Securities Act the final prospectus to be used in connection with sales pursuant to such Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 5.1(c)(ii)) by reason of the Company filing a report on Form 10-Q or Form 10-K or any analogous report under the Exchange Act, the Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on or prior to the third (3rd) Trading Day following the date on which the Exchange Act report is filed with the SEC which created the requirement for the Company to amend or supplement such Registration Statement.

(iii) The Company shall (A) permit one legal counsel in the aggregate for the Investors to review and comment upon (1) each Registration Statement that includes the name, or otherwise identifies, any Investor as a "Selling Stockholder" with respect to securities registered for sale pursuant to such Registration Statement at least five (5) days prior to its filing with the SEC and (2) all amendments and supplements to each Registration Statement that includes the name, or otherwise identifies, any Investor as a "Selling Stockholder" with respect to securities registered for sale pursuant to such Registration Statement (including, without limitation, the prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto, in each case, referred to in clause (A) above, in a form to which legal counsel for the Investors reasonably objects in a timely manner; provided however, that, in the event of such objection, the Company shall have no liability to any Investor for the resulting failure to timely file the Registration Statement. The Company shall reasonably cooperate with legal counsel for the Investors in performing the Company's obligations pursuant to this Section 5.1(c)(iii).

(iv) The Company shall promptly furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (A) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to such Registration Statement, to the extent that such comments relate to the "Selling Stockholders" or the "Plan of Distribution", (B) upon request, after the same is prepared and filed with the SEC, a reasonable number of copies of such Registration Statement and any amendment(s) and supplement(s) thereto, including, if so requested, the financial statements and schedules filed therewith, all documents incorporated therein by reference, all exhibits and each preliminary prospectus, (C) upon request, upon the effectiveness of such Registration Statement, two (2) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request from time to time), and (D) such other documents, including, without limitation, copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor, except to the extent such documents referred to in clauses (A) through (D) above are included in the SEC Reports.

(v) The Company shall use reasonable efforts to (A) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by any Registration Statement under such other securities or "blue sky" laws of jurisdictions in the United States as shall be reasonably appropriate for the distribution of the Registrable Securities covered by such Registration Statement, (B) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the applicable Registration Period, (C) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the applicable Registration Period, and (D) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that, the Company shall not be required in connection therewith or as a condition thereto to (1) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 5.1(c)(v), (2) subject itself to general taxation in any such jurisdiction, or (3) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(vi) The Company shall promptly notify each Investor in writing when a prospectus or any prospectus supplement or post-effective amendment relating to a Registration Statement has been filed, when a Registration Statement or any post-effective amendment thereto has become effective (notification of such effectiveness shall be delivered to each Investor by facsimile or e-mail no later than one (1) Business Day following the date of such effectiveness or by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment thereto will be reviewed by the SEC. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto. If the Company receives SEC comments which challenge the right of an Investor to have its Registrable Securities included in a Registration Statement without being deemed an underwriter thereunder, the Company shall, in discussions with and responses to the SEC, use reasonable efforts and time to cause as many Registrable Securities as possible to be included in such Registration Statement without characterizing any Investor as an underwriter and in such regard use reasonable efforts to cause the SEC to permit the affected Investors or their respective counsel to reasonably participate in SEC conversations on such issue together with Company Counsel, and timely convey relevant information concerning such issue with the affected Investors or their respective counsel. In no event may the Company name any Investor as an underwriter without such Investor's prior written consent.

(vii) The Company shall (A) use reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension as soon as reasonably practicable and (B) notify each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(viii) The Company shall hold in confidence and not make, without the consent of such Investor, any disclosure of confidential information concerning an Investor provided to the Company unless (A) disclosure of such information is necessary to comply with federal or state securities laws, (B) the disclosure of such information is necessary to avoid or correct a misstatement or omission in a Registration Statement or is otherwise required to be disclosed in a Registration Statement pursuant to the Securities Act, (C) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (D) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor to undertake, at its expense, appropriate action to prevent disclosure of, or to obtain a protective order for, such information. For the avoidance of doubt, nothing contained in this Section 5.1(c)(viii) shall obligate the Company to withhold disclosure in contravention of any deadline imposed by any court or governmental body of competent jurisdiction.

(ix) Without limiting any obligation of the Company under this Agreement, the Company shall use reasonable efforts to cause all of the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange. In addition, the Company shall cooperate with each Investor and any broker or dealer through which any such Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Investor. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 5.1(c)(ix).

(x) [Reserved].

(xi) [Reserved].

(xii) [Reserved].

(xiii) Within two (2) Business Days after the date on which a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, or shall cause legal counsel for the Company to deliver, to the Transfer Agent (with copies to the Investors whose Registrable Securities are included in such Registration Statement upon request by any such Investor) written confirmation that such Registration Statement has been declared effective by the SEC.

(xiv) Notwithstanding anything to the contrary herein, at any time after the date on which a particular Registration Statement is declared effective by the SEC, the Company may suspend the use of any prospectus for sales of Registrable Securities under such Registration Statement or delay the disclosure of any material non-public information or pending development concerning the Company or any of its Subsidiaries for a specified period if the disclosure of such information or development during such period would be materially detrimental, in the good faith opinion of the Company's board of directors or any named executive officer of the Company, to the Company (a "Grace Period"), provided, that, the Company shall promptly notify the Investors in writing of the (A) existence of material non-public information or pending development (without disclosing the nature of such information or development) giving rise to a Grace Period and the date on which such Grace Period will begin and (B) date on which such Grace Period ends, provided, further, that, (1) such Grace Period shall not exceed sixty (60) consecutive days, (2) during any three hundred sixty five (365) day period, all Grace Periods occurring during such period shall not exceed an aggregate of one hundred twenty (120) days, (3) the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period, and (4) no Grace Period may exist during the forty-five (45) day period immediately following the effective date of such Registration Statement (provided, that, such forty-five (45) day period shall be extended by the number of days during such period and any extension thereof contemplated by this proviso during which such Registration Statement is not effective or the prospectus contained therein is not available for use) (each Grace Period satisfying each of the conditions in the foregoing clauses (1), (2), (3) and (4), an "Allowable Grace Period"). For purposes of determining the length of a Grace Period above, such Grace Period shall begin on and include the date the Company delivers to the Investors the notice referred to in clause (A) above and shall end on and include the earlier of (x) the date stated in the notice referred to in clause (B) above as the end of such Grace Period or (y) to the extent considered appropriate by the Company in its sole discretion, such earlier date as to which the Company may advise the Investors in writing after the Company's provision of the notices described above. The provisions of Section 5.1(c)(vi) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of each Grace Period, the Company shall again be bound by the first sentence of Section 5.1(c)(vi) with respect to the information giving rise thereto unless such material non-public information is no longer applicable.

(e) Obligations of the Investors. Each Investor shall furnish to the Company such information regarding itself and the Persons who control such Investor, the Registrable Securities held by it, and the intended method of disposition of such securities as the Company shall reasonably request and as shall be required in connection with the registration of the Registrable Securities, and shall execute such documents in connection with such registration as the Company may reasonably request. Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement. Each Investor agrees to provide the Company with such information within three (3) Business Days of any such request by the Company.

(f) Expenses of Registration. All expenses incurred in connection with any Registration Statement, excluding underwriters' discounts and commissions, but including without limitation all registration, filing and qualification fees, word processing, duplicating, printers' and accounting fees, stock exchange fees, messenger and delivery expenses incurred by the Company, all fees and expenses of complying with state securities or blue sky laws and the fees and disbursements of counsel for the Company shall be paid by the Company; provided, however, that, in the event the Company is required to file an amendment or supplement to any Registration Statement to identify an assignee of Registrable Securities as a "Selling Stockholder" in such Registration Statement, then, except with respect to the first transfer by the Investor of Registrable Securities to an assignee that is (or the first series of substantially concurrent transfers of Registrable Securities by the Investors to assignees that are) either (i) an "affiliate" (as defined in Rule 144) of an Investor or (ii) a limited partner of an Investor or an "affiliate" (as defined in Rule 144) of any such limited partner, such assignee shall pay any such expenses incurred in connection therewith. Notwithstanding anything to the contrary contained in this Agreement, each selling Investor will pay (i) all underwriting discounts, commissions, fees and expenses and all transfer taxes with respect to the Registrable Securities sold by such selling Investor; (ii) any fees and expenses of its legal counsel (other than the reasonable and documented fees and expenses of its counsel selected pursuant to Section 5.1(d)(iii)) and (iii) all other expenses incurred by such selling Investor and incidental to the sale and delivery of the shares to be sold by such Investor.

(g) Sufficient Number of Shares Registered. Subject to Section 5.1(g), in the event the number of shares available under any Registration Statement during the applicable Registration Period is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 5.1(h), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than thirty (30) days after the necessity therefor arises (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use reasonable efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC. Subject to Section 5.1(g), for purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the applicable Registration Statement is less than the Required Registration Amount as of such time. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on conversion, amortization and/or redemption of the Notes (and such calculation shall assume that (A) the Notes are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the Notes) and (B) the initial outstanding principal amount of the Notes remains outstanding through the scheduled Maturity Date (as defined in the Notes) and no redemptions of the Notes occur prior to the scheduled Maturity Date (except to the extent redemptions of the Notes have actually occurred on or prior to such date).

(h) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the Staff or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an "underwriter," then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC's "by or on behalf of the Company" offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof.

(i) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be.

(j) No Inclusion of Other Securities. The Company shall in no event include any securities other than Registrable Securities on any Registration Statement filed in accordance herewith without the prior written consent of the Investors.

5.2 Rules 144 and 144A and Regulation S. The Company shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any Investor, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as any Investor may reasonably request, all to the extent required from time to time to enable the Investors to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Investor, the Company will deliver to the Investors a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

5.3 Notification. As promptly as practicable, each Investor of Registrable Securities shall notify the Company when all of such Investor's Registrable Securities have been sold.

ARTICLE VI
CONDITIONS

6.1 Conditions Precedent to the Obligations of the Investors. The obligation of each Investor to purchase the Notes at the Closing is subject to the satisfaction, unless waived in writing by such Investor, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Obligors contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of the Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(b) Performance. Each Obligor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing.

(c) Approvals. Each Obligor shall have obtained all governmental, regulatory or third-party consents and approvals, if any, necessary for the sale of the Securities, all of which shall be and remain so long as necessary in full force and effect (other than the filing with the SEC of one or more Registration Statements in accordance with Article V, the filing with the SEC of a Form D and any other filings as may be required by state securities agencies, and the filing of any requisite notices and/or application(s) to any Trading Market for the issuance and sale of the Note Shares and the listing of the Note Shares for trading or quotation, as the case may be, thereon in the time and manner required thereby).

(d) Absence of Litigation. Other than as disclosed in the SEC Reports, there shall not exist (i) any action, suit or proceeding pending in any court or before an arbitrator or Governmental Authority that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect or (ii) to the knowledge of any Responsible Officer of the Company or any Subsidiary, any governmental investigation pending or threatened or any action, suit or proceeding threatened in any court or before an arbitrator or Governmental Authority, in each case, that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) Transaction Documents. Receipt by the Investors of executed counterparts of the Transaction Documents, each properly executed by a Responsible Officer of the signing Obligor and each other party to such documents, in each case in form and substance reasonably satisfactory to the Investors.

(f) Material Adverse Effect. There shall not have occurred a material adverse change since December 31, 2023 in the operations, business, assets, properties, liabilities (actual or contingent) or financial condition of the Company and its Subsidiaries, taken as a whole.

(g) MSPLP Facility Amendment. A second loan modification to the MSPLP Facility, pursuant to which, among other things, CNB will waive the Minimum Deposit Relationship (as defined in the MSPLP Facility) until the testing date occurring on April 30, 2024, in form and substance reasonably satisfactory to the Investors.

(h) Good Standing. Each Obligor shall have delivered to the Investors a good standing (or its equivalent) of such Obligor dated not more than thirty (30) days prior to the Closing Date.

(i) Perfection and Priority of Liens. Receipt by the Investors of the following:

(i) Uniform Commercial Code financing statements for each appropriate jurisdiction as is necessary, in the Investors' sole discretion, to perfect the Investors' security interest in the collateral granted pursuant to the Transaction Documents;

(ii) duly executed notices of grant of security interest in the form required by the applicable Transaction Document(s) as are necessary, in the Investors' sole discretion, to perfect the Investors' security interest in the intellectual property rights of the Obligors;

6.2 Conditions Precedent to the Obligations of the Obligors. The obligation of the Obligors to sell the Securities at the Closing is subject to the satisfaction or waiver by the Obligors, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Investors contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of the Closing Date (except for those representations and warranties that speak as of a specific date, which shall be true and correct in all material respects as of such specified date).

(b) Deliverables. The Investors shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company. The Investors shall have delivered to the Company those items required by Section 2.2(b).

ARTICLE VII
INDEMNIFICATION

7.1 Indemnification.

(a) To the fullest extent permitted by law, Obligors will, and hereby do, indemnify, hold harmless and defend each Investor and each of its directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls such Investor within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Person"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several, (collectively, "Claims") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened in writing ("Indemnified Damages"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any breach of the representations, warranties, covenants or agreements made by any of the Obligors in this Agreement or in the other Transaction Documents, (ii) any untrue statement or alleged untrue statement of a material fact in any Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered, or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (iv) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to any Registration Statement (the matters in the foregoing clauses (i) through (iv) being, collectively, "Violations"). Subject to Section 7.1(c), the Obligors shall reimburse the Indemnified Persons for any reasonable and documented legal fees of one counsel or other reasonable and documented out-of-pocket expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7.1(a): (A) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person expressly for use in connection with the preparation of, or inclusion in, any Registration Statement or any such amendment thereof or supplement thereto, (B) shall not be available to a particular Investor to the extent such Claim is based on a failure of such Investor to deliver or to cause to be delivered the prospectus made available by the Company (to the extent applicable), including, without limitation, a corrected prospectus, if such prospectus or corrected prospectus was made available by the Company. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors and (C) shall not be available to the extent that such Claims are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Person. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(b) To the fullest extent permitted by law, each Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 7.1(a), each Obligor, each of its directors, officers, shareholders, members, partners, employees, agents, and representatives and each Person, if any, who controls any Obligor within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Party"), against any Claim or Indemnified Damages to which any of them may become subject, under the Securities Act, the Exchange Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with the preparation of, or inclusion in, (i) a Registration Statement or any such amendment thereof or supplement thereto or (ii) any final prospectus relating to any Registration Statement (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC); and, subject to Section 7.1(c) and the below provisos in this Section 7.1(b), such Investor will reimburse an Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such Claim; provided, however, that, the indemnity agreement contained in this Section 7.1(b) and the agreement with respect to contribution contained in Section 7.2 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided, further, that, such Investor shall be liable under this Section 7.1(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of any of the Registrable Securities by any of the Investors.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party (as the case may be) under this Section 7.1 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 7.1, deliver to the applicable indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, with the written consent of the Company if the Company is not the indemnifying party, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party (as the case may be); provided, however, that, an Indemnified Person or Indemnified Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person or Indemnified Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person or Indemnified Party (as the case may be) and the indemnifying party, and such Indemnified Person or such Indemnified Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person or such Indemnified Party and the indemnifying party (in which case, if such Indemnified Person or such Indemnified Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the indemnifying party), provided, further, that, in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for all Indemnified Persons or Indemnified Parties (as the case may be). The Indemnified Party or Indemnified Person (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that, the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Party or Indemnified Person (as the case may be). Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person (as the case may be) with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party (as the case may be) under this Section 7.1, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities to which the indemnifying party may be subject pursuant to the law.

7.2 **Contribution**. To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7.1 to the fullest extent permitted by law; provided, however, that: (a) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 7.1; (b) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (c) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to a Registration Statement. Notwithstanding the provisions of this Section 7.2, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 7.1(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

ARTICLE VIII
COLLATERAL AGENT

8.1 **Appointment**. Each of the Investors hereby irrevocably appoints the Collateral Agent as its agent, and for purposes of acquiring, holding and enforcing any and all Liens which are governed by Israeli law, as its trustee, and authorizes the Collateral Agent to take such actions on its behalf, including execution of the other Transaction Documents, and to exercise such powers as are delegated to the Collateral Agent by the terms of the Transaction Documents, together with such actions and powers as are reasonably incidental thereto.

8.2 **Duties**. The Collateral Agent shall not have any duties or obligations except those expressly set forth in the Transaction Documents. Without limiting the generality of the foregoing, (a) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether an Event of Default (as defined in the Notes) has occurred and is continuing, (b) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Transaction Documents that the Collateral Agent is required to exercise in writing as directed by the Required Holders (as defined in the Notes), and (c) except as expressly set forth in the Transaction Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the entity serving as Collateral Agent or any of its Affiliates in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Holders or in the absence of its own gross negligence or willful misconduct. The Collateral Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Collateral Agent by the Company or an Investor, and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Transaction Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Transaction Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Transaction Document, (iv) the validity, enforceability, effectiveness or genuineness of any Transaction Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in any Transaction Document. The entity serving as the Collateral Agent may generally engage in any kind of business with the Company or any Subsidiary of the Company or other Affiliate thereof as if it were not the Collateral Agent hereunder. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

8.3 **Sub-Agents**. The Collateral Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of this Article VIII shall apply to any such sub-agent and to the Affiliates of the Collateral Agent and any such sub-agent, and shall apply to their activities as Collateral Agent.

8.4 **Successor Collateral Agent**. Subject to the appointment and acceptance of a successor Collateral Agent as provided in this paragraph, the Collateral Agent may resign at any time by notifying the Investors and the Company. Upon any such resignation, the Required Holders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Holders and shall have accepted such appointment within 30 days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Investors, appoint a successor Collateral Agent which shall be a commercial bank or an Affiliate of any such commercial bank. Upon the acceptance of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. After the Collateral Agent's resignation hereunder, the provisions of this Article VIII shall continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Collateral Agent.

ARTICLE IX
MISCELLANEOUS

9.1 **Termination**. This Agreement, subject to Section 9.11, shall terminate and have no further force or effect (a) upon any repayment, conversion or redemption of the Notes in full in accordance with the terms thereof or (b) if Closing does not occur on or prior to January 18, 2024.

9.2 **Fees and Expenses**. The Obligors shall pay (a) all reasonable and documented out-of-pocket expenses incurred by the Investors and the Collateral Agent (including the fees, charges and disbursements of one counsel in the aggregate for all Investors and the Collateral Agent), in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Transaction Documents (and any term sheet executed by any Investor), provided, the fees and expenses reimbursable by the Company to the Investors and the Collateral Agent under this clause (a)(i) shall be subject to a maximum aggregate amount of $75,000, and (ii) any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the administration of this Agreement and the other Transaction Documents and (b) all reasonable and documented out-of-pocket expenses incurred by the Investors and the Collateral Agent (including the fees, charges and disbursements of one counsel in the aggregate for all Investors and the Collateral Agent), in connection with the enforcement or protection of their rights (i) in connection with this Agreement and the other Transaction Documents, including their rights under this Section 9.2 or (ii) in connection with the Notes, including all such out-of-pocket expenses incurred during any arbitration, dispute resolution, workout, restructuring or negotiations in respect of such Notes.

9.3 **Confidentiality**. Each of the Investors agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its Affiliates or to its and such Affiliates' respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, sub-advisors or representatives in connection with the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or such Person's Affiliates or the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, sub-advisors or representatives of such Person or of such Person's Affiliates (including any self-regulatory authority), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other original Investor signatory hereto, (e) as may be reasonably necessary in connection with the exercise of any remedies hereunder or under any other Transaction Document or any action or proceeding relating to this Agreement or any other Transaction Document or the enforcement of rights hereunder or thereunder, (f) upon the prior written consent of the Company, to any prospective assignee of any of an Investor's rights and obligations under this Agreement which agrees to be bound by the confidentiality provisions set forth in this Section 9.3, (g) on a confidential basis to (i) any rating agency in connection with rating any Obligor or its Subsidiaries or any of the Securities or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to any of the Securities, (h) with the consent of the Company, (i) to the members of its investment committee and its limited partners in connection with the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) or (j) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 9.3 or (y) becomes available to the Investors or any of their respective Affiliates on a nonconfidential basis from a source other than the Obligors. Each of the Investors, any permitted assignee and any Affiliate of such Investor agrees not to transact in the securities of the Company on the basis of any Information provided by the Company to the extent and for so long as such Information remains material non-public information.

9.4 **Entire Agreement; Further Assurances**. The Transaction Documents, together with the Exhibits, Annexes and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof 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.

9.5 **Notices**. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and provided by email and by deposit with a nationally recognized courier service and shall be deemed given and effective on the earliest of (a) the Trading Day such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given, if such notice or communication is delivered at the address specified in this Section 9.5 prior to 6:30 p.m. (New York City time) on a Trading Day, or (b) the next Trading Day after the date of delivery, if such notice or communication is delivered by such nationally recognized courier service to the party to whom such notice is required to be given at the address specified in this Section 9.5 on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day. The addresses and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address as may be designated in writing hereafter, in the same manner, by any such Person.

9.6 **Amendments; Waivers**. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Obligors, the Collateral Agent and the Investors holding more than 50% of the outstanding principal amount of the Notes or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. 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.

9.7 **Construction**. 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. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. A reference to a provision of law is a reference to that provision as amended or reenacted and any reference to any law shall include all rules and regulations promulgated pursuant to such law. Any reference to a law, unless the context requires otherwise, shall refer also to any applicable treaty, rule, official directive, request or guideline of any governmental, fiscal, monetary or regulatory body, agency, department or regulatory, self-regulatory or other authority or organization, whether or not having the force of law.

9.8 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. No Obligor may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors holding more than 50% of the outstanding principal amount of the Notes; provided, however, that, this Agreement shall be assigned to any corporation or association into which such Obligor may be merged or converted or with which it may be consolidated, and any corporation, association or other similar entity resulting from any such merger, conversion or consolidation shall be a party hereto without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties to this Agreement, anything herein to the contrary notwithstanding. Any Investor may assign its rights under this Agreement to any Person to whom such investor assigns or transfers any Registrable Securities, but unless the Assignment Conditions have been satisfied, no Investor may assign its rights under this Agreement in connection with any transfer or assignment of the Notes, other than to an Affiliate of such Investor (in which case the Assignment Conditions do not apply). In addition to the Assignment Conditions if applicable, prior to any assignment of this Agreement, (a) such transferor shall have agreed in writing with the transferee or assignee to assign such rights, and a copy of such agreement shall be furnished to the Company after such assignment, (b) the Company shall have been furnished with written notice of the name and address of such transferee or assignee, (c) following such transfer or assignment, the further disposition of such securities by the transferee or assignee shall be restricted, as applicable, under the Securities Act and applicable state securities laws, (d) such transferee shall agree in writing to be bound, with respect to the transferred Securities, by the provisions hereof that apply to the "Investors" and (e) such transfer shall have been made in accordance with the applicable requirements of this Agreement and with all laws applicable thereto.

9.9 **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

9.10 **Governing Law; Venue; Waiver of Jury Trial**. This agreement shall be governed by and construed in accordance with the laws of the State of New York. The Obligors and the Investors hereby irrevocably submit 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 brought by any Obligor or any Investor hereunder, 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 waive, and agree not to assert in any suit, action or proceeding brought by any Obligor or any Investor, any claim that it is not personally subject to the jurisdiction of any such court, or that 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 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 manner permitted by law. The Obligors and the Investors hereby waive all rights to a trial by jury.

9.11 **Survival**. Notwithstanding Section 9.1(a) above, Sections 4.1, 4.4, 4.6, 7.1, 7.2, 9.2, 9.3 9.10, 9.15 and 9.16 and Article V shall survive the termination of this Agreement upon repayment, conversion or redemption of the Notes in full.

9.12 **Execution**. This Agreement may be executed in counterparts, all of which when taken together shall be considered one and the same agreement. In the event that any signature is delivered by facsimile transmission or email attachment, 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 email-attached signature page were an original thereof.

9.13 **Severability**. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

9.14 **Independent Nature of Investors' Obligations and Rights**. The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Documents. The decision of each Investor to purchase Securities pursuant to this Agreement has been made by such Investor independently of any other Investor and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Company and its Subsidiaries which may have been made or given by any other Investor or by any agent or employee of any other Investor, and no Investor or any of its agents or employees shall have any liability to any other Investor (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors 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 Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no other Investor will be acting as agent of such Investor in connection with monitoring its investment hereunder. Each Investor 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 Investor to be joined for such purpose as an additional party in any action, claim, suit, investigation or proceeding (including, without limitation, a partial proceeding, such as a deposition).

9.15 [Reserved].

9.16 **Replacement of Securities**. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, then the relevant Obligor 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 such Obligor 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, but without any requirement to post a bond (unless required by the Transfer Agent, in which case the cost of such bond shall be paid by the relevant Obligor).

9.17 **USA PATRIOT Act and Canadian AML Act Notice**. Each Investor that is subject to the Act (as hereinafter defined), the Canadian AML Acts or the Israeli PMLL hereby notifies the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), the Canadian AML Acts and the Israeli PMLL, it is required to obtain, verify and record information that identifies the Obligors, which information includes the name and address of the Obligors, information concerning its direct and indirect holders of equity interests and other Persons exercising control over it, and its and their respective directors and officers, and other information that will allow such Investor to identify the Obligors in accordance with the Act, the Canadian AML Acts and the Israeli PMLL. The Obligors shall, promptly following a request by any Investor, provide all documentation and other information that such Investor reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act, the Canadian AML Acts and the Israeli PMLL.

9.18 **Interest Rate Limitation**. Notwithstanding anything to the contrary contained in any Transaction Document, the interest (actual or deemed) paid or agreed to be paid under the Transaction Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (including without limitation, the Criminal Code (Canada)) (the "Maximum Rate"). If the Collateral Agent or any Investor shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Notes or, if it exceeds such unpaid principal, refunded to the Company. In determining whether the interest contracted for, charged, or received by the Collateral Agent or an Investor exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations under the Transaction Documents.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Note Purchase and Registration Rights Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

VENUS CONCEPT INC., as
Company

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Address for Notice:

Venus Concept Inc.
235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8
Email: rdesilva@venusconcept.com;
mmandarello@venusconcept.com

VENUS CONCEPT CANADA CORP., as Guarantor

By: /s/ Hemanth Varghese
Name: Hemanth Varghese
Title: President and General Manager

Address for Notice:

Venus Concept Canada
c/o Venus Concept Inc.
235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8
Email: rdesilva@venusconcept.com;
mmandarello@venusconcept.com

VENUS CONCEPT LTD., as
Guarantor

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Address for Notice:

Venus Concept Ltd.
c/o Venus Concept Inc.
235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8
Email: rdesilva@venusconcept.com;
mmandarello@venusconcept.com

VENUS CONCEPT USA INC., as
Guarantor

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: President and Assistant Secretary

Address for Notice:

Venus Concept USA Inc.
c/o Venus Concept Inc.
235 Yorkland Blvd, Suite 900
Toronto, Ontario M2J 4Y8
Email: rdesilva@venusconcept.com;
mmandarello@venusconcept.com

[OBLIGORS SIGNATURE PAGE]

EW HEALTHCARE PARTNERS, L.P., as Collateral Agent

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
Address: 21 WaterWay Ave, Suite 225, The Woodlands, TX 77380
Email Address:

[COLLATERAL AGENT SIGNATURE PAGE]

Investor Signature Page

IN WITNESS WHEREOF, by its execution and delivery of this signature page, the undersigned Investor hereby joins in and agrees to be bound by the terms and conditions of that certain Note Purchase and Registration Rights Agreement dated as of January 18, 2024 (the "Note Purchase Agreement"), by and among Venus Concept Inc., a Delaware corporation, the Guarantors (as defined therein), the Collateral Agent (as defined therein) and the Investors (as defined therein), as to the principal amount of Notes set forth across from such Investor's name on the Schedule of Investors, and authorizes this signature page to be attached to the Note Purchase Agreement or counterparts thereof.

Name of Investor:

EW HEALTHCARE PARTNERS, L.P.
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
Address: 21 WaterWay Ave, Suite 225, The Woodlands, TX 77380140
Email Address:

Delivery Instructions (if different from above):

c/o: _____
Address: _____

_____
Telephone No.: _____
Facsimile No.: _____
Other Special Instructions: _____

ANNEX A

SCHEDULE OF INVESTORS

Name and Address of Investor	Principal Amount of Note	Purchase Price
EW HEALTHCARE PARTNERS, L.P. 21 WaterWay Ave, Suite 225, The Woodlands, TX 77380140	$ 1,922,648.77	$ 1,922,648.77
EW HEALTHCARE PARTNERS-A, L.P. 21 WaterWay Ave, Suite 225, The Woodlands, TX 77380140	$ 77,351.23	$ 77,351.23
TOTAL:	**$ 2,000,000.00**	**$ 2,000,000.00**

ANNEX B

"SELLING STOCKHOLDERS" / "PLAN OF DISTRIBUTION"

Plan of Distribution

Each Selling Stockholder (the "Selling Stockholders") of the shares and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares covered hereby on the NASDAQ Capital Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell shares under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated.

In connection with the sale of the shares or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the shares in the course of hedging the positions they assume. The Selling Stockholders may also sell shares short and deliver these shares to close out their short positions, or loan or pledge the shares to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Company and the Guarantors are required to pay certain fees and expenses incurred by the Company incident to the registration of the shares. The Company and the Guarantors have agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

The Selling Stockholders may be deemed to be statutory underwriters under the Securities Act. In addition, any broker-dealers who act in connection with the sale of the shares hereunder may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, and any commissions received by them and profit on any resale of the shares as principal may be deemed to be underwriting discounts and commissions under the Securities Act. Because Selling Stockholders may be deemed to be "underwriters" within the meaning of the Securities Act, they may be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder.

The Selling Stockholders have acknowledged that they understand their obligations to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M.

We agreed to keep this prospectus effective with respect to shares of common stock offered by a Selling Stockholder hereunder until the earlier of such Selling Stockholder's sale of such shares pursuant to this prospectus or until such shares may be sold without restrictions or other limitations pursuant to Rule 144 (or any successor provision) under the Securities Act (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1).

We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

There can be no assurance that the Selling Stockholders will sell any or all of the shares of common stock registered pursuant to the registration statement of which this prospectus forms a part.

We are not aware of any plans, arrangements or understandings between the Selling Stockholders and any underwriter, broker-dealer or agent regarding the sale of shares of common stock by the selling stockholders.

We will pay all expenses incident to the filing of this registration statement, estimated to be $[__]. These expenses include accounting and legal fees in connection with the preparation of the registration statement of which this prospectus forms a part, legal and other fees in connection with the qualification of the sale of the shares under the laws of certain states (if any), registration and filing fees and other expenses.

SCHEDULE 3.1(dd)

1. UCC Financing Statements
2. PPSA Financing Statements
3. Liens granted pursuant to the MSPLP Facility and the Loan Documents (as defined in the MSPLP Facility).
4. Liens granted pursuant to the ABL Facility, and the Loan Documents (as defined in the ABL Facility).
5. Existing Liens in favor of Madryn Health Partners LP and/or any of its Affiliates.

EXHIBIT A

FORM OF THE NOTE

EXHIBIT B

FORM OF THE GUARANTY AND SECURITY AGREEMENT

Exhibit 10.2

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

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED AS OF JANUARY 18, 2024.

THIS INSTRUMENT IS SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN THE NOTE PURCHASE AND REGISTRATION RIGHTS AGREEMENT DATED AS OF JANUARY 18, 2024, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

VENUS CONCEPT INC.

SECURED SUBORDINATED CONVERTIBLE NOTE

Certificate No.: 1
Issuance Date: January 18, 2024 Original Principal Amount: U.S.$1,922,648.77

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

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

2. Interest. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in kind by capitalizing such Interest and adding it to the Principal balance of this Note on the last Business Day of each Calendar Quarter after the Issuance Date (each, an "Interest Date"). Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, and in cash in full on the Maturity Date by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. If any portion of this Note is repaid or redeemed pursuant to Sections 4.2, 4.3, 5.2, 5.3 and 7 or converted pursuant to Section 3 prior to the Maturity Date and prior to the payment of Interest on an Interest Date, Interest on such portion of this Note shall accrue at the Interest Rate and be payable in cash on each Redemption Date, on each Conversion Date and/or in connection with any required payment upon any Event of Default, as applicable; provided, that, in connection with a conversion, such Interest accrued and unpaid interest may, at the option of the Company, be converted into shares of Common Stock on the same terms as the Principal being converted on such Conversion Date, in lieu of payment in cash. Interest shall continue to accrue on any portion of this Note to the extent not so repaid, redeemed or converted.

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

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

3.2 Mechanics of Conversion.

(a) Optional Conversion.

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

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

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

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

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

(b) [Reserved].

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

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

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

3.4 Net Share Settlement.

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

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

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

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

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

Where:

P = the Principal of this Note to be redeemed on the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, as the case may be.

CP = the Conversion Price in effect as of the date of the Conversion Notice.

MP = the Closing Sale Price per share of the Common Stock on the date of the Conversion Notice or, if such Closing Sale Price is not yet available as of the date of the Conversion Notice, the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the date of the Conversion Notice.

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

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

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

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

(c) The occurrence of any default, event of default, or similar term under the MSPLP Facility after the expiration of all applicable notice, grace and cure periods (each, a "CNB Event of Default"); provided, that to the extent that the Holder has not accelerated the Notes or foreclosed upon the Collateral in reliance on the Event of Default in this clause (c) on or prior to the date upon which CNB, its affiliates or successors enter into a consent, amendment, waiver or similar agreement with respect to the underlying CNB Event of Default giving rise to the Event of Default under this clause (c), the Event of Default pursuant to this clause (c) shall be deemed to be automatically cured upon effectiveness of such waiver or similar agreement among CNB, its affiliates or successors and the Company and its affiliates with respect to the CNB Event of Default. For the avoidance of doubt, the proviso set forth in this clause (c) shall not apply to, or be deemed to have any impact on, any Event of Default arising independently of this clause (c);

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

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

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

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

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

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

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

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

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

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

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

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

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

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

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

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

5.3 Mandatory Redemption upon ERC Claim Payment. Notwithstanding anything to the contrary herein, the Company shall immediately upon receipt by the Company and/or Venus Concept USA Inc. pay to the Holders of the Notes an amount in cash representing all amounts received by the Company and Venus Concept USA Inc. in connection with the ERC Claim, without the requirement for any notice, demand or other action by the Holder or any other person or entity. Such payment shall be made pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder. Such payment shall be paid and applied (i) first to all fees and expenses owed to the Holder and the holders of the Other Notes under the Note Purchase Agreement, Notes and the Guaranty and Security Agreement, (ii) second to all accrued and unpaid Interest owed to the Holder and the Holders of the Other Notes under the Notes and the Guaranty and Security Agreement, and (iii) the remaining portion of such payment shall be applied to the outstanding Principal amount of the Notes. In no event will any Redemption Premium Amount be required to be paid in connection with such payment.

6. Adjustments to the Conversion Rate.

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

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

Where:

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

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

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

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

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

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

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

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

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

OS the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date.

X the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.

Y = a number of shares of Common Stock obtained by dividing (i) the aggregate price amount to exercise all such rights, options or warrants distributed by the Company by (ii) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

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

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

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

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

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

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

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

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

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

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

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

SP_0 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the ex-dividend date for such distribution.

FMV = the fair market value (as determined by the Board of Directors of the Company) of the Distributed Property so distributed with respect to each outstanding share of the Common Stock on the ex-dividend date for such distribution.

Any increase made under the portion of this Section 6.3 above shall become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the ex-dividend date for the distribution.

With respect to an adjustment pursuant to this Section 6.3 where there has been a payment of a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "Spin-Off"), the Conversion Rate shall be increased based on the following formula:

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

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

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

FMV_0 = the average of the Closing Sale Prices per share of the capital stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten (10) consecutive Trading Day period after, and including, the ex-dividend date of the Spin-Off (the "Valuation Period").

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

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

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

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

(ii) are not exercisable; and

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

shall be deemed not to have been distributed for purposes of this Section 6.3 (and no adjustment to the Conversion Rate under this Section 6.3 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 6.3. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and ex-dividend date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 6.3 was made:

(A) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase, (1) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (2) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and

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

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

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

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

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

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

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

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

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

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

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

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

Any increase made pursuant to this Section 6.4 shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make or pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that the Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the ex-dividend date for such cash dividend or distribution.

6.5 Tender or Exchange Offers. If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock (in each case excluding a tender or exchange offer that constitutes a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (such date, the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

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

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

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

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer.

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "Expiration Time") such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Redemptions at the Company's Option.

7.1 Company Optional Redemption.

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

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

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

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

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

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

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

9. Reservation of Authorized Shares.

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

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

10. Redemptions.

10.1 Mechanics.

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

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

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

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

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

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

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

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

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

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

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

12.4 Pro Rata Payments. The Company shall not make any payment on the Madryn Notes unless the Company makes a payment on the Notes on a Pari Passu Basis.

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

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

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

16. Reissuances; New Notes.

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

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

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

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

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

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

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

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

21. Dispute Resolution.

21.1 Submission to Dispute Resolution.

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

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

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

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

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

22. Notices; Currency; Payments.

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

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

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

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

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

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

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

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

28. Adjusted Three-Month Term SOFR Unavailability Period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.15 "CME" means CME Group Benchmark Administration Limited.

29.16 "CNB" means City National Bank of Florida.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.31 "Conversion Rate" means the rate at which shares of Common Stock shall be delivered upon conversion, which rate shall be initially 799.3605 shares of Common Stock for each $1,000 principal amount of Notes, as adjusted from time to time pursuant to the provisions of this Agreement.

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

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

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

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

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

(b) the Common Stock (including all Registrable Securities) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (i) a writing by such Eligible Market or (ii) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable) for the period of time specified by such requirement, provided, however, that the Company's failure to satisfy the minimum stockholders' equity requirement as required for continued listing under Nasdaq Listing Rule 5550(b), as described in the Company's filings with the SEC prior to the date hereof, and any notices received or to be received, or actions taken or to be taken, by the Eligible Market related thereto, shall not constitute a breach of the Equity Condition set forth in this Section 29.35(b).

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

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

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

(f) [reserved];

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

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

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

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

29.37 "ERC Claim" means the Company's and Venus Concept USA Inc.'s rights to receive any and all payments, proceeds or distributions of any kind (without set-off, deduction or withholding of any kind) from the IRS in respect of the employee retention credits claimed by the Company and Venus Concept USA, Inc. on account of qualified wages paid by the Company and Venus Concept USA Inc. and identified as a "Claim for Refund" under Form 941-X Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund for the first and second quarter of 2021, filed with the IRS on or about September 19, 2023 in the aggregate amount of $1,619,206 (the "Claim Amount") as set forth in line item 27 of Part 3 thereof.

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

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

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

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

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

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

29.44 "Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Issuance Date, by and among the Company, the Guarantors from time to time party thereto, and EW Healthcare Partners, L.P., as collateral agent.

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

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

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

29.48 "Interest Period" means (a) initially, the period commencing on (and including) the date hereof and ending on (and including) March 31, 2024; provided, that, if such day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such day, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the last day of the calendar quarter following the calendar quarter in which the preceding Interest Period ended; provided, that, if any such last day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such last day of such quarter, and (y) the Maturity Date.

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

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

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

29.52 "Madryn Notes" means each of (i) that certain Secured Subordinated Convertible Note, dated October 4, 2023, issued by the Company in favor of Madryn Health Partners, LP in the original principal amount of $8,432,946.88 and (ii) that certain Secured Subordinated Convertible Note, dated October 4, 2023, issued by the Company in favor of Madryn Health Partners (Cayman Master), LP in the original principal amount of $14,358,801.44.

29.53 "Material Adverse Effect" has the meaning specified in the Note Purchase Agreement.

29.54 "Maturity Date" means December 9, 2025.

29.55 "MSPLP Facility" means that certain Loan and Security Agreement, dated as of December 8, 2020, among Venus Concept USA Inc., as borrower, the Company, as guarantor, and CNB, as agent and lender, together with any extension, renewal, refinancing or replacement thereof.

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

29.57 "Note Purchase Agreement" means that certain Note Purchase and Registration Rights Agreement, dated as of January 18, 2024, among the Company, the guarantors identified therein and the investors identified therein, pursuant to which the Company issued the Notes, as such agreement may be amended, restated or otherwise modified from time to time.

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

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

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

29.61 "Pari Passu Basis" means, at any time, the percentage (carried out to the ninth decimal place) that (i) the aggregate principal amount of indebtedness outstanding under the Notes bears to the sum of (ii) the aggregate principal amount of indebtedness outstanding under the Madryn Notes and the Notes.

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

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

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

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

29.66 "Principal Market" means the NASDAQ Global Market.

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

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

29.69 "Redemption Premium Amount" means, on any date of determination, with respect to any amount of outstanding Principal redeemed or required to be redeemed, an amount equal to the present value as of such date of determination (as determined by the Holder or, if there are other holders whose Notes are also redeemed or required to be redeemed at the same time, as determined by the holders of Notes representing at least a majority of the aggregate principal amount of the Notes being so redeemed or required to be redeemed, in each case, in accordance with customary practice), discounted at the Three-Month Treasury Rate, of the aggregate remaining Interest payment amounts (at the non-default Interest Rate)on the amount of Principal redeemed or required to be redeemed.

29.70 "Redemption Price" means, as applicable, the Change of Control Redemption Price and the Company Optional Redemption Price.

29.71 "Register" has the meaning specified in Section 3.2(c).

29.72 "Registered Notes" has the meaning specified in Section 3.2(c).

29.73 "Registrable Securities" has the meaning specified in the Note Purchase Agreement.

29.74 "Registration Statement" has the meaning specified in the Note Purchase Agreement.

29.75 "Required Dispute Documentation" has the meaning specified in Section 21.1(b).

29.76 "Required Holders" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

29.77 "Required Reserve Amount" has the meaning specified in Section 9.1.

29.78 "Rule 144" has the meaning specified in the Note Purchase Agreement.

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

29.80 "Senior Management Persons" means the collective reference to Rajiv De Silva, Hemanth Varghese, Domenic Della Penna, Willliam McGrail, Ross Portaro, Anna Georgiadis and Michael Mandarello; and "Senior Management Person" means any one of them.

29.81 "Share Delivery Deadline" has the meaning specified in Section 3.2(a).

29.82 "SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

29.83 "SOFR Adjustment" means 0.10% (10 basis points) per annum.

29.84 "SOFR Successor Rate" has the meaning set forth in Section 28.

29.85 "SOFR Successor Rate Conforming Changes" means, with respect to any proposed SOFR Successor Rate, any conforming changes to the definitions of "Adjusted Three-Month Term SOFR," "Interest Date," "Interest Period," "Interest Rate," "SOFR," "SOFR Adjustment" or "Three-Month Term SOFR," the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Holder, to reflect the adoption of such SOFR Successor Rate and to permit the administration thereof by the Holder in a manner substantially consistent with market practice (or, if the Holder determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such SOFR Successor Rate exists, in such other manner of administration as the Holder determines in consultation with the Borrower).

29.86 "SOFR Unavailability Period" means a period, commencing on the date on which the Holder shall have determined (which determination shall be conclusive absent manifest error) that any of the events set forth in clauses (a) or (b) below have occurred and are continuing through the date on which a SOFR Successor Rate is established pursuant to Section 28:

(a) adequate and reasonable means do not exist for ascertaining Three-Month Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, or

(b) the CME (or any successor administrator reasonably satisfactory to the Holder) has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease, provided, that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Holder that will continue to provide SOFR, or for any reason Three-Month Term SOFR does not adequately and fairly reflect the cost to the Holder of funding this Note.

29.87 "Subsidiary" has the meaning specified in the Note Purchase Agreement.

29.88 "Successor Entity" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

29.89 "Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Transfer Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Transfer Agent from time to time).

29.90 "Three-Month Term SOFR" means, with respect to any Interest Period, the rate per annum equal to the greater of (x) five percent (5.0%) per annum and (y) the three-month Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then Three-Month Term SOFR means the three-month Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto. The Holder's determination of interest rates shall be determinative in the absence of manifest error.

29.91 "Three-Month Treasury Rate" means, as of any date of determination, the weekly average yield as of such date of determination of actually traded United States Treasury securities adjusted to a constant maturity of three (3) months (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Federal Reserve Statistical Release H.15(519) is no longer published, any publicly available source of similar market data)). For the avoidance of doubt, this calculation is based on yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

29.92 "Trading Day" has the meaning specified in the Note Purchase Agreement.

29.93 "Transaction Documents" has the meaning specified in the Note Purchase Agreement.

29.94 "Transfer Agent" has the meaning specified in Section 3.1.

29.95 "U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Secured Subordinated Convertible Note as of the Issuance Date set out above.

VENUS CONCEPT INC.

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Accepted and Agreed:

EW HEALTHCARE PARTNERS, L.P.,
a Delaware limited partnership

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

EXHIBIT I

VENUS CONCEPT INC.
CONVERSION NOTICE

Reference is made to the Secured Subordinated Convertible Note (the "Note") dated as of January 18, 2024, issued to the undersigned by Venus Concept Inc., a Delaware corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the portion of the Principal (as defined in the Note) of the Note indicated below into shares of Common Stock of the Company with $0.0001 par value per share (the "Common Stock"), as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

AGGREGATE PRINCIPAL TO BE CONVERTED: _____

Please confirm the following information:

Conversion Rate: _____

Net Share Settlement: [Yes / No / N/A]

Number of shares of Common Stock to be issued [as Net Share Amount][1] (the "Shares"): _____

[Principal to be repaid in cash][2]: $ _____

Accrued but unpaid Interest to be paid in cash: $ _____

Redemption Premium Amount to be paid in cash: $ _____

Check here if the Holder does not intend to resell the Shares to be issued either (a) prior to, (b) contemporaneously with or (c) no later than thirty (30) days after, as applicable, the date of this Conversion Notice.

[1]Include if Net Share Settlement is elected.
[2]Include if Net Share Settlement is elected.

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty (30) days after the date of this Conversion Notice.

Please issue the shares of the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number:
Account Number: _____

Please make the cash payments specified above to Holder by wire transfer of immediately available funds.

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

VENUS CONCEPT INC.

_____, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of Venus Concept Inc.

Ladies and Gentlemen:

Reference is made to (a) the Note Purchase and Registration Rights Agreement, dated as of January 18, 2024, as amended, by and among Venus Concept Inc., a Delaware corporation (the "Company"), the guarantors named therein and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "Holders") secured subordinated convertible notes (the "Notes"), which are convertible into shares of the Company's Common Stock, par value $0.0001 per share (the "Common Stock"); (b) the conversion notice attached hereto (the "Conversion Notice"); and (c) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (i) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "1933 Act"), (ii) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("Rule 144"), or (iii) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice, and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

VENUS CONCEPT INC.

By:
Name:
Title:

Exhibit 10.3

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

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THOSE CERTAIN SUBORDINATION OF DEBT AGREEMENTS DATED AS OF JANUARY 18, 2024.

THIS INSTRUMENT IS SUBJECT TO THE RESTRICTIONS ON TRANSFER SET FORTH IN THE NOTE PURCHASE AND REGISTRATION RIGHTS AGREEMENT DATED AS OF JANUARY 18, 2024, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

VENUS CONCEPT INC.

SECURED SUBORDINATED CONVERTIBLE NOTE

Certificate No.: 2
Issuance Date: January 18, 2024 Original Principal Amount: U.S.$77,351.23

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

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

2. Interest. Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed per month and shall be payable in kind by capitalizing such Interest and adding it to the Principal balance of this Note on the last Business Day of each Calendar Quarter after the Issuance Date (each, an "Interest Date"). Interest shall be payable in kind on each Interest Date, to the record holder of this Note on the applicable Interest Date, and in cash in full on the Maturity Date by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company. If any portion of this Note is repaid or redeemed pursuant to Sections 4.2, 4.3, 5.2, 5.3 and 7 or converted pursuant to Section 3 prior to the Maturity Date and prior to the payment of Interest on an Interest Date, Interest on such portion of this Note shall accrue at the Interest Rate and be payable in cash on each Redemption Date, on each Conversion Date and/or in connection with any required payment upon any Event of Default, as applicable; provided, that, in connection with a conversion, such Interest accrued and unpaid interest may, at the option of the Company, be converted into shares of Common Stock on the same terms as the Principal being converted on such Conversion Date, in lieu of payment in cash. Interest shall continue to accrue on any portion of this Note to the extent not so repaid, redeemed or converted.

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

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

3.2 Mechanics of Conversion.

(a) Optional Conversion.

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

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

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

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

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

(b) [Reserved].

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

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

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

3.4 Net Share Settlement.

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

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

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

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

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

Where:

P = the Principal of this Note to be redeemed on the Maturity Date, the applicable Redemption Date or the applicable date of any required payment upon any Event of Default, as the case may be.

CP = the Conversion Price in effect as of the date of the Conversion Notice.

MP = the Closing Sale Price per share of the Common Stock on the date of the Conversion Notice or, if such Closing Sale Price is not yet available as of the date of the Conversion Notice, the Closing Sale Price per share of the Common Stock on the Trading Day immediately preceding the date of the Conversion Notice.

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

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

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

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

(c) The occurrence of any default, event of default, or similar term under the MSPLP Facility after the expiration of all applicable notice, grace and cure periods (each, a "CNB Event of Default"); provided, that to the extent that the Holder has not accelerated the Notes or foreclosed upon the Collateral in reliance on the Event of Default in this clause (c) on or prior to the date upon which CNB, its affiliates or successors enter into a consent, amendment, waiver or similar agreement with respect to the underlying CNB Event of Default giving rise to the Event of Default under this clause (c), the Event of Default pursuant to this clause (c) shall be deemed to be automatically cured upon effectiveness of such waiver or similar agreement among CNB, its affiliates or successors and the Company and its affiliates with respect to the CNB Event of Default. For the avoidance of doubt, the proviso set forth in this clause (c) shall not apply to, or be deemed to have any impact on, any Event of Default arising independently of this clause (c);

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

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

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

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

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

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

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

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

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

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

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

5. Fundamental Transactions; Change of Control.

5.1 Fundamental Transactions.

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

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

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

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

5.3 Mandatory Redemption upon ERC Claim Payment. Notwithstanding anything to the contrary herein, the Company shall immediately upon receipt by the Company and/or Venus Concept USA Inc. pay to the Holders of the Notes an amount in cash representing all amounts received by the Company and Venus Concept USA Inc. in connection with the ERC Claim, without the requirement for any notice, demand or other action by the Holder or any other person or entity. Such payment shall be made pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder. Such payment shall be paid and applied (i) first to all fees and expenses owed to the Holder and the holders of the Other Notes under the Note Purchase Agreement, Notes and the Guaranty and Security Agreement, (ii) second to all accrued and unpaid Interest owed to the Holder and the Holders of the Other Notes under the Notes and the Guaranty and Security Agreement, and (iii) the remaining portion of such payment shall be applied to the outstanding Principal amount of the Notes. In no event will any Redemption Premium Amount be required to be paid in connection with such payment.

6. Adjustments to the Conversion Rate.

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

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

Where:

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

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

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

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

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

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

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

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

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

OS the number of shares of Common Stock outstanding immediately before the open of business on such ex-dividend date.

X the total number of shares of Common Stock issuable pursuant to such rights, options or warrants.

Y = a number of shares of Common Stock obtained by dividing (i) the aggregate price amount to exercise all such rights, options or warrants distributed by the Company by (ii) the average of the Closing Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

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

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

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

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

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

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

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

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

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

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

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

SP_0 = the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the ex-dividend date for such distribution.

FMV = the fair market value (as determined by the Board of Directors of the Company) of the Distributed Property so distributed with respect to each outstanding share of the Common Stock on the ex-dividend date for such distribution.

Any increase made under the portion of this Section 6.3 above shall become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Company's Board of Directors determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the ex-dividend date for the distribution.

With respect to an adjustment pursuant to this Section 6.3 where there has been a payment of a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "Spin-Off"), the Conversion Rate shall be increased based on the following formula:

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

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

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

FMV_0 = the average of the Closing Sale Prices per share of the capital stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten (10) consecutive Trading Day period after, and including, the ex-dividend date of the Spin-Off (the "Valuation Period").

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

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

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

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

(ii) are not exercisable; and

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

shall be deemed not to have been distributed for purposes of this Section 6.3 (and no adjustment to the Conversion Rate under this Section 6.3 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 6.3. If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and ex-dividend date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof).

In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 6.3 was made:

(A) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase, (1) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (2) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and

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

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

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

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

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

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

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

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

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

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

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

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

Any increase made pursuant to this Section 6.4 shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make or pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that the Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the ex-dividend date for such cash dividend or distribution.

6.5 Tender or Exchange Offers. If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock (in each case excluding a tender or exchange offer that constitutes a Fundamental Transaction, as to which the provisions set forth in Section 5.1 will apply), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Prices per share of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (such date, the "Expiration Date"), the Conversion Rate shall be increased based on the following formula:

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

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

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

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer.

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the "Expiration Time") such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer).

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Redemptions at the Company's Option.

7.1 Company Optional Redemption.

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

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

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

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

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

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

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

9. Reservation of Authorized Shares.

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

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

10. Redemptions.

10.1 Mechanics.

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

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

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

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

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

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

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

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

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

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

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

12.4 Pro Rata Payments. The Company shall not make any payment on the Madryn Notes unless the Company makes a payment on the Notes on a Pari Passu Basis.

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

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

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

16. Reissuances; New Notes.

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

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

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

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

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

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

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

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

21. Dispute Resolution.

21.1 Submission to Dispute Resolution.

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

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

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

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

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

22. Notices; Currency; Payments.

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

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

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

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

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

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

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

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

28. Adjusted Three-Month Term SOFR Unavailability Period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.15 "CME" means CME Group Benchmark Administration Limited.

29.16 "CNB" means City National Bank of Florida.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.31 "Conversion Rate" means the rate at which shares of Common Stock shall be delivered upon conversion, which rate shall be initially 799.3605 shares of Common Stock for each $1,000 principal amount of Notes, as adjusted from time to time pursuant to the provisions of this Agreement.

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

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

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

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

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

(b) the Common Stock (including all Registrable Securities) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (i) a writing by such Eligible Market or (ii) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable) for the period of time specified by such requirement, provided, however, that the Company's failure to satisfy the minimum stockholders' equity requirement as required for continued listing under Nasdaq Listing Rule 5550(b), as described in the Company's filings with the SEC prior to the date hereof, and any notices received or to be received, or actions taken or to be taken, by the Eligible Market related thereto, shall not constitute a breach of the Equity Condition set forth in this Section 29.35(b).

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

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

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

(f) [reserved];

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

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

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

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

29.37 "ERC Claim" means the Company's and Venus Concept USA Inc.'s rights to receive any and all payments, proceeds or distributions of any kind (without set-off, deduction or withholding of any kind) from the IRS in respect of the employee retention credits claimed by the Company and Venus Concept USA, Inc. on account of qualified wages paid by the Company and Venus Concept USA Inc. and identified as a "Claim for Refund" under Form 941-X Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund for the first and second quarter of 2021, filed with the IRS on or about September 19, 2023 in the aggregate amount of $1,619,206 (the "Claim Amount") as set forth in line item 27 of Part 3 thereof.

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

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

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

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

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

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

29.44 "Guaranty and Security Agreement" means that certain Guaranty and Security Agreement, dated as of the Issuance Date, by and among the Company, the Guarantors from time to time party thereto, and EW Healthcare Partners, L.P., as collateral agent.

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

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

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

29.48 "Interest Period" means (a) initially, the period commencing on (and including) the date hereof and ending on (and including) March 31, 2024; provided, that, if such day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such day, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the last day of the calendar quarter following the calendar quarter in which the preceding Interest Period ended; provided, that, if any such last day is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately preceding such last day of such quarter, and (y) the Maturity Date.

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

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

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

29.52 "Madryn Notes" means each of (i) that certain Secured Subordinated Convertible Note, dated October 4, 2023, issued by the Company in favor of Madryn Health Partners, LP in the original principal amount of $8,432,946.88 and (ii) that certain Secured Subordinated Convertible Note, dated October 4, 2023, issued by the Company in favor of Madryn Health Partners (Cayman Master), LP in the original principal amount of $14,358,801.44.

29.53 "Material Adverse Effect" has the meaning specified in the Note Purchase Agreement.

29.54 "Maturity Date" means December 9, 2025.

29.55 "MSPLP Facility" means that certain Loan and Security Agreement, dated as of December 8, 2020, among Venus Concept USA Inc., as borrower, the Company, as guarantor, and CNB, as agent and lender, together with any extension, renewal, refinancing or replacement thereof.

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

29.57 "Note Purchase Agreement" means that certain Note Purchase and Registration Rights Agreement, dated as of January 18, 2024, among the Company, the guarantors identified therein and the investors identified therein, pursuant to which the Company issued the Notes, as such agreement may be amended, restated or otherwise modified from time to time.

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

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

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

29.61 "Pari Passu Basis" means, at any time, the percentage (carried out to the ninth decimal place) that (i) the aggregate principal amount of indebtedness outstanding under the Notes bears to the sum of (ii) the aggregate principal amount of indebtedness outstanding under the Madryn Notes and the Notes.

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

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

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

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

29.66 "Principal Market" means the NASDAQ Global Market.

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

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

29.69 "Redemption Premium Amount" means, on any date of determination, with respect to any amount of outstanding Principal redeemed or required to be redeemed, an amount equal to the present value as of such date of determination (as determined by the Holder or, if there are other holders whose Notes are also redeemed or required to be redeemed at the same time, as determined by the holders of Notes representing at least a majority of the aggregate principal amount of the Notes being so redeemed or required to be redeemed, in each case, in accordance with customary practice), discounted at the Three-Month Treasury Rate, of the aggregate remaining Interest payment amounts (at the non-default Interest Rate)on the amount of Principal redeemed or required to be redeemed.

29.70 "Redemption Price" means, as applicable, the Change of Control Redemption Price and the Company Optional Redemption Price.

29.71 "Register" has the meaning specified in Section 3.2(c).

29.72 "Registered Notes" has the meaning specified in Section 3.2(c).

29.73 "Registrable Securities" has the meaning specified in the Note Purchase Agreement.

29.74 "Registration Statement" has the meaning specified in the Note Purchase Agreement.

29.75 "Required Dispute Documentation" has the meaning specified in Section 21.1(b).

29.76 "Required Holders" means the holders of Notes (including the Other Notes) representing at least a majority of the aggregate principal amount of the Notes (including the Other Notes) then outstanding.

29.77 "Required Reserve Amount" has the meaning specified in Section 9.1.

29.78 "Rule 144" has the meaning specified in the Note Purchase Agreement.

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

29.80 "Senior Management Persons" means the collective reference to Rajiv De Silva, Hemanth Varghese, Domenic Della Penna, Willliam McGrail, Ross Portaro, Anna Georgiadis and Michael Mandarello; and "Senior Management Person" means any one of them.

29.81 "Share Delivery Deadline" has the meaning specified in Section 3.2(a).

29.82 "SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

29.83 "SOFR Adjustment" means 0.10% (10 basis points) per annum.

29.84 "SOFR Successor Rate" has the meaning set forth in Section 28.

29.85 "SOFR Successor Rate Conforming Changes" means, with respect to any proposed SOFR Successor Rate, any conforming changes to the definitions of "Adjusted Three-Month Term SOFR," "Interest Date," "Interest Period," "Interest Rate," "SOFR," "SOFR Adjustment" or "Three-Month Term SOFR," the timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Holder, to reflect the adoption of such SOFR Successor Rate and to permit the administration thereof by the Holder in a manner substantially consistent with market practice (or, if the Holder determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such SOFR Successor Rate exists, in such other manner of administration as the Holder determines in consultation with the Borrower).

29.86 "SOFR Unavailability Period" means a period, commencing on the date on which the Holder shall have determined (which determination shall be conclusive absent manifest error) that any of the events set forth in clauses (a) or (b) below have occurred and are continuing through the date on which a SOFR Successor Rate is established pursuant to Section 28:

(a) adequate and reasonable means do not exist for ascertaining Three-Month Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, or

(b) the CME (or any successor administrator reasonably satisfactory to the Holder) has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease, provided, that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Holder that will continue to provide SOFR, or for any reason Three-Month Term SOFR does not adequately and fairly reflect the cost to the Holder of funding this Note.

29.87 "Subsidiary" has the meaning specified in the Note Purchase Agreement.

29.88 "Successor Entity" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

29.89 "Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Transfer Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Transfer Agent from time to time).

29.90 "Three-Month Term SOFR" means, with respect to any Interest Period, the rate per annum equal to the greater of (x) five percent (5.0%) per annum and (y) the three-month Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then Three-Month Term SOFR means the three-month Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto. The Holder's determination of interest rates shall be determinative in the absence of manifest error.

29.91 "Three-Month Treasury Rate" means, as of any date of determination, the weekly average yield as of such date of determination of actually traded United States Treasury securities adjusted to a constant maturity of three (3) months (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such date of determination (or, if such Federal Reserve Statistical Release H.15(519) is no longer published, any publicly available source of similar market data)). For the avoidance of doubt, this calculation is based on yields on actively traded non-inflation-indexed issues adjusted to constant maturities.

29.92 "Trading Day" has the meaning specified in the Note Purchase Agreement.

29.93 "Transaction Documents" has the meaning specified in the Note Purchase Agreement.

29.94 "Transfer Agent" has the meaning specified in Section 3.1.

29.95 "U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has executed this Secured Subordinated Convertible Note as of the Issuance Date set out above.

VENUS CONCEPT INC.

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Accepted and Agreed:

EW HEALTHCARE PARTNERS-A, L.P.,
a Delaware limited partnership

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

EXHIBIT I

VENUS CONCEPT INC.
CONVERSION NOTICE

Reference is made to the Secured Subordinated Convertible Note (the "Note") dated as of January 18, 2024, issued to the undersigned by Venus Concept Inc., a Delaware corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the portion of the Principal (as defined in the Note) of the Note indicated below into shares of Common Stock of the Company with $0.0001 par value per share (the "Common Stock"), as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

AGGREGATE PRINCIPAL TO BE CONVERTED: _____

Please confirm the following information:

Conversion Rate: _____

Net Share Settlement: [Yes / No / N/A]

Number of shares of Common Stock to be issued [as Net Share Amount][1] (the "Shares"): _____

[Principal to be repaid in cash][2]: $ _____

Accrued but unpaid Interest to be paid in cash: $ _____

Redemption Premium Amount to be paid in cash: $ _____

Check here if the Holder does not intend to resell the Shares to be issued either (a) prior to, (b) contemporaneously with or (c) no later than thirty (30) days after, as applicable, the date of this Conversion Notice.

[1]Include if Net Share Settlement is elected.
[2]Include if Net Share Settlement is elected.

Notwithstanding anything to the contrary contained herein, unless the Holder shall have checked the box above, the Holder agrees to notify the Company in the event that the Holder has not resold the Shares to be issued on or prior to thirty (30) days after the date of this Conversion Notice.

Please issue the shares of the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

_____

_____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____
DTC Number:
Account Number: _____

Please make the cash payments specified above to Holder by wire transfer of immediately available funds.

Date: _____

_____
Name of Registered Holder

By: _____
Name:
Title:

Tax ID: _____

Facsimile: _____

Email Address: _____

EXHIBIT II

TRANSFER AGENT INSTRUCTIONS

VENUS CONCEPT INC.

_____, 20__

[Transfer Agent]
[Address]
[Address]
[Address]

Re: Order to Issue Common Stock of Venus Concept Inc.

Ladies and Gentlemen:

Reference is made to (a) the Note Purchase and Registration Rights Agreement, dated as of January 18, 2024, as amended, by and among Venus Concept Inc., a Delaware corporation (the "Company"), the guarantors named therein and the investors who are parties thereto, pursuant to which the Company is issuing to the purchasers (collectively, the "Holders") secured subordinated convertible notes (the "Notes"), which are convertible into shares of the Company's Common Stock, par value $0.0001 per share (the "Common Stock"); (b) the conversion notice attached hereto (the "Conversion Notice"); and (c) the attached copy of a written instruction from the general counsel of the Company (or its outside legal counsel) that (i) a registration statement covering the resale of the shares of the Common Stock, subject to this letter, has been declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "1933 Act"), (ii) the Holders may transfer such shares of the Common Stock under Rule 144 promulgated under the 1933 Act ("Rule 144"), or (iii) the Holders may transfer such shares of the Common Stock under Rule 144, without having to comply with the information requirements under Rule 144(c)(1).

This instruction letter shall serve as our authorization and direction to you to issue:

- to the recipient identified under "Issue to" in the applicable Conversion Notice,
- in book-entry form,
- such number of shares of the Common Stock as set forth under "Number of shares of the Common Stock to be issued" in the Conversion Notice, and
- by crediting the designated recipient's balance account with the Depository Trust Company, identified in the Conversion Notice under "DTC Participant," "DTC Number," and "Account Number," through its Deposit Withdrawal at Custodian system.

[Signature Page Follows]

Should you have any questions concerning this matter, please contact me at [_____].

Very Truly Yours,

VENUS CONCEPT INC.

By:
Name:
Title:

Exhibit 10.4

THIS INSTRUMENT IS SUBORDINATED TO ALL INDEBTEDNESS NOW OR HEREAFTER OWING BY THE MAKER TO CITY NATIONAL BANK OF FLORIDA, AS PROVIDED IN THAT CERTAIN SUBORDINATION OF DEBT AGREEMENT DATED AS OF JANUARY 18, 2024.

GUARANTY AND SECURITY AGREEMENT

THIS GUARANTY AND SECURITY AGREEMENT dated as of January 18, 2024 (as amended, modified, restated or supplemented from time to time, this "Agreement") is by and among the parties identified as "Obligors" on the signature pages hereto and such other parties as may become Obligors hereunder after the date hereof (individually an "Obligor", and collectively the "Obligors") and EW Healthcare Partners, L.P., as Collateral Agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined below).

W I T N E S S E T H

WHEREAS, pursuant to that certain Note Purchase and Registration Rights Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), dated as of January 18, 2024, by and among Venus Concept Inc., a Delaware corporation (the "Company"), the Guarantors from time to time party thereto, each Investor from time to time party thereto, and the Collateral Agent, the Company has issued certain secured convertible notes (the "Notes") to the Investors;

WHEREAS, it is required under the terms of the Note Purchase Agreement and the Notes that the Guarantors shall have provided the guaranty set forth in this Agreement;

WHEREAS, it is required under the terms of the Note Purchase Agreement and the Notes that the Grantors shall have granted, pledged and assigned the security interests and undertaken the obligations contemplated by this Agreement; and

WHEREAS, this Agreement is required under the terms of the Note Purchase Agreement.

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Note Purchase Agreement or the Notes, as the context may require.

(b) The following terms shall have the meanings assigned thereto in the UCC (defined below): Accession, Account, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Company Security, Investment Property, Letter-of-Credit Right, Manufactured Home, Money, Payment Intangibles, Proceeds, Securities Account, Securities Entitlement, Securities Intermediary, Security, Software, Standing Timber, Supporting Obligation and Tangible Chattel Paper.

(c) As used herein, the following terms shall have the meanings set forth below:

"Additional Pledged Shares" means one hundred percent (100%) of the issued and outstanding Equity Interests of any Person that becomes an Obligor hereunder, including without limitation, the certificates (or other agreements or instruments) representing such Equity Interests and all options and other rights, contractual or otherwise, with respect thereto.

"Agreement" has the meaning provided in the introductory paragraph hereof.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease and (c) in respect of any Securitization Transaction of any Person, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Collateral Agent in its reasonable judgment.

"Capital Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a finance lease on the balance sheet of that Person.

"Company" has the meaning provided in the introductory paragraph hereof.

"Collateral" has the meaning provided in Section 3 hereof.

"Collateral and Guarantee Requirement" means the requirement of the Obligors to cause the Notes to be secured by assets of the Obligors, as of any date of determination, constituting at least fifty percent (50%) of the consolidated net tangible assets (determined in accordance with GAAP, consistently applied) of the Company and its Subsidiaries (the "Threshold Level"), determined (a) solely as of the date of the Collateral and Guarantee Test Trigger, (b) without regard to any Subsidiaries acquired by any Obligor following the Closing Date and (c) without regard to any assets acquired following the Closing Date in an acquisition of substantially all of the assets of another Person or operating division thereof by any of the Company's Subsidiaries which is not an Obligor.

"Collateral and Guarantee Test Trigger" means the sale, transfer, exclusive license, lease or other disposition by any Obligor of a material portion of the consolidated net tangible assets of the Company and its Subsidiaries, taken as a whole, outside of the ordinary course of business to any entity which is not, at the time of such transfer or other disposition, an Obligor.

"Collateral Agent" has the meaning provided in the introductory paragraph hereof.

"Copyright License" means any agreement, whether written or oral, providing for the grant of any right to use any Work under any Copyright.

"Copyrights" means (a) all proprietary rights afforded Works pursuant to Title 17 of the United States Code, including, without limitation, all rights in mask works, copyrights and original designs, and all proprietary rights afforded such Works by other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international treaties and conventions thereto), whether registered or unregistered, including, but not limited to, all applications for registration, renewals, extensions, reversions or restorations thereof now or hereafter provided for by law and all rights to make applications for registrations and recordations, regardless of the medium of fixation or means of expression, which are owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to and (b) all copyright rights under the copyright laws of the United States, Canada, Israel and all other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international copyright treaties and conventions), whether registered or unregistered, including, but not limited to, all applications for registration, renewals, extensions, reversions or restorations of copyrights now or hereafter provided for by law and all rights to make applications for copyright registrations and recordations, regardless of the medium of fixation or means of expression, which are owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding-Up and Restructuring Act (Canada), the Israeli Companies Law, the Israeli Companies Ordinance, the Israeli Bankruptcy Ordinance, the Israeli Insolvency and Economic Rehabilitation Law, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States, Canada, Israel or other applicable jurisdictions from time to time in effect.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Disqualified Capital Stock" means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (pursuant to a sinking fund obligation or otherwise) or is redeemable at the option of the holder thereof (in whole or in part), in any such case at any time prior to the one hundred eighty-first (181st) day after the Maturity Date in effect at the time of issuance of such Equity Interest, (b) requires the payment of any cash dividends at any time prior to the one hundred eighty-first (181st) day after the Maturity Date in effect at the time of issuance of such Equity Interest, (c) contains any repurchase obligation which may come into effect prior to the one hundred eighty-first (181st) day after the Maturity Date in effect at the time of issuance of such Equity Interest, or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in clause (a), (b) or (c) above, in any such case at any time prior to the one hundred eighty-first (181st) day after the Maturity Date in effect at the time of issuance of such Equity Interest; provided, that, any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the one hundred eighty-first (181st) day after the Maturity Date in effect at the time of issuance of such Equity Interest shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof will not redeem or repurchase any such Equity Interests pursuant to such provisions prior to the Maturity Date.

"Domain Names" means all domain names and URLs that are registered and/or owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"Drug or Device Application" means a New Drug Application, an Abbreviated New Drug Application, or a product license application, as those terms are defined in the FDCA, for any Product, as appropriate, in each case of any Grantor.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member, membership or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; provided, however, that Equity Interests shall not include Indebtedness having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into or by reference to Equity Interests of the Company.

"ERC Claim" means the Grantors' rights to receive any and all payments, proceeds or distributions of any kind (without set-off, deduction or withholding of any kind) from the IRS in respect of the employee retention credits claimed by the Company and Venus Concept USA, Inc. on account of qualified wages paid by the Grantors and identified as a "Claim for Refund" under Form 941-X *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund* for the first and second quarter of 2021, filed with the IRS on or about September 19, 2023 in the aggregate amount of $1,619,206 as set forth in line item 27 of Part 3 thereof.

"Excluded Account" means (a) deposit accounts established solely as payroll, trust, employee benefit and other zero balance accounts, (b) deposit accounts securing reimbursement obligations for credit cards or letters of credit, (c) those certain deposit accounts of Venus Canada maintained by RBC Royal Bank with account numbers ending with x-9637, x-1954 and x-7463, (d) other deposit accounts, so long as at any time the aggregate balance in all such accounts does not exceed $200,000.

"Excluded Property" means, with respect to any Grantor, including any Person that becomes a Grantor after the date of this Agreement, (a) solely with respect to any Grantor organized in the United States, Canada or Israel, any personal property (including, without limitation, motor vehicles of any Grantor organized in the United States) in respect of which perfection of a Lien is not either (i) governed by the UCC, the PPSA, the Israeli Companies Law or the Israeli Companies Ordinance, respectively or (ii) effected by appropriate evidence of the Lien being filed in the United States Copyright Office, the United States Patent and Trademark Office, the Canadian Intellectual Property Office or the Israel Patent Office, (b) any property which is subject to a Lien in connection with "purchase money" Indebtedness pursuant to documents which prohibit such Grantor from granting any other Liens in such property, (c) any leasehold interest of any Grantor in real property, (d) any Excluded Accounts, (e) any real or personal property as to which the Collateral Agent and the Company agree in writing that the costs or other consequences of obtaining a security interest or perfection thereof are excessive in view of the benefits to be obtained by the Secured Parties therefrom, (f) solely with respect to any Grantor organized under the laws of the United States or Canada, any permit, lease, license, contract or other agreement if the grant of a security interest in such permit, lease, license, contract or other agreement in the manner contemplated by the Transaction Documents, under the terms thereof or under applicable law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Grantor's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided, that, (i) any such limitation described in this clause (f) on the security interests granted under the Transaction Documents shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the UCC, the PPSA or any other applicable law, in each case, that has the effect of permitting the grant of a security interest and preventing any termination, acceleration or alteration of such Grantor's rights, titles and interests thereunder as a result of such grant of a security interest and (ii) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any applicable law, permit, lease, license, contract or other agreement, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such permit, lease, license, contract or other agreement shall be automatically and simultaneously granted under the Transaction Documents and such permit, lease, license, contract or other agreement shall be included as Collateral, (g) Equity Interests in any Subsidiary of the Company (other than Wholly Owned Subsidiaries of the Company) organized outside of the United States to the extent that the pledge of such Equity Interests is not permitted by the terms of such Subsidiary's Organization Documents, (h) Equity Interests in any Subsidiary to the extent that the pledge thereof is prohibited by applicable law; provided, that, (i) any such limitation described in this clause (h) on the security interests granted under the Transaction Documents shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the UCC, the PPSA or any other applicable law, in each case, that has the effect of permitting the grant of a security interest and preventing any termination, acceleration or alteration of such Grantor's rights, titles and interests thereunder as a result of such grant of a security interest and (ii) in the event of the termination or elimination of any such prohibition, a security interest in such Equity Interests shall be automatically and simultaneously granted under the Transaction Documents and such Equity Interests shall be included as Collateral, (i) Equity Interests in any Subsidiary not organized in the United States to the extent that the pledge thereof would result in adverse tax consequences to the Company or its Subsidiaries (as reasonably determined by the Company) and (j) Excluded Shares.

"Excluded Shares" means one hundred percent (100%) of the issued and outstanding Equity Interests of any Subsidiary directly owned by any Grantor, including, without limitation, the certificates (or other agreements or instruments) representing such Equity Interests and all options and other rights, contractual or otherwise, with respect thereto, unless such Subsidiary is an Obligor hereunder.

"FDA" means the Food and Drug Administration of the United States of America or any successor entity thereto.

"FDCA" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq. and all regulations promulgated thereunder.

"Funded Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business); (c) all obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (d) all purchase money indebtedness and all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), including, without limitation, any earn out obligations; (e) the Attributable Indebtedness of Capital Leases, Securitization Transactions and Synthetic Leases; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Capital Stock in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (h) all Guarantees with respect to Funded Indebtedness of the types specified in clauses (a) through (g) above of another Person; and (i) all Funded Indebtedness of the types referred to in clauses (a) through (h) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that Funded Indebtedness is expressly made non-recourse to such Person. For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

"Governmental Licenses" means all applications to and requests for approval from a Governmental Authority for the right to manufacture, import, store, market, promote, advertise, offer for sale, sell, use and/or otherwise distribute a Product, including, without limitation, all filings filed with the FDA and Health Canada, and all authorizations issuing from a Governmental Authority based upon or as a result of such applications and requests, which are owned by any Grantor, acquired by any Grantor via assignment, purchase or otherwise or that any Grantor is licensed, authorized or otherwise granted rights under or to.

"Grantor" means each Person who is a party to this Agreement as a "Grantor" from time to time in accordance with the terms hereof. As of the date of this Agreement, the Grantors are Venus Concept USA Inc. and the Company.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" means each Person who is a party to this Agreement as a "Guarantor" from time to time in accordance with the terms hereof. As of the date of this Agreement, the Guarantors are Venus Concept USA Inc., Venus Canada, and Venus Concept Ltd.

"Health Canada" means the Canadian Food Inspection Agency and Health Canada, as applicable.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all Funded Indebtedness; (b) the Swap Termination Value of any Swap Contract; (c) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) and (b) above of any other Person; and (d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person or a Subsidiary thereof is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or such Subsidiary.

"IP Rights" means all worldwide intellectual property rights, industrial property rights, proprietary rights and common-law rights, whether registered or unregistered, Copyrights, Domain Names, Patents, Trademarks, Proprietary Databases, Proprietary Software, Websites and Trade Secrets, including without limitation, all rights to and under all new and useful algorithms, concepts, data (including all clinical data relating to a Product), databases, designs, discoveries, inventions, know-how, methods, processes, protocols, chemistries, compositions, show-how, software (other than commercially available, off-the-shelf or open source), specifications for Products, techniques, technology, trade dress and all improvements thereof and thereto, which is owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"IRS" means the United States Internal Revenue Service.

"Israeli Companies Law" means the Israeli Companies Law, 1999, as amended.

"Israeli Companies Ordinance" means the Israeli Companies Ordinance [New Version], 1983, as amended.

"Israeli Guarantee Law" means the Israeli Guarantee Law, 1967, as amended.

"Israeli Guarantor" means, from time to time, each Person that is a party to this Agreement as a Guarantor that is organized under the laws of, or is registered or maintains a place of business (including an office for the transfer or registration of shares) in, Israel, together with their successors and permitted assigns, in each case, organized under the laws of, or registered or maintaining a place of business (including an office for the transfer or registration of shares) in, Israel.

"Israeli Insolvency and Economic Rehabilitation Law" means the Israeli Insolvency and Economic Rehabilitation Law, 5778-2018, as amended.

"Israeli Patent Office" means the office of Patents Registrar of the State of Israel.

"Israeli Pledge Law" means the Israeli Pledge Law, 1967, as amended.

"Madryn" means the collateral agent under the Pari Passu Intercreditor Agreement, which shall initially be Madryn Health Partners, LP.

"Madryn Guaranty & Security Agreement" means that certain Guaranty and Security Agreement, dated as of December 9, 2020, by and among the Company, the Guarantors from time to time party thereto, and Madryn Health Partners, LP, as collateral agent.

"Material IP Rights" means IP Rights that (a) are material to the operations, business, property or condition (financial or otherwise) of the Grantors or their licensee(s) or (b) the loss of which could reasonably be expected to have a Material Adverse Effect.

"Note Purchase Agreement" has the meaning provided in the recitals hereof.

"Notes" has the meaning provided in the recitals hereof.

"Obligations" means (a) all advances to, and all debts, liabilities, obligations, covenants and duties of, any Obligor arising under any Transaction Document or otherwise with respect to the Notes and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Obligor or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding but excluding, in all cases, all liabilities, obligations, covenants and duties of any Obligor under any Transaction Document relating solely to the Equity Interests into which the Notes may be converted (including, without limitation, the registration rights relating thereto).

"Obligor" has the meaning provided in the introductory paragraph hereof.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction (including articles of association with respect to any company organized in Israel)), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction), and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Pari Passu Intercreditor Agreement" means that certain Intercreditor Agreement dated as of the date hereof by and among the Collateral Agent, the Investors, Madryn and certain Affiliates of Madryn, as amended, restated, supplemented or otherwise modified from time to time.

"Patent License" means any agreement, whether written or oral, providing for the grant of any right to make, use, offer for sale, import, sell or otherwise exploit any invention, in each case, under any Patent.

"Patents" means all registered letters patent and patent applications in the United States, Canada, Israel and all other countries (and all letters patent that issue therefrom) and all reissues, reexaminations, extensions, renewals, divisions and continuations (including continuations-in-part and continuing prosecution applications) thereof, for the full term thereof, together with the right to claim the priority thereto and the right to sue for past infringement of any of the foregoing, which are owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"Permitted Senior Debt" means an amount of Indebtedness which ranks senior to the Obligations in right of payment and/or lien priority, not to exceed $70,000,000 in the aggregate at any time outstanding (excluding the amount of any capitalized interest thereon).

"Pledged Shares" means (a) one hundred percent (100%) of the issued and outstanding Equity Interests of each Subsidiary owned directly by a Grantor set forth on Schedule 3(a) attached hereto, together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following: (i) all shares, securities, membership interests and other Equity Interests or other property representing a dividend or other distribution on or in respect thereof, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, revision, reclassification or other exchange therefor, and any other dividends, distributions, subscriptions, warrants, cash, securities, instruments, rights, options or other property issued to or received or receivable by the holder of, or otherwise in respect thereof; and (ii) without affecting the obligations of the Grantors under any provision prohibiting such action hereunder or under the other Transaction Documents, in the event of any consolidation or merger involving the issuer of any Pledged Shares and in which such issuer is not the surviving Person, all Equity Interests of the successor Person formed by or resulting from such consolidation or merger, (b) all Additional Pledged Shares, and (c) all Accessions and all Proceeds of any and all of the foregoing.

"PPSA" means the Personal Property Security Act (Ontario); provided, that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral granted pursuant to the Transaction Documents is governed by the Personal Property Security Act as in effect in a Canadian jurisdiction other than the Province of Ontario, or the Civil Code of Quebec, "PPSA" means the Personal Property Security Act as in effect from time to time in such other jurisdiction, as applicable, for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

"Product" means any product or service developed, manufactured, marketed, imported or offered for sale, sold, used, distributed or otherwise commercialized by any Obligor or any Subsidiary.

"Proprietary Databases" means any material non-public proprietary database or information repository that is owned by any Grantor or that any Grantor is licensed, authorized or otherwise granted rights under or to.

"Proprietary Software" means any proprietary software owned, licensed or otherwise used (other than any software that is generally commercially available, off-the-shelf and/or open source) including, without limitation, the object code and source code forms of such software and all associated documentation, which is owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"Secured Parties" means, collectively, the Collateral Agent and the Investors, and "Secured Party" means any one of them.

"Securitization Transaction" means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include an Investor or any Affiliate of an Investor).

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

"Threshold Level" has the meaning provided in the definition of "Collateral and Guarantee Requirement".

"Trademark License" means any agreement, written or oral, providing for the grant of any right to use any Trademark.

"Trademarks" means all statutory and common-law trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications to register in connection therewith, under the laws of the United States, any state thereof, Canada, Israel or any other country or any political subdivision thereof, or otherwise, for the full term and all renewals thereof, which are owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"Trade Secrets" means any data or information that is not commonly known by or available to the public and which (a) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other Persons who can obtain economic value from its disclosure or use, (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy and (c) which are owned by any Grantor or which any Grantor is licensed, authorized or otherwise granted rights under or to.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York except as such term may be used in connection with the perfection of the Collateral and then the applicable jurisdiction with respect to such affected Collateral shall apply.

"Venus Canada" means Venus Concept Canada Corp., an Ontario corporation.

"Website Agreements" means all agreements between any Grantor and any other Person pursuant to which such Person provides any services relating to the hosting, design, operation, management or maintenance of any Website, including without limitation, all agreements with any Person providing website hosting, database management or maintenance or disaster recovery services to any Grantor and all agreements with any domain name registrar, as all such agreements may be amended, supplemented or otherwise modified from time to time.

"Websites" means all websites that any Grantor shall operate, manage or control through a Domain Name, whether on an exclusive basis or a nonexclusive basis, including, without limitation, all content, elements, data, information, materials, hypertext markup language (HTML), software and code, works of authorship, textual works, visual works, aural works, audiovisual works and functionality embodied in, published or available through each such website and all intellectual property and proprietary rights in each of the foregoing.

"Wholly Owned Subsidiary" means, as to any Person, (a) any corporation one hundred percent (100%) of whose Equity Interests (other than directors' qualifying shares or Equity Interests that are required to be held by another person in order to satisfy a foreign requirement of law prescribing an equity owner resident in the local jurisdiction) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a one hundred percent (100%) equity interest at such time. Unless otherwise specified, all references herein to a "Wholly Owned Subsidiary" or to "Wholly Owned Subsidiaries" shall refer to a Wholly Owned Subsidiary or Wholly Owned Subsidiaries of the Company.

"Work" means any work or subject matter that is subject to protection pursuant to Title 17 of the United States Code.

2. Guaranty.

(a) The Guaranty. Each of the Guarantors hereby jointly and severally guarantees to each Secured Party and the Collateral Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not satisfied in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly satisfied in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Transaction Documents, the obligations of each Guarantor under this Agreement and the other Transaction Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Debtor Relief Laws or any comparable provisions of any applicable state law.

(b) Obligations Unconditional. The obligations of the Guarantors under Section 2(a) are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Transaction Documents, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 2(b) that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Company or any other Guarantor for amounts paid under this Section 2 until such time as the Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been satisfied in full. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Transaction Documents, or any other agreement or instrument referred to in the Transaction Documents shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Transaction Documents, or any other agreement or instrument referred to in the Transaction Documents shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, any Secured Party as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Secured Parties exhaust any right, power or remedy or proceed against any Person under any of the Transaction Documents, or any other agreement or instrument referred to in the Transaction Documents, or against any other Person under any other guarantee of, or security for, any of the Obligations.

(c) Reinstatement. The obligations of the Guarantors under this Section 2 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any Secured Party, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Secured Parties on demand for all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Secured Parties in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

(d) Certain Additional Waivers.

(i) Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 2(b) and through the exercise of rights of contribution pursuant to Section 2(f).

(ii) Without derogating from the generality of the foregoing Section 2(d)(i), each Israeli Guarantor agrees and confirms that neither the Israeli Guarantee Law nor the Israeli Pledge Law shall apply to this Agreement, and hereby does, and at all times shall, irrevocably and unconditionally waive, all rights and defenses that might otherwise have been or be available to it under the Israeli Guarantee Law (including sections 4(b), 4(c), 5(b)-(c), 6, 7(b), 8, 9, 11, 12, 15 and 17 thereof) or under the Israeli Pledge Law (including Sections 7(b), 13(b) and 20 thereof).

(e) Remedies. The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Secured Parties, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 4.2 of the Notes (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 4.3 of the Notes) for purposes of Section 2(a) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 2(a). The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Transaction Documents and that the Secured Parties may exercise their remedies thereunder in accordance with the terms thereof.

(f) Rights of Contribution. The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Transaction Documents and no Guarantor shall exercise such rights of contribution until all Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been satisfied in full.

(g) Financial Assistance – Israeli Law. Without derogating from the generality of Section 2(d)(ii), if and to the extent that a payment in fulfilling a liability of an Israeli Guarantor under this Agreement would, at the time the payment is due, be restricted due to the payment being a prohibited distribution under Section 301(b) of the Companies Law, then the payment shall be made in the maximum amount permitted to be paid, *provided*, *that*, and without prejudice to any rights of the Collateral Agent and the Secured Parties to full payment, the limited payment shall not be less than all of such Israeli Guarantor's funds capable of distribution in accordance with Section 302 of the Israeli Companies Law, and *provided*, *further*, *that*, the restriction (as may apply from time to time or not) shall not free the Israeli Guarantor from the payment liability in excess of the limited payment amount, but merely shall postpone the payment date of such excess until such time or times as further payment of the liability is not prohibited under Section 301(b) of the Companies Law, with payment of any unsatisfied liability repeatedly so postponed until the liability is satisfied in full.

(h) Guarantee of Payment; Continuing Guarantee. The guarantee in this Section 2 is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

(i) Interest Act (Canada). For the purposes of the Interest Act (Canada), and solely with respect to Venus Canada: (A) whenever a rate of interest or fee rate in any Transaction Document is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (B) the principle of deemed reinvestment of interest shall not apply to any such interest calculation and (C) the rates of interest stipulated thereby are intended to be nominal rates and not effective rates or yields. Each Guarantor hereby irrevocably agrees not to plead or assert, whether by way of defense or otherwise, in any proceeding relating to this Agreement, the Notes or any other Transaction Document, that the interest payable under this Agreement, the Notes any other Transaction Document and the calculation thereof has not been adequately disclosed to it, whether pursuant to section 4 of the Interest Act (Canada) or any other applicable law or legal principle.

3. Grant of Security Interest in the Collateral. Subject to the terms of the Subordination Agreements, to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Obligations, each Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in any and all right, title and interest of such Grantor in and to all of the following, whether now owned or existing or owned, acquired or arising hereafter (collectively, the "Collateral"):

(a) all Accounts;

(b) all Chattel Paper;

(c) all Commercial Tort Claims, including those identified on Schedule 3(c) attached hereto;

(d) all Copyrights;

(e) all Copyright Licenses;

(f) all Deposit Accounts;

(g) all Documents;

(h) all Domain Names;

(i) all Drug or Device Applications;

(j) all Equipment;

(k) all Fixtures;

(l) all General Intangibles;

(m) all Goods;

(n) all Governmental Licenses;

(o) all Instruments;

(p) all Inventory;

(q) all Investment Property;

(r) all IP Rights;

(s) all Letter-of-Credit Rights;

(t) all Money;

(u) all Patents;

(v) all Patent Licenses;

(w) all Payment Intangibles;

(x) all Pledged Shares;

(y) Proprietary Databases;

(z) all Proprietary Software;

(aa) all Software;

(bb) all Supporting Obligations;

(cc) all Trademarks;

(dd) all Trademark Licenses;

(ee) all Trade Secrets;

(ff) all Websites;

(gg) all Website Agreements;

(hh) the ERC Claim; and

(ii) all Accessions and all Proceeds of any and all of the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this Agreement shall not extend to any Excluded Property.

Without limiting the generality of the foregoing, it is hereby specifically understood and agreed that a Grantor may from time to time hereafter deliver additional Equity Interests to the Collateral Agent or Madryn, as applicable, as collateral security for the Obligations. Upon delivery to the Collateral Agent or Madryn, as applicable, such additional Equity Interests shall be deemed to be part of the Pledged Shares of such Grantor and shall be subject to the terms of this Agreement whether or not Schedule 3(a) is amended to refer to such additional Equity Interests.

The Grantors and the Collateral Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Obligations, whether now existing or hereafter arising and (ii) is not and shall not be construed as an assignment of any IP Rights.

4. Provisions Relating to Accounts. Anything herein to the contrary notwithstanding, each of the Grantors shall remain liable under each of the Accounts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Account. Neither the Collateral Agent nor any Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any Secured Party of any payment relating to such Account pursuant hereto, nor shall the Collateral Agent or any Secured Party be obligated in any manner to perform any of the obligations of a Grantor under or pursuant to any Account (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

5. Representations and Warranties. Each Grantor hereby represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that:

(a) Ownership. Each Grantor is the legal and beneficial owner of, or has rights to use, its Collateral and has the right to pledge, sell, assign or transfer the same.

(b) Security Interest/Priority. This Agreement creates a valid security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in the Collateral of such Grantor and, when properly perfected by the filing of a UCC financing statement or other evidence of the interests granted herein with appropriate Governmental Authorities, shall constitute a valid, perfected security interest in such Collateral, to the extent such security interest can be perfected solely by filing a financing statement under the UCC or other evidence. Subject to the terms of the Subordination Agreements, with respect to any Collateral (excluding any Excluded Accounts) consisting of a Deposit Account, Securities Entitlement or held in a Securities Account, upon execution and delivery by the applicable Grantor, the applicable depository bank or Securities Intermediary and the Collateral Agent of an agreement granting control to the Collateral Agent (or Madryn pursuant to the Pari Passu Intercreditor Agreement) over such Collateral, the Collateral Agent shall have a valid and perfected security interest in such Collateral.

(c) Types of Collateral. None of the Collateral consists of, or is the Accessions or the Proceeds of, As-Extracted Collateral, Consumer Goods, Farm Products, Manufactured Homes or Standing Timber.

(d) Accounts. (i) Each Account of the Grantors and the papers and documents relating thereto are genuine and in all material respects accurate and what they purport to be, (ii) each Account arises out of (A) a bona fide sale of goods sold and delivered by such Grantor (or is in the process of being delivered), or (B) services theretofore actually rendered by such Grantor to, the account debtor named therein, (iii) no Account of a Grantor is evidenced by any Instrument or Chattel Paper unless such Instrument or Chattel Paper, to the extent requested by the Collateral Agent, has been endorsed over and delivered to, or submitted to the control of, the Collateral Agent, (iv) no surety bond was required or given in connection with any Account of a Grantor or the contracts or purchase orders out of which they arose and (v) the right to receive payment under each Account is assignable.

(e) Equipment and Inventory. With respect to any Equipment and/or Inventory of a Grantor, each such Grantor has exclusive possession and control of such Equipment and Inventory of such Grantor except for (i) Equipment leased by such Grantor as a lessee, (ii) Equipment or Inventory in transit with common carriers or out for repair, (iii) Equipment in the possession of contract manufacturers and other service providers or (iv) computer equipment in possession of employees. No Inventory of a Grantor is held by a Person other than a Grantor pursuant to consignment, sale or return, sale on approval or similar arrangement.

(f) ERC Claim. (i) The ERC Claim has been duly executed and timely and properly filed with the IRS in the aggregate amount of $1,619,206, (ii) the Grantors have no claims for employee retention credits for any time periods other than those set forth in the definition of "ERC Claim", (iii) the ERC Claim has not been revoked, withdrawn, or otherwise retracted or modified in any respect, no right thereunder has been waived and all statements in the ERC Claim are true, correct and complete, and not misleading, as of the date the ERC Claim was filed and as of the date hereof, (iv) the Grantors have a right to receive all distributions in the amount of the ERC Claim amount, (v) a true and correct copy of the ERC Claim is attached hereto as Exhibit 5(f), (vi) each Grantor has timely filed all of its federal and state tax returns (including for income taxes and all other taxes), such tax returns are complete and accurate, and all federal and state taxes due and owing by the Company have been paid; (vii) no Grantor has filed, and no Grantor will file, any request for setoff of any current or future tax liabilities against the ERC Claim, or claim the ERC Claim as a credit against any current or future tax liabilities; (viii) except as set forth in Schedule 3.1(dd) in the Note Purchase Agreement, no Grantor has pledged or granted any security interest in or to the ERC Claim to any third party or for the benefit of any third party; and (ix) no payment or other distribution has been received in connection with the ERC Claim as of the date hereof.

(g) Consents; Etc. Except for (i) the filing or recording of UCC financing statements, (ii) the filing of appropriate notices with the United States Patent and Trademark Office and the United States Copyright Office and patent, trademark and copyright offices and other appropriate Governmental Authorities in other countries or political subdivisions thereof, (iii) [reserved] and (iv) consents, authorizations, filings or other actions which have been obtained or made, no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including, without limitation, any stockholder, member or creditor of such Grantor), is required for (A) the grant by such Grantor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by such Grantor, (B) the perfection of such security interest (to the extent such security interest can be perfected by filing under the UCC, the granting of control (to the extent required under Section 7(b) and Section 7(d) hereof) or by filing an appropriate notice with the United States Patent and Trademark Office or the United States Copyright Office or patent, trademark and copyright offices and other appropriate Governmental Authorities in other countries or political subdivisions thereof) or (C) other than with respect to the licenses set forth on Schedule 5(g) hereto, the exercise by the Collateral Agent or the Secured Parties of the rights and remedies provided for in this Agreement.

(h) Commercial Tort Claims. As of the date of this Agreement, such Grantor has no Commercial Tort Claims other than those listed on Schedule 3(c).

(i) Authorization of Pledged Shares. The Pledged Shares are duly authorized and validly issued, and, if applicable, are fully paid and nonassessable and are not subject to the preemptive rights of any Person.

(j) Title. Each Grantor has good and indefeasible title to the Pledged Shares of such Grantor and is the legal and beneficial owner of such Pledged Shares. There exists no "adverse claim" within the meaning of Section 8-102 of the UCC with respect to the Pledged Shares of such Grantor.

(k) Exercising of Rights. The exercise by the Collateral Agent of its rights and remedies hereunder will not violate any law or governmental regulation applicable to such Grantor or any material contractual restriction binding on or affecting a Grantor or any of its property. There are no restrictions in any Organization Document governing any Pledged Shares or any document related thereto which would limit or restrict the grant of a Lien pursuant to this Agreement on such Pledged Shares, the perfection of such Lien or the exercise of remedies in respect of such perfected Lien in the Pledged Shares as contemplated by this Agreement.

(l) Grantor's Authority. No authorization, approval or action by, and no notice or filing with any Governmental Authority or with the issuer of any Pledged Shares or any other Person is required either (i) for the pledge made by a Grantor or for the granting of the security interest by a Grantor pursuant to this Agreement (except as have been already obtained) or (ii) for the exercise by the Collateral Agent or the Secured Parties of their rights and remedies hereunder (except as may be required by the UCC or applicable foreign laws or laws affecting the offering and sale of securities), in each case, other than those which have been obtained or made.

(m) Security Interest/Priority. Subject to the terms of the Subordination Agreements and the Pari Passu Intercreditor Agreement, this Agreement creates a valid security interest in favor of the Collateral Agent for the benefit of the Secured Parties in the Pledged Shares. The taking of possession by the Collateral Agent or Madryn subject to the terms of the Pari Passu Intercreditor Agreement of the certificates representing the Pledged Shares and all other certificates and instruments constituting Pledged Shares will perfect and establish the priority of the Collateral Agent's security interest in the Pledged Shares and, when properly perfected by filing a UCC financing statement or registration, in all other Pledged Shares represented by such Pledged Shares and instruments securing the Obligations to the extent such security interest can be perfected by filing a UCC financing statement. Except as set forth in this Section 5(m), no action is necessary to perfect or otherwise protect such security interest.

(n) Partnership and Membership Interests. None of the Pledged Shares consisting of partnership or limited liability company interests (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a securities account or (v) constitutes a Security or a Financial Asset.

6. Covenants of the Obligors. Each Obligor covenants that, so long as any of the Obligations (other than contingent indemnification obligations for which no claim has been asserted) remains outstanding, such Obligor shall:

(a) Financial Statements; Certificates; Other Information. Solely in the event that EW Healthcare Partners, L.P. or its Affiliates hold all of the Notes, deliver to the Collateral Agent, in form and detail reasonably satisfactory to the Collateral Agent:

(i) Within one hundred twenty (120) days after the end of each fiscal year of the Company (or, if earlier, when required to be filed with the SEC (or foreign equivalent)), subject to any applicable extensions, a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards.

(ii) Within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or, if earlier, when required to be filed with the SEC (or foreign equivalent)), a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of the Company as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Company and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(iii) Concurrently with the delivery of the financial statements referred to in Sections 6(a)(i), a duly completed certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Company, including a listing of (A) all Copyrights, Patents or Trademarks and (B) all Trademark Licenses, Copyright Licenses (other than "off-the-shelf" software licenses) and Patent Licenses (except for (x) license grants solely between the Obligors, (y) non-exclusive license grants to distributors or customers to use Trademarks in connection with using, promoting, marketing or selling the Products and (z) non-exclusive license grants solely between the Obligors and their Subsidiaries).

(iv) No later than March 15th of each calendar year, an annual business plan and budget of the Company and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Company, in each case together with such supporting materials as are required by the Collateral Agent and in form reasonably satisfactory to the Collateral Agent, of consolidated balance sheets and statements of income or operations and cash flows of the Company and its Subsidiaries on a quarterly basis for the then current fiscal year and forecast period.

(v) Reserved.

(vi) Promptly after receipt, copies of any detailed audit reports or management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Company or any Subsidiary by independent accountants in connection with the accounts or books of the Company or any Subsidiary, or any audit of any of them.

(vii) Concurrently with delivery to the board of directors of the Company or any Obligor (or any committee of such board of directors), copies of all materials (which, for the avoidance of doubt, shall include any minutes of meetings or similar records) furnished to the board of directors of the Company or any Obligor (or any committee of such board of directors); provided, that, it is understood and agreed that the Company or such Obligor may (x) withhold any information if access to such information may be (in the good faith determination of the board of directors of the Company or such Subsidiary) subject to the attorney-client privilege between the Company or such Subsidiary and its counsel, (y) withhold any information if the disclosure thereof is prohibited by any applicable law and (z) withhold any information to the extent which the Collateral Agent, Investors or the Transaction Documents are the subject thereof.

(viii) Reserved.

(ix) Reserved.

(x) Promptly, such additional information regarding the business, financial or corporate affairs of any Obligor or any Subsidiary, or compliance with the terms of the Transaction Documents, as the Collateral Agent or any Investor (through the Collateral Agent) may from time to time reasonably request.

(xi) Concurrently with delivery thereof to CNB, copies of all financial information, calculations and other reporting provided to CNB pursuant to the terms of the ABL Facility and/or the MSPLP Facility.

(xii) Reserved.

Documents required to be delivered pursuant to Section 6(a) or Section 6(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or posts a link thereto on the Company's website on the internet, or (ii) on which such documents are posted on the Company's behalf on an internet or intranet website, if any, to which each Investor and the Collateral Agent have access (whether a commercial, third-party website, SEC website or whether sponsored by the Collateral Agent). The Collateral Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery by an Investor, and each Investor shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Notwithstanding anything to the contrary contained in this Agreement or any other Transaction Document, each Investor shall have the option in its sole discretion, which may be exercised in writing, to elect to stop receiving any information or reporting that is otherwise required by this Agreement or any other Transaction Document that contains material, non-public information. If an Investor elects to exercise such option, the Obligors shall not deliver any information or reporting that contains material, non-public information to such Investor until such a time as such Investor has notified the Company in writing of its desire to resume receiving such information or reporting.

(b) Notices. Solely in the event that EW Healthcare Partners, L.P. or its Affiliates hold all of the Notes:

(i) Promptly (and in any event, within four (4) Business Days) notify the Collateral Agent of the occurrence of any Default.

(ii) Promptly (and in any event, within five (5) Business Days) notify the Collateral Agent and each Investor of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(iii) Reserved.

(iv) Promptly (and in any event, within five (5) Business Days) notify the Collateral Agent of the occurrence of any default or event of default under the MSPLP Facility or the ABL Facility.

(v) Reserved.

Each notice pursuant to clauses (i) through (v) of this Section 6(b) shall be accompanied by a statement of a Responsible Officer of the Company setting forth details of the occurrence referred to therein and stating what action the applicable Obligor has taken and proposes to take with respect thereto. Each notice pursuant to Section 6(b) shall describe with particularity any and all provisions of this Agreement and any other Transaction Document that have been breached.

(c) Preservation of Existence, Maintenance of Properties, Etc.

(i) Preserve, renew and maintain in full force and effect its legal existence under the laws of the jurisdiction of its organization except (solely for Obligors other than the Company) in a transaction permitted by the Transaction Documents.

(ii) Preserve, renew and maintain in full force and effect its good standing under the laws of the jurisdiction of its organization, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(iii) Take all commercially reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(iv) Preserve or renew all of its registered IP Rights and all IP Rights in respect of which an application for registration has been filed or recorded with the United States Copyright Office, the United States Patent and Trademark Office, the Canadian Intellectual Property Office or the Israeli Patent Office (or any foreign equivalent), in each case, the non-preservation or non-renewal of which could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(v) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty excepted, and make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Maintenance of IP Rights.

(i) Renew, prosecute, enforce and maintain all IP Rights except where the failure to renew, prosecute, enforce or maintain any IP Rights could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(ii) Without limiting the generality of clause (i) above:

(A) Not do any act, or knowingly omit to do any act, whereby any Copyright owned by any Obligor that is a Material IP Right may become dedicated to the public domain, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(B) Use commercially reasonable efforts to (1) maintain the quality of products and services offered under each Trademark owned by any Obligor that is a Material IP Right, (2) employ each Trademark owned by any Obligor that is a Material IP Right with the appropriate notice of registration, if applicable, and (3) not adopt or use any mark that is confusingly similar or a colorable imitation of such Trademarks unless the Collateral Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such Trademark pursuant to this Agreement, in each case except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(C) Notify the Collateral Agent promptly if they know that any Patent or Trademark owned by any Obligor that is a Material IP Right, or any application or registration relating to any Patent or Trademark owned by any Obligor that is a Material IP Right may become abandoned, invalidated, rendered unenforceable or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof or any court or tribunal in any country) regarding any Obligor's ownership of any such Patent or Trademark or its right to register the same or to keep and maintain the same.

(D) Take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of each Patent and Trademark owned by any Obligor that is a Material IP Right, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(E) Not (and not permit any licensee or sublicensee thereof to) do any act, or omit to do any act, whereby any Material IP Right may become abandoned, invalidated, rendered unenforceable, diluted or dedicated to the public, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(F) Use commercially reasonable efforts to maintain the confidentiality of all Trade Secrets and other confidential information that constitute Material IP Rights, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(G) Promptly notify the Collateral Agent of any infringement, violation or misappropriation of any Material IP Right of which they become aware and take such actions as they shall reasonably deem appropriate under the circumstances to protect such Material IP Right, including, where appropriate, the bringing of suit for infringement, violation, misappropriation or dilution, seeking injunctive relief and seeking to recover any and all damages for such infringement, violation, misappropriation or dilution, except where the failure to do so could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) Organization Documents; Legal Name; State of Formation and Form of Entity; Certain Amendments.

(i) Not amend, modify or change its Organization Documents in a manner adverse to the Collateral Agent's interest in the Collateral.

(ii) Not, without providing ten (10) days prior written notice to the Collateral Agent, change its name, state of organization or form of organization (or foreign equivalent) or change its country or nation of domicile, organization or formation.

(iii) Not amend, waive, modify or change (or permit the amendment, waiver, modification or change of) any of the terms or provisions of the documentation evidencing the MSPLP Facility in a manner that (A) shortens the maturity date thereof, (B) increases the interest rate thereof by more than 2.00% (excluding the imposition of the default rate of interest therein and the impact of an alternate benchmark), (C) accelerates the dates due for payment thereunder, (D) imposes subordination terms on the Notes that are more restrictive than those set forth in the Subordination Agreements, (E) subjects any Obligor to any direct prohibition or limitation on the making of mandatory, required or scheduled payments of principal and interest under the Notes or (F) restricts or prohibits the exercise by any Investor of any remedy or other right under or in connection with the Transaction Documents, other than as provided by the Subordination Agreements.

(f) Collateral and Guarantee Requirement; Fundamental Changes; Further Assurances.

Within ninety (90) days following the date of any Collateral and Guarantee Test Trigger, (A) cause additional Subsidiaries of the Company to become Obligors by executing a joinder agreement as contemplated by Section 24 in form and substance reasonably satisfactory to the Collateral Agent, and delivering such other documents as may be necessary in order for such additional Subsidiaries to become Guarantors and provide the security interests contemplated by the Transaction Documents, and/or (B) cause the existing Obligors to provide such additional Collateral pursuant to the Transaction Documents, in each case, such that the Collateral and Guarantee Requirement is met with respect to such Collateral and Guarantee Test Trigger.

Each Obligor agrees that such security interests described above shall be granted pursuant to the Transaction Documents or, with respect to any such property acquired subsequent to the date of this Agreement, such other additional security documents as the Collateral Agent shall request, in each case, reasonably satisfactory to the Collateral Agent and that such security interests shall constitute valid and enforceable perfected security interests. The Obligors will deliver such documentation as the Collateral Agent may reasonably request in connection with the foregoing, including without limitation, appropriate UCC-1 financing statements (or equivalent filings in any foreign jurisdiction), certified resolutions and other organizational and authorizing documents of such Person, all in form, content and scope reasonably satisfactory to the Collateral Agent. Notwithstanding anything to the contrary herein, in no event will any collateral access agreement be required in connection with the Collateral and Guarantee Requirement or for any other purpose hereunder.

Solely to the extent necessary to comply with the Collateral and Guarantee Requirement, the Obligors will execute any and all further documents, financing statements, agreements and instruments, and take all further action (including filing UCC and foreign equivalent financing statements) that may be required under applicable law or that the Investors or the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Transaction Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created in accordance with the terms hereof.

Each Obligor shall, and shall cause each Subsidiary to, ensure that at all times the exercise of the rights of the Collateral Agent or any Investor under any Transaction Document (including the realization, sale or assignment by the Collateral Agent or an Investor of any Equity Interests in any Subsidiary) does not conflict with its Organization Documents.

(g) Liens. Not create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired that ranks senior to the Obligations, other than (except with respect to the ERC Claim) any such Lien securing the Permitted Senior Debt.

(h) Indebtedness. Not create, incur, assume or suffer to exist any Indebtedness that ranks senior to the Obligations in priority of payment, other than (i) the Permitted Senior Debt and (ii) unsecured Indebtedness incurred in the ordinary course of business (including Indebtedness incurred from the use of corporate credit cards) in an aggregate principal amount not to exceed $5,000,000.

(i) Regulatory Compliance.

(i) Anti-Corruption Laws.

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

(B) Not, directly or indirectly, use the proceeds of any Note for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, the Corruption of Foreign Public Officials Act (Canada), the Israeli Penal Law, 1977, Chapter 9, Part 5, and other similar anti-corruption legislation in such or other jurisdictions.

(ii) Sanctions. Not, directly or indirectly, use the proceeds of any Note, or lend, contribute or otherwise make available the proceeds of any Note to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Investor, Collateral Agent, or otherwise) of Sanctions.

Notwithstanding the foregoing, the covenants in clauses (i) and (ii) above shall not require any Obligor organized under the laws of Canada to take any action or refrain from taking any action that would result in a violation of or conflict with the *Foreign Extraterritorial Measures Act* (Canada) or any similar law.

7. Covenants of the Grantors. Each Grantor covenants that, so long as any of the Obligations (other than contingent indemnification obligations for which no claim has been asserted) remains outstanding, such Grantor shall:

(a) Other Liens; Defense of Title.

(i) Defend the Collateral against Liens thereon other than Liens not prohibited by the Transaction Documents.

(ii) Warrant and defend title to and ownership of the Pledged Shares of such Grantor at its own expense against the claims and demands of all other parties claiming an interest therein, and not sell, exchange, transfer, assign, lease or otherwise dispose of Pledged Shares of such Grantor or any interest therein, if the result thereof could reasonably be expected to violate the Collateral and Guarantee Requirement.

(b) Reserved.

(c) Perfection of Security Interest. After the Closing Date, solely to the extent necessary to comply with the Collateral and Guarantee Requirement:

(i) Deliver to the Collateral Agent or Madryn pursuant to the terms of the Pari Passu Intercreditor Agreement, as applicable (A) simultaneously with or promptly following the execution and delivery of this Agreement, all certificates (if any) representing the Pledged Shares of such Grantor and (B) promptly upon the receipt thereof by or on behalf of a Grantor, all other certificates and instruments constituting Pledged Shares of a Grantor. Prior to delivery to the Collateral Agent or Madryn, as applicable, all such certificates and instruments constituting Pledged Shares of a Grantor shall be held in trust by such Grantor for the benefit of the Collateral Agent pursuant hereto. All such certificates and instruments shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, substantially in the form provided in Exhibit 7(c)(i) attached hereto. If such Grantor shall receive (or become entitled to receive) by virtue of its being or having been the owner of any Pledged Shares, any (1) certificate or instrument, including without limitation, any certificate representing a dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares or membership or other Equity Interests, stock splits, spin-off or split-off, promissory notes or other instruments, (2) option or right, whether as an addition to, substitution for, conversion of, or an exchange for, any Pledged Shares or otherwise in respect thereof, (3) dividends payable in securities or (4) distributions of securities or other Equity Interests, cash or other property in connection with a partial or total liquidation, dissolution or reduction of capital, capital surplus or paid-in surplus, then such Grantor shall accept and receive each such certificate, instrument, option, right, dividend or distribution in trust for the benefit of the Collateral Agent, shall segregate it from such Grantor's other property and shall deliver it forthwith to the Collateral Agent or Madryn, as applicable, in the exact form received together with any necessary endorsement and/or appropriate stock power duly executed in blank, substantially in the form provided in Exhibit 7(c)(i), to be held by the Collateral Agent or Madryn, as applicable, as Pledged Shares and as further collateral security for the Obligations.

(ii) Execute and deliver to the Collateral Agent, or Madryn, as applicable, such agreements, assignments or instruments (including affidavits, notices, reaffirmations and amendments and restatements of existing documents, as the Collateral Agent shall reasonably request) and do all such other things as the Collateral Agent may reasonably deem necessary, appropriate or convenient (A) to assure to the Collateral Agent the effectiveness, perfection and priority of its security interests in the Collateral hereunder, including (1) such instruments as the Collateral Agent may from time to time reasonably request in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (2) with regard to Copyrights and Copyright Licenses, a Notice of Grant of Security Interest in Copyrights for filing with the United States Copyright Office in the form of Exhibit 7(c)(ii)(A)(2) attached hereto, (3) with regard to Patents and Patent Licenses, a Notice of Grant of Security Interest in Patents for filing with the United States Patent and Trademark Office in the form of Exhibit 7(c)(ii)(A)(3) attached hereto and (4) with regard to Trademarks registered with the United States Patent and Trademark Office and all applications for Trademarks filed with the United States Patent and Trademark Office and Trademark Licenses, a Notice of Grant of Security Interest in Trademarks for filing with the United States Patent and Trademark Office in the form of Exhibit 7(c)(ii)(A)(4) attached hereto, (B) to consummate the transactions contemplated hereby and (C) to otherwise protect and assure the Collateral Agent of its rights and interests hereunder. To that end, each Grantor authorizes the Collateral Agent to file one or more financing statements (including authorization to describe the Collateral as "all assets" or words of similar meaning) disclosing the Collateral Agent's security interest in any or all of the Collateral of such Grantor without such Grantor's signature thereon, and further each Grantor also hereby irrevocably makes, constitutes and appoints the Collateral Agent, its nominee or any other Person whom the Collateral Agent may designate, as such Grantor's attorney-in-fact with full power and for the limited purpose to sign in the name of such Grantor any such financing statements (including renewal statements), amendments and supplements, notices or any similar documents that in the Collateral Agent's reasonable discretion would be necessary, appropriate or convenient in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable so long as the Obligations (other than contingent indemnification obligations for which no claim has been asserted) remain unpaid. Each Grantor hereby agrees that a carbon, photographic or other reproduction of this Agreement or any such financing statement is sufficient for filing as a financing statement by the Collateral Agent without notice thereof to such Grantor wherever the Collateral Agent may in its sole discretion desire to file the same. In the event for any reason the law of any jurisdiction other than New York becomes or is applicable to the Collateral of any Grantor or any part thereof, or to any of the Obligations, such Grantor agrees to execute and deliver all such instruments and to do all such other things as the Collateral Agent in its sole discretion reasonably deems necessary, appropriate or convenient to preserve, protect and enforce the security interests of the Collateral Agent under the law of such other jurisdiction (and, if a Grantor shall fail to do so promptly upon the request of the Collateral Agent, then the Collateral Agent may execute any and all such requested documents on behalf of such Grantor pursuant to the power of attorney granted hereinabove). If any Collateral is in the possession or control of a Grantor's agents (other than contract manufacturers and other service providers in the ordinary course of business) and the Collateral Agent so requests, such Grantor agrees to notify such agents in writing of the Collateral Agent's security interest therein and, upon the Collateral Agent's request, instruct them to hold all such Collateral for the account of the Secured Parties. Each Grantor agrees to mark its books and records to reflect the security interest of the Collateral Agent in the Collateral.

(d) Notwithstanding anything to the contrary herein, in no event will any control agreement, collateral access agreement, leasehold mortgage or possessory collateral (other than equity certificates) be required for any purpose hereunder.

(e) ERC Claim. Not revoke, withdraw or otherwise retract or modify or waive any rights under the ERC Claim, and not transfer, sell or assign any interests in the ERC Claim, without the prior written consent of the Collateral Agent. Upon receipt of the ERC Claim by a Grantor, such Grantor shall (i) accept and hold such funds for the sole benefit of Collateral Agent, (ii) not commingle such funds with its own funds or another person's funds and (iii) pay the Notes or cause the Notes to be paid in accordance with Section 5.3 of the Notes.

(f) Reserved.

(g) Further Assurances. Promptly following the request therefor, and subject to the terms of the Pari Passu Intercreditor Agreement and the Subordination Agreements, execute and deliver at its expense all further instruments and documents and take all further action that may be necessary and desirable or that the Collateral Agent may reasonably request in order to (i) perfect and protect the security interest created hereby in the Collateral of such Grantor (including, without limitation, any and all other action reasonably necessary to satisfy the Collateral Agent that the Collateral Agent has obtained a perfected security interest in all Collateral), (ii) enable the Collateral Agent to exercise and enforce its rights and remedies hereunder in respect of the Collateral of such Grantor and (iii) otherwise effect the purposes of this Agreement, including, without limitation and if requested by the Collateral Agent, delivering to the Collateral Agent or Madryn, as applicable, upon its request following the occurrence and continuation of an Event of Default, irrevocable proxies in respect of the Pledged Shares of such Grantor, in each case, to the extent consistent with the terms hereof.

(h) Amendments. Not make or consent to any amendment or other modification or waiver with respect to any of the Pledged Shares of such Grantor or enter into any agreement or allow to exist any restriction with respect to any of the Pledged Shares of such Grantor to the extent such action could reasonably be expected to result in a violation of the Collateral and Guarantee Requirement.

(i) Reserved.

(j) Reserved.

(k) Issuance or Acquisition of Equity Interests. Not, without promptly executing and delivering, or causing to be executed and delivered, to the Collateral Agent or Madryn, as applicable, such agreements, documents and instruments as the Collateral Agent may reasonably request for the purpose of perfecting its security interest therein, issue or acquire any Equity Interests constituting Pledged Shares consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is an Investment Company Security, (iv) is held in a securities account or (v) constitutes a Security or a Financial Asset.

8. Advances. On failure of any Obligor to perform any of the covenants and agreements contained herein or in any other Transaction Document, the Collateral Agent may, at its sole option and in its sole discretion, perform the same and in so doing may expend such sums as the Collateral Agent may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien or potential Lien, expenditures made in defending against any adverse claim and all other expenditures that the Collateral Agent may make for the protection of the security hereof or that may be compelled to make by operation of law. All such sums and amounts so expended shall be repayable by the Obligors, on demand, on a joint and several basis (subject to Section 23 hereof) promptly upon timely notice thereof and demand therefor, shall constitute additional Obligations and shall bear interest from the date said amounts are expended at the Interest Rate applicable while an Event of Default has occurred and is continuing. No such performance of any covenant or agreement by the Collateral Agent on behalf of any Obligor, and no such advance or expenditure therefor, shall relieve the Obligors of any Default or Event of Default. The Collateral Agent may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by an Obligor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP. Notwithstanding the foregoing, the terms of this Section 8 shall only apply when no Permitted Senior Debt is outstanding.

9. Remedies.

(a) General Remedies. Upon the occurrence of an Event of Default and solely during the continuation thereof, the Collateral Agent shall have, in addition to the rights and remedies provided herein, in the Transaction Documents, in any other documents relating to the Obligations, or by law (including, without limitation, levy of attachment, garnishment and the rights and remedies set forth in the UCC of the jurisdiction applicable to the affected Collateral), the rights and remedies of a secured party under the UCC of the jurisdiction applicable to the affected Collateral and, further, the Collateral Agent may, with or without judicial process or the aid and assistance of others to the extent permitted by applicable law, (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Grantors, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Grantors to assemble and make available to the Collateral Agent at the expense of the Grantors any Collateral at any place and time designated by the Collateral Agent that is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting the sale or other disposition thereof and/or (v) at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale, by one or more contracts, in one or more parcels, for cash, upon credit or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion (subject to any and all mandatory legal requirements). Each of the Grantors acknowledges that any private sale referenced above may be at prices and on terms less favorable to the seller than the prices and terms that might have been obtained at a public sale. In addition to all other sums due the Collateral Agent and the Secured Parties with respect to the Obligations, the Grantors shall pay the Collateral Agent and each of the Secured Parties all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent or any such Secured Party, in enforcing its remedies hereunder including, but not limited to, reasonable and documented attorneys' fees and court costs, in obtaining or liquidating the Collateral, in enforcing payment of the Obligations, or in the prosecution or defense of any action or proceeding by or against the Collateral Agent or the Secured Parties or the Grantors concerning any matter arising out of or connected with this Agreement, any Collateral or the Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under Debtor Relief Laws. To the extent the rights of notice cannot be legally waived hereunder, each Grantor agrees that any requirement of reasonable notice shall be met if such notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to the Company in accordance with the notice provisions set forth in the Transaction Documents at least ten (10) Business Days before the time of sale or other event giving rise to the requirement of such notice. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Collateral Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by law, any Secured Party may be a purchaser at any such sale. To the extent permitted by applicable law, each of the Grantors hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable law, the Collateral Agent and the Secured Parties may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by law, be made at the time and place to which the sale was postponed, or the Collateral Agent may further postpone such sale by announcement made at such time and place.

(b) Remedies Relating to Accounts. Upon the occurrence of an Event of Default and solely during the continuation thereof, whether or not the Collateral Agent has exercised any or all of its rights and remedies hereunder, (i) each Grantor will promptly upon request of the Collateral Agent instruct all account debtors to remit all payments in respect of Accounts to a mailing location selected by the Collateral Agent and (ii) the Collateral Agent shall have the right to enforce any Grantor's rights against its customers and account debtors, and the Collateral Agent or its designee may notify (or require such Grantor to notify) any Grantor's customers and account debtors that the Accounts of such Grantor have been assigned to the Collateral Agent or of the Collateral Agent's security interest therein and may (either in its own name or in the name of a Grantor or both) demand, collect (including without limitation by way of a lockbox arrangement), receive, take receipt for, sell, sue for, compound, settle, compromise and give acquittance for any and all amounts due or to become due on any Account, and, in the Collateral Agent's discretion, file any claim or take any other action or proceeding to protect and realize upon the security interest of the Secured Parties in the Accounts. Each Grantor acknowledges and agrees that the Proceeds of its Accounts remitted to or on behalf of the Collateral Agent in accordance with the provisions hereof shall be solely for the Collateral Agent's own convenience and that such Grantor shall not have any right, title or interest in such Accounts or in any such other amounts except as expressly provided herein. The Collateral Agent and the other Secured Parties shall have no liability or responsibility to any Grantor for acceptance of a check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement or be responsible for determining the correctness of any remittance. Furthermore, upon the occurrence of an Event of Default and solely during the continuation thereof, (A) the Collateral Agent shall have the right, but not the obligation, to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and the Grantors shall furnish all such assistance and information as the Collateral Agent may require in connection with such test verifications, (B) upon the Collateral Agent's request and at the expense of the Grantors, the Grantors shall cause independent public accountants or others satisfactory to the Collateral Agent to furnish to the Collateral Agent reports showing reconciliations, aging and test verifications of and trial balances for, the Accounts and (C) the Collateral Agent in its own name or in the name of others may communicate with account debtors on the Accounts to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any Accounts.

(c) Remedies Relating to Pledged Shares.

(i) Sale of Pledged Shares. Upon the occurrence of an Event of Default and solely during the continuation thereof, without limiting the generality of this Section 9 and without notice, the Collateral Agent may, in its sole discretion, sell or otherwise dispose of or realize upon the Pledged Shares, or any part thereof, in one or more parcels, at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the Collateral Agent may deem commercially reasonable, for cash, credit or for future delivery or otherwise in accordance with applicable law. To the extent permitted by law, any Secured Party may in such event, bid for the purchase of such securities. Each Grantor agrees that, to the extent notice of sale shall be required by law and has not been waived by such Grantor, any requirement of reasonable notice shall be met if notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to such Grantor, in accordance with the notice provisions set forth in the Transaction Documents at least ten (10) Business Days before the time of such sale. The Collateral Agent shall not be obligated to make any sale of Pledged Shares of such Grantor regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(ii) Private Sale. Upon the occurrence of an Event of Default and solely during the continuation thereof, the Grantors recognize that the Collateral Agent may be unable or deem it impracticable to effect a public sale of all or any part of the Pledged Shares or any of the securities constituting Pledged Shares and that the Collateral Agent may, therefore, determine to make one or more private sales of any such Pledged Shares to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such Pledged Shares for their own account, for investment and not with a view to the distribution or resale thereof, and who are "accredited investors" under the Securities Act. Each Grantor acknowledges and agrees that any such private sale may be at prices and on other terms less favorable than the prices and other terms that might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to delay sale of any such Pledged Shares for the period of time necessary to permit the issuer of such Pledged Shares to register such Pledged Shares for public sale under the Securities Act or under applicable state securities laws. Each Grantor further acknowledges and agrees that any offer to sell such Pledged Shares that has been publicly advertised on a bona fide basis in a newspaper or other publication of general circulation in the financial community of New York, New York (to the extent that such offer may be advertised without prior registration under the Securities Act) shall be deemed to involve a "public sale" under the UCC, notwithstanding that such sale may not constitute a "public offering" under the Securities Act, and the Collateral Agent may, in such event, bid for the purchase of such Pledged Shares.

(d) Access. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and solely during the continuation thereof, the Collateral Agent shall have the right to enter and remain upon the various premises of the Grantors without cost or charge to the Collateral Agent and use the same, together with materials, supplies, books and records of the Grantors for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, at such time the Collateral Agent may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(e) Remedies Relating to ERC Claim. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and solely during the continuation thereof, each Grantor hereby designates and appoints the Collateral Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Grantor, irrevocably and with power of substitution, to demand, sue for, compromise and recover all sums of money that are now or that hereafter might become due and payable for or on account of such Grantor's right to receive any and all payments, proceeds or distributions of any kind (without set-off, deduction or withholding of any kind) from the IRS in respect of the ERC Claim and to submit any and all forms required for the Collateral Agent to receive the ERC Claim directly from the IRS. The Collateral Agent shall have no direct contractual relationship with the IRS by reason of this Agreement. The Collateral Agent does not assume and shall not be responsible for any obligations, liabilities or expenses of any Grantor related to the ERC Claim or any other Grantor obligations owing to the IRS.

(f) Nonexclusive Nature of Remedies. Failure by the Collateral Agent or the Secured Parties to exercise any right, remedy or option under this Agreement, any other Transaction Document, any other documents relating to the Obligations, or as provided by law, or any delay by the Collateral Agent or the Secured Parties in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Collateral Agent or the Secured Parties shall only be granted as provided herein. To the extent permitted by law, neither the Collateral Agent, the Secured Parties, nor any party acting as attorney for the Collateral Agent or the Secured Parties, shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder. The rights and remedies of the Collateral Agent and the Secured Parties under this Agreement shall be cumulative and not exclusive of any other right or remedy that the Collateral Agent or the Secured Parties may have.

(g) Retention of Collateral. To the extent permitted by applicable law, in addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and solely during the continuation thereof, the Collateral Agent may, in compliance with Sections 9-620 and 9-621 of the UCC (or any successor section) or otherwise complying with the requirements of applicable law of the relevant jurisdiction, accept or retain all or any portion of the Collateral in satisfaction of the Obligations. Unless and until the Collateral Agent shall have provided such notices, however, the Collateral Agent shall not be deemed to have accepted or retained any Collateral in satisfaction of any Obligations for any reason.

(h) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Collateral Agent or the Secured Parties are legally entitled, the Obligors shall be jointly and severally liable for the deficiency (subject to Section 23 hereof), together with interest thereon at the Interest Rate applicable while an Event of Default has occurred and is continuing, together with the costs of collection and the reasonable fees, charges and disbursements of counsel. Any surplus remaining after the full payment and satisfaction of the Obligations shall be returned to the Obligors or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

(i) No Objection. An Israeli Guarantor shall, and each Israeli Guarantor does hereby, and at all times shall, irrevocably and unconditionally waive any right it may have to object to any application by the Collateral Agent to a court of competent jurisdiction to exercise the powers accorded to it under this Agreement or similar powers, or to appoint a trustee, administrator, receiver, liquidator or other official with such or similar powers.

10. Rights of the Collateral Agent.

(a) Power of Attorney. In addition to other powers of attorney contained herein, each Grantor hereby designates and appoints the Collateral Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Grantor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and solely during the continuation of an Event of Default:

(i) to demand, collect, settle, compromise and adjust, and give discharges and releases concerning the Collateral, all as the Collateral Agent may reasonably deem appropriate;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any of the Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action, suit or proceeding brought and, in connection therewith, give such discharge or release as the Collateral Agent may reasonably deem appropriate;

(iv) to receive, open and dispose of mail addressed to a Grantor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to the Collateral on behalf of and in the name of such Grantor, or securing, or relating to such Collateral;

(v) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

(vi) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct;

(vii) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;

(viii) to maintain (including determining not to renew, pursue or further file) and enforce all IP Rights, forming any part of the Collateral;

(ix) to sell, assign, transfer, license, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral or the goods or services that have given rise thereto, as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes;

(x) to adjust and settle claims under any insurance policy relating thereto;

(xi) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Collateral Agent may reasonably deem appropriate in order to perfect and maintain the security interests and liens granted in this Agreement and in order to fully consummate all of the transactions contemplated therein;

(xii) to institute any foreclosure proceedings that the Collateral Agent may reasonably deem appropriate;

(xiii) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Pledged Shares;

(xiv) to exchange any of the Pledged Shares or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Pledged Shares with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Collateral Agent may deem reasonably appropriate;

(xv) to vote for a shareholder or member resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Pledged Shares into the name of the Collateral Agent or one or more of the Secured Parties or into the name of any transferee to whom the Pledged Shares or any part thereof may be sold pursuant to Section 9 hereof; and

(xvi) to do and perform all such other acts and things as the Collateral Agent may deem appropriate or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable for so long as any of the Obligations (other than contingent indemnification obligations for which no claim has been asserted) shall remain outstanding. The Collateral Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Collateral Agent in this Agreement and shall not be liable for any failure to do so or any delay in doing so. The Collateral Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Collateral Agent solely to protect, preserve and realize upon its security interest in the Collateral.

(b) Assignment by the Collateral Agent. The Collateral Agent may from time to time assign the Obligations to a successor Collateral Agent appointed in accordance with the Transaction Documents, and such successor shall be entitled to all of the rights and remedies of the Collateral Agent under this Agreement in relation thereto.

(c) Releases of Collateral. If any Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction not prohibited by the Transaction Documents, then the security interest therein shall be automatically released and the Collateral Agent, at the request and sole expense of such Grantor, shall promptly execute and deliver to such Grantor all releases and other documents and take such other action, reasonably necessary for the release of the Liens created hereby or by any other Transaction Document on such Collateral. The Collateral Agent may release any of the Pledged Shares from this Agreement or may substitute any of the Pledged Shares for other Pledged Shares without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Agreement as to any Pledged Shares not expressly released or substituted, and this Agreement shall continue as a lien on all Pledged Shares not expressly released or substituted. Notwithstanding anything to the contrary contained in this Agreement or in any other Transaction Document, the security interest in the Collateral granted by the Grantors shall be released and, at the request and sole expense of the Grantors, the Collateral Agent shall promptly execute and deliver to the Grantors all releases and other documents and take such other action, reasonably necessary for the release of the Liens created hereby or by any other Transaction Document on such Collateral on the earliest to occur of (i) assignment by EW Healthcare Partners, L.P. or is Affiliates of any of its rights under the Notes (other than to an Affiliate of EW Healthcare Partners, L.P.) and (ii) the occurrence of the "Collateral Release Date" (as defined in the Madryn Guaranty and Security Agreement) (the "Collateral Release Date"). Further, Sections 3, 4, 5, 6(f), 7, 8, 9, 10 (other than Section 10(c) and Section 10(d)) and 11 of this Agreement shall automatically terminate on the Collateral Release Date.

(d) The Collateral Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Collateral Agent hereunder and to account for all proceeds thereof, the Collateral Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Grantors shall be responsible for preservation of all rights in the Collateral, and the Collateral Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Grantors. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Collateral Agent shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 9 hereof, the Collateral Agent shall have no responsibility for (i) ascertaining or taking action with respect to any matters relating to any Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters or (ii) taking any steps to clean, repair or otherwise prepare the Collateral for sale.

(e) Voting Rights in Respect of the Pledged Shares.

(i) So long as no Event of Default shall have occurred and be continuing, each Grantor may exercise any and all voting and other consensual rights pertaining to the Pledged Shares of such Grantor or any part thereof for any purpose not inconsistent with the terms of this Agreement or the other Transaction Documents; and

(ii) Upon the occurrence and during the continuance of an Event of Default, and delivery by the Collateral Agent to the applicable Grantor of notice of its intent to exercise its rights under this Section 10(e), all rights of a Grantor to exercise the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to paragraph (i) of this subsection shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall then have the sole right to exercise such voting and other consensual rights.

(f) Dividend Rights in Respect of the Pledged Shares.

(i) So long as no Event of Default shall have occurred and be continuing and subject to Section 7(c) hereof, each Grantor may receive and retain any and all dividends and distributions (other than stock dividends and other dividends and distributions constituting Pledged Shares addressed hereinabove) or interest paid in respect of the Pledged Shares.

(ii) Upon the occurrence and during the continuance of an Event of Default, and delivery by the Collateral Agent to the applicable Grantor of notice of its intent to exercise its rights under this Section 10(f):

(A) all rights of a Grantor to receive the dividends, distributions and interest payments that it would otherwise be authorized to receive and retain pursuant to paragraph (i) of this subsection shall cease and all such rights shall thereupon be vested in the Collateral Agent, which shall then have the sole right to receive and hold as Pledged Shares such dividends, distributions and interest payments; and

(B) all dividends and interest payments that are received by a Grantor contrary to the provisions of paragraph (ii) (A) of this subsection shall be received in trust for the benefit of the Collateral Agent and Madryn as provided for in the Pari Passu Intercreditor Agreement, shall be segregated from other property or funds of such Grantor, and shall be promptly paid over to the Collateral Agent or Madryn, as applicable, as Pledged Shares in the exact form received, to be held by the Collateral Agent or Madryn, as applicable, as Pledged Shares and as further collateral security for the Obligations.

11. Application of Proceeds. Upon the acceleration of the Obligations pursuant to Section 4.2 or Section 4.3 of any Note, any payments in respect of the Obligations and any proceeds of the Collateral, when received by the Collateral Agent or any of the Secured Parties in cash or its equivalent, will be applied in reduction of the Obligations that were so accelerated, and each Grantor irrevocably waives the right to direct the application of such payments and proceeds and acknowledges and agrees that the Collateral Agent shall have the continuing and exclusive right to apply any and all such payments and proceeds in the Collateral Agent's sole discretion, notwithstanding any entry to the contrary upon any of its books and records.

12. Continuing Agreement.

(a) This Agreement shall be a continuing agreement in every respect and shall remain in full force and effect so long as any of the Obligations (other than contingent indemnification obligations for which no claim has been asserted) remains outstanding. Upon payment or other satisfaction of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), this Agreement and the liens and security interests of the Collateral Agent hereunder shall be automatically terminated and the Collateral Agent shall, upon the request and at the expense of the Grantors, execute and deliver all UCC termination statements and/or other documents reasonably requested by the Grantors evidencing such termination and return to Grantors all Collateral in its possession. Notwithstanding the foregoing, all releases and indemnities provided hereunder shall survive termination of this Agreement.

(b) This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent or any Secured Party as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided, that, in the event payment of all or any part of the Obligations is rescinded or must be restored or returned, all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Collateral Agent or any Secured Party in defending and enforcing such reinstatement shall be deemed to be included as a part of the Obligations.

13. Amendments and Waivers. This Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except as set forth in Section 9.6 of the Note Purchase Agreement.

14. Successors in Interest. This Agreement shall create a continuing security interest in the Collateral and shall be binding upon each Grantor, its successors and assigns, and shall inure, together with the rights and remedies of the Collateral Agent and the Secured Parties hereunder, to the benefit of the Collateral Agent and the Secured Parties and their successors and permitted assigns; provided, however, that, none of the Obligors may assign its rights or delegate its duties hereunder without the prior written consent of the requisite Investors under the Transaction Documents.

15. Notices and Other Communications; Facsimile Copies.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Obligors:

Venus Concept Inc.
Attn: Rajiv De Silva, CEO
Michael Mandarello, General Counsel
235 Yorkland Blvd, Suite 900
Toronto, Ontario, Canada M2J 4Y8
Electronic Mail: rdesilva@venusconcept.com
mmandarello@venusconcept.com
Telephone: +1 (888) 907-0115
Facsimile: +1 (855) 907-0115

With a copy to:

Reed Smith LLP

Attn: Benjamin Brimeyer
10 South Wacker Drive
Chicago, Illinois 60606
Electronic Mail: bbrimeyer@reedsmith.com
Telephone: +1 (312) 207-1000
Facsimile: +1 (312) 207-6400

Attn: Mark Pedretti
599 Lexington Avenue
New York, New York 10022
Electronic Mail: mpedretti @reedsmith.com
Telephone: +1 (212) 521-5400
Facsimile: +1 (212) 521-545

(ii) if to Collateral Agent:

Notice shall be sent to both of the following addresses:

EW Healthcare Partners, L.P.
Attn: R. Scott Barry
21 WaterWay Ave, Suite 225
The Woodlands, TX 77380
Electronic Mail: sbarry@ewhealthcare.com
Telephone: +1 (646) 429-1259

and

EW Healthcare Partners, L.P.
Attn: Greg Hill
21 WaterWay Ave, Suite 225
The Woodlands, TX 77380
Electronic Mail: ghill@ewhealthcare.com
Telephone: 281-364-1555

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

Barnes & Thornburg LLP
Attn: Bruce A. Zivian; Taylor K. Wirth
One N. Wacker Drive, Suite 4400
Chicago, IL 60606-2833
Electronic Mail: bzivian@btlaw.com; Taylor.Wirth@btlaw.com
Telephone: +1 (312) 214-5601
Facsimile: +1 (312) 759-5646

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Collateral Agent hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites). The Collateral Agent or the Obligors may each, in their respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided*, *that*, approval of such procedures may be limited to particular notices or communications.

16. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

17. Headings. Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

18. Governing Law; Venue; Waiver of Right to Jury Trial. The terms of Section 9.10 of the Note Purchase Agreement with respect to governing law, venue, and waiver of the right to a jury trial are each incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

19. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

20. Entirety. This Agreement, the other Transaction Documents and the other documents relating to the Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any proposal letters or correspondence relating to the Transaction Documents, any other documents relating to the Obligations, or the transactions contemplated herein and therein.

21. Survival. All representations and warranties of the Obligors hereunder shall survive the execution and delivery of this Agreement, the other Transaction Documents and the other documents relating to the Obligations, the delivery of the Notes and the extension of credit thereunder or in connection therewith. It is understood and agreed that, notwithstanding the foregoing, representations and warranties shall only be made (or deemed to be made) by the Obligors hereunder on the date hereof and on each date thereafter on which the representations and warranties set forth herein are required to be made (or deemed to be made).

22. Other Security. To the extent that any of the Obligations are now or hereafter secured by property other than the Collateral (including, without limitation, real and other personal property and securities owned by a Grantor) or by a guarantee, endorsement or property of any other Person, then to the extent permitted by applicable law the Collateral Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuation of any Event of Default, and the Collateral Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Collateral Agent shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Obligations or any of the rights of the Collateral Agent or the Secured Parties under this Agreement, under any of the other Transaction Documents or under any other document relating to the Obligations.

23. Joint and Several Obligations of Grantors.

(a) Subject to Section 23(b), each of the Obligors is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Secured Parties, for the mutual benefit, directly and indirectly, of each of the Obligors and in consideration of the undertakings of each of the Obligors to accept joint and several liability for the obligations of each of them. Each Obligor irrevocably and unconditionally does, and at all times shall, waive (i) any claim or defense that joint and several liability hereunder shall be considered a guarantee under the Israeli Guarantee Law and (ii) any rights or defenses under such law, should such law be considered to nonetheless apply.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Transaction Documents or in any other documents relating to the Obligations, the obligations of each Obligor under this Agreement, the other Transaction Documents and the other documents relating to the Obligations shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any applicable state law.

24. Joinder. At any time after the date of this Agreement, one or more additional Subsidiaries may become party hereto by executing and delivering to the Collateral Agent a joinder agreement. Immediately upon such execution and delivery of such joinder agreement (and without any further action), each such additional Subsidiary will become a party to this Agreement as a "Grantor," a "Guarantor," and/or an "Obligor," as applicable, and have all the rights and obligations of a "Grantor," a "Guarantor," and/or an "Obligor," as applicable, hereunder and this Agreement and the schedules hereto shall be deemed amended by such joinder agreement.

25. [Reserved].

26. Consent of Issuers of Pledged Shares. Each issuer of Pledged Shares party to this Agreement hereby acknowledges, consents and agrees to the grant of the security interest in such Pledged Shares by the applicable Grantors pursuant to this Agreement, together with all rights accompanying such security interest as provided by this Agreement and applicable law, notwithstanding any anti-assignment provisions in any operating agreement, limited partnership agreement or similar organizational or governance documents of such issuer.

27. Confidentiality. Section 9.3 of the Note Purchase Agreement is incorporated herein by this reference as if set forth in full in this Agreement, *mutatis mutandis*.

28. Termination. This Agreement shall automatically terminate upon the earlier to occur of satisfaction (whether by repayment, conversion into Equity Interests of the Company, or some combination thereof) in full of the Obligations (other than contingent indemnification obligations for which no claim has been asserted).

[Signature Pages Follow]

Each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

OBLIGORS

VENUS CONCEPT INC.,
as a Grantor

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

VENUS CONCEPT USA INC.,
as a Guarantor and as a Grantor

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: President and Assistant Secretary

VENUS CONCEPT CANADA CORP.,
as a Guarantor

By: /s/ Hemanth Varghese
Name: Hemanth Varghese
Title: President and General Manager

VENUS CONCEPT LTD.,
as a Guarantor

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Accepted and agreed to as of the date first above written.

COLLATERAL AGENT:

EW HEALTHCARE PARTNERS, L.P.,
a Delaware limited partnership

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

SCHEDULES

Exhibit 5(f)

ERC CLAIM

(see attached)

EXHIBIT 7(c)(i)

FORM OF IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to

the following shares of capital stock of _____, a _____ corporation:

Number of Shares	Certificate Number

and irrevocably appoints _____ its agent and attorney-in-fact to transfer all or any part of such capital stock and to take all necessary and appropriate action to effect any such transfer. The agent and attorney-in-fact may substitute and appoint one or more persons to act for him.

[HOLDER]

By: _____
Name:
Title:

EXHIBIT 7(c)(ii)(A)(II)

FORM

OF

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

COPYRIGHTS

United States Copyright Office

Ladies and Gentlemen:

Please be advised that pursuant to the Guaranty and Security Agreement dated as of January 18, 2024 (as the same may be amended, modified, restated or supplemented from time to time, the "Security Agreement") by and among the Grantors party thereto (each a "Grantor" and collectively, the "Grantors") and EW Healthcare Partners, L.P., as Collateral Agent (the "Collateral Agent") for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon, the copyrights, copyright licenses and copyright applications shown on Schedule 1 attached hereto to the Collateral Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Collateral Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the copyrights, copyright licenses and copyright applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Security Agreement and (ii) is not to be construed as an assignment of any copyright, copyright license or copyright application.

[Signature pages follow]

Very truly yours,

[GRANTOR]

By: _____
Name:
Title:

Acknowledged and Accepted:

COLLATERAL AGENT:

EW HEALTHCARE PARTNERS, L.P.,
a Delaware limited partnership

By: ESSEX WOODLANDS FUND IX-GP, L.P.,
its General Partner

By: ESSEX WOODLANDS IX, LLC,
its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT 7(c)(ii)(A)(III)

FORM

OF

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

PATENTS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Guaranty and Security Agreement dated as of January 18, 2024 (as the same may be amended, modified, restated or supplemented from time to time, the "Security Agreement") by and among the Grantors party thereto (each a "Grantor" and collectively, the "Grantors") and EW Healthcare Partners, L.P., as Collateral Agent (the "Collateral Agent") for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon, the patents, patent licenses and patent applications set forth on Schedule 1 attached hereto to the Collateral Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Collateral Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the patents, patent licenses and patent applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Security Agreement and (ii) is not to be construed as an assignment of any patent, patent license or patent application.

[Signature pages follow]

Very truly yours,

[GRANTOR]

By: _____
Name:
Title:

Acknowledged and Accepted:

COLLATERAL AGENT:

EW HEALTHCARE PARTNERS, L.P.,
a Delaware limited partnership

By: ESSEX WOODLANDS FUND IX-GP, L.P.,
its General Partner

By: ESSEX WOODLANDS IX, LLC,
its General Partner

By: _____
Name: _____
Title: _____

EXHIBIT 7(c)(ii)(A)(IV)

FORM

OF

NOTICE

OF

GRANT OF SECURITY INTEREST

IN

TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Guaranty and Security Agreement dated as of January 18, 2024 (as the same may be amended, modified, restated or supplemented from time to time, the "Security Agreement") by and among the Grantors party thereto (each a "Grantor" and collectively, the "Grantors") and EW Healthcare Partners, L.P., as Collateral Agent (the "Collateral Agent") for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon, the trademarks, trademark licenses and trademark applications set forth on Schedule 1 attached hereto to the Collateral Agent for the ratable benefit of the Secured Parties.

The undersigned Grantor and the Collateral Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in the trademarks, trademark licenses and trademark applications set forth on Schedule 1 attached hereto (i) may only be terminated in accordance with the terms of the Security Agreement and (ii) is not to be construed as an assignment of any trademark, trademark license or trademark application.

[Signature pages follow]

Very truly yours,

[GRANTOR]

By: _____
Name:
Title:

Acknowledged and Accepted:

COLLATERAL AGENT:

EW HEALTHCARE PARTNERS, L.P.,
a Delaware limited partnership

By: ESSEX WOODLANDS FUND IX-GP, L.P.,
its General Partner

By: ESSEX WOODLANDS IX, LLC,
its General Partner

By: _____
Name: _____
Title: _____

Exhibit 10.5

SUBORDINATION OF DEBT AGREEMENT

This SUBORDINATION OF DEBT AGREEMENT is entered into as of January 18, 2024 (the "**Agreement**"), by and among (a) EW HEALTHCARE PARTNERS, L.P. and EW HEALTHCARE PARTNERS-A, L.P. (collectively, the "**Junior Lender**"), whose address is 21 WaterWay Ave, Suite 225, The Woodlands, TX 77380, (b) CITY NATIONAL BANK OF FLORIDA, its successors and/or assigns (the "**Senior Lender**"), whose address is 100 S.E. 2nd Street, 13th Floor, Miami, Florida 33131, (c) VENUS CONCEPT INC., a Delaware corporation (the "**Issuer**"), whose address is 1880 N. Commerce Parkway, Suite 2, Weston, Florida 33326, (d) VENUS CONCEPT CANADA CORP., a corporation incorporated under the laws of the Province of Ontario (the "**Canadian Guarantor**"), whose address is 255 Consumers Road, Suite 110, Toronto, Ontario M2J 1R4, (e) VENUS CONCEPT USA INC., a Delaware corporation (the "**US Guarantor**"), whose address is 1880 N. Commerce Parkway, Suite 2, Weston, Florida 33326 and (f) VENUS CONCEPT LTD., a company formed under the Companies Law of Israel (the "**Israeli Guarantor**" and, together with the Issuer, the Canadian Guarantor and the US Guarantor, the "**Obligors**"), whose address is 6 Hayozma, Yokne'am, Illit, Israel 2069200.

R E C I T A L S:

A. The Obligors are now or will be from time to time, whether as direct debtors or as guarantors, hereafter indebted in various sums to the Junior Lender pursuant to certain existing and/or future notes, agreements and instruments (collectively, the "**Junior Debt Instruments**").

B. The Junior Lender desires that the Senior Lender extend and/or continue the extension of credit to the Obligors from time to time as the Senior Lender in its sole discretion may determine, and as a condition of such extension and/or continued extension of such credit, the Senior Lender is requiring that the Junior Debt (as defined below) be subordinated to the Senior Debt (as defined below) in the manner hereinafter set forth; and

C. The extension and/or continued extension of credit, as aforesaid, by the Senior Lender is necessary or desirable to the conduct and operation of the business of the Obligors, and will inure to the benefit of the Junior Lender.

A G R E E M E N T S:

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration to the Junior Lender, the receipt and sufficiency of which are hereby acknowledged, the Junior Lender and the Obligors hereby agree with the Senior Lender as follows:

1. Subordination.

1.1 Except as expressly set forth herein, the Junior Lender hereby subordinates the indebtedness evidenced by the Junior Debt Instruments, and any and all other indebtedness now or at any time or times hereafter owing by the Obligors, or any successor or assign of the Obligors, including without limitation, a receiver, trustee or debtor-in-possession (the term "**Obligors**" as used hereinafter shall include any such successor or assign) to the Junior Lender, whether such indebtedness is absolute or contingent, direct or indirect and howsoever evidenced, including without limitation, all interest thereon, including pre-petition and post-petition interest, fees and expenses and any other charges, and any refinancings thereof (collectively, the "**Junior Debt**") to any and all indebtedness now or at any time hereafter owing by the Obligors to the Senior Lender, whether absolute or contingent, direct or indirect and howsoever evidenced, including, but not limited to, all pre-petition and post-petition interest thereon, fees, expenses and all other demands, claims, liabilities or causes of action for which the Obligors may now or at any time or times hereafter in any way be liable to the Senior Lender, whether under any agreement, instrument or document executed and delivered or made by the Obligors to the Senior Lender or otherwise, including any refinancings thereof, including, without limitation, the Obligations (as defined in that certain Loan and Security Agreement (Main Street Priority Loan Facility), dated as of December 8, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time (the "**Senior Loan Agreement**")) and any other obligation, whether contingent or otherwise, owed by the Obligors from time to time to the Senior Lender under the Loan Documents (as defined in the Senior Loan Agreement) (collectively, the "**Senior Debt**").

1.2 The Junior Lender hereby subordinates all security interests, liens, encumbrances, guaranties and claims, whether now existing or hereafter arising, which in any way secure the payment of the Junior Debt (excluding the Junior Lender's Priority Collateral (as defined below), the "**Junior Lender's Subordinated Collateral**") to all security interests, liens, encumbrances, guaranties and claims, whether now existing or hereafter arising, which in any way secure the payment of the Senior Debt, (the "**Senior Lender's Collateral**"). Notwithstanding anything in this Section 1.2 to the contrary, the Senior Lender agrees that the Junior Lender's security interest, lien, encumbrance and claim to (a) the Issuer's and the US Guarantor's rights to receive any and all payments, proceeds or distributions of any kind (without set-off, deduction or withholding of any kind) from the United States Internal Revenue Service (the "**IRS**") in respect of the employee retention credits claimed by the Issuer and the US Guarantor on account of qualified wages paid by the Issuer and identified as a "Claim for Refund" under Form 941-X *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund* for the first and second quarter of 2021, filed with the IRS on or about September 19, 2023 in the aggregate amount of $1,619,206 as set forth in line item 27 of Part 3 thereof (the "**ERTC Claim**") and (b) all moneys received by the Issuer from the IRS in satisfaction of the ERTC Claim (together with any proceeds received in connection with the foregoing, the "**ERTC Claim Proceeds**" and, together with the ERTC Claim, the "**Junior Lender's Priority Collateral**") has priority over any present or future security interest of Senior Lender in the Junior Lender's Priority Collateral. The Senior Lender hereby (x) subordinates solely its security interest, lien, encumbrance, and claim, whether now existing or hereafter arising, in the Junior Lender's Priority Collateral to the Junior Creditor's security interest, lien, encumbrance and claim, whether now existing or hereafter arising, over the Junior Lender's Priority Collateral and (y) acknowledges and agrees that the term "Junior Lender's Subordinated Collateral" shall not include the Junior Lender's Priority Collateral. The Junior Lender hereby acknowledges and agrees that all security interests, liens, encumbrances, guaranties and claims, whether now existing or hereafter arising, of the Senior Lender over the Senior Lender's Collateral other than the Senior Lender's security interest, lien, encumbrance and claim over the Junior Lender's Priority Collateral, which shall be subordinated pursuant to the terms of this Section 1.2 to the Junior Lender's interest therein, shall at all times be senior in priority to the Junior Lender's security interests, liens, encumbrances, guaranties and claims, whether now existing or hereafter arising, which in any way secured the payment of the Junior Debt.

1.3 The Junior Lender shall not take any action to enforce any of its liens on the Junior Lender's Subordinated Collateral, and shall not ask for or receive from the Obligors or any other person or entity any security for the Junior Debt not specifically granted by the Junior Debt Instruments.

1.4 The Junior Lender agrees that it shall have no right to possession of any assets included in the Junior Lender's Subordinated Collateral or in the Senior Lender's Collateral, whether by judicial action or otherwise.

1.5 The Junior Lender agrees to instruct the Obligors not to pay, and, other than in the case of the conversion of the Junior Debt to common stock of the Issuer as set forth in the Junior Debt Instruments, agrees not to accept payment of, or assert, demand, sue for or seek to enforce against the Obligors or any other person or entity, by setoff or otherwise, all or any portion of the Junior Debt. Notwithstanding the foregoing, so long as there is no Event of Default or Unmatured Event of Default (each as defined in the Senior Loan Agreement) under the Senior Debt, the Obligors shall be permitted to make regularly scheduled payments of accrued interest and principal on the Junior Debt which are mandatory and due or as otherwise permitted under the terms of the Senior Loan Agreement and the Loan Documents (as defined in the Senior Loan Agreement), which has been authorized under Section 13(3) of the Federal Reserve Act. Notwithstanding the foregoing, nothing in this Agreement shall prohibit the Junior Lender from taking or receiving the proceeds of any assets of the Obligors or any other party which do not constitute Senior Lenders' Collateral (collectively, the "**Excluded Collateral**") and applying the proceeds of Excluded Collateral to the repayment of the Junior Debt when mandatory and due.

1.6 Except with respect to the Junior Lender's Priority Collateral and the proceeds thereof, the Junior Lender hereby assigns to the Senior Lender and subrogates to the Senior Lender all of the Junior Lender's right, title and interest in and to the Junior Debt and the Junior Lender's Subordinated Collateral, and hereby irrevocably authorizes the Senior Lender (i) to collect, receive, enforce and accept any and all sums or distributions of any kind, whether cash, securities or other property, that may become due, payable or distributable on or in respect of the Junior Debt (other than with respect to distributions of common stock of the Issuer to the Junior Lender as a result of the conversion of the Junior Debt into common stock of the Issuer in accordance with the terms of the Junior Debt Instruments) or the Junior Lender's Subordinated Collateral, whether paid directly by the Obligors or paid or distributed in any liquidation, bankruptcy, arrangement, receivership, assignment, reorganization or dissolution proceedings or otherwise, and (ii) in the Senior Lender's sole discretion, to make, present and vote claims therefor in, and take such other actions as the Senior Lender deems necessary or advisable in connection with, any such proceedings, either in the Senior Lender's name or in the name of the Junior Lender, including, but not limited to, any election in any proceeding instituted under Chapter 11 of Title 11 of United States Code (11 U.S.C. § 101 et. seq.) (the "**Bankruptcy Code**"); and agrees that, upon the written request of the Senior Lender after the occurrence of an Event of Default (such written request, an "**EOD Request**"), it will promptly assign, endorse and deliver to and deposit with the Senior Lender all agreements, instruments and documents evidencing the Junior Debt, including without limitation the Junior Debt Instruments, unless the Junior Lender notifies the Senior Lender in writing no later than one (1) Business Day after the Junior Lender's receipt of an EOD Request that it will exercise its right to convert the Junior Debt into common stock of the Issuer in accordance with the terms of the Junior Debt Instruments.

1.7 The Junior Lender hereby agrees that all material agreements, instruments and documents evidencing the Junior Debt and the Junior Lender's Subordinated Collateral will be endorsed with proper notice of this Agreement as follows:

> "This instrument is subordinated to all indebtedness now or hereafter owing by the maker to CITY NATIONAL BANK OF FLORIDA, as provided in that certain Subordination of Debt Agreement dated as of January 18, 2024."

The Junior Lender will promptly deliver to the Senior Lender a certified copy of the Junior Debt Instruments, as well as certified copies of all other material agreements, instruments and documents hereafter evidencing any Junior Debt, in each case showing such endorsement.

1.8 The Junior Lender agrees to receive and hold in trust for and promptly turn over to the Senior Lender, in the form received (except for the endorsement or assignment by the Junior Lender where necessary), any sums at any time paid to, or received by, the Junior Lender in violation of the terms of this Agreement and to reimburse the Senior Lender for all costs, including reasonable attorney's fees, incurred by the Senior Lender in the course of collecting said sums should the Junior Lender fail to voluntarily turn the same over to the Senior Lender as herein required.

1.9 The Junior Lender hereby irrevocably makes, constitutes and appoints the Senior Lender (and any officer of the Senior Lender or any person designated by the Senior Lender for that purpose) as the Junior Lender's true and lawful proxy and attorney-in-fact (and agent-in-fact) in the Junior Lender's name, place and stead, with full power of substitution, to (i) take any and all actions as are permitted in this Agreement, (ii) execute such financing statements and other documents and to do such other acts as the Senior Lender may require to perfect and preserve the Junior Debt and the Junior Lender's Subordinated Collateral, and (iii) carry out any remedy provided for in this Agreement. The Junior Lender hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Junior Lender hereby ratifies and confirms all that said attorney-in-fact may do or cause to be done by virtue of any provision of this Agreement.

1.10 The Junior Lender agrees that it shall not modify or amend any agreement, instrument or document evidencing or securing the Junior Debt, including without limitation the Junior Debt Instruments, without the prior written consent of the Senior Lender.

1.11 Notwithstanding anything to the contrary herein, any rights of conversion, exercise, exchange or such similar right provided to the Junior Lender by the Issuer with respect to the Junior Debt as set forth in the Junior Debt Instruments (the "**Conversion Rights**"), the Issuer's common stock issuable to the Junior Lender upon its exercise of the Conversion Rights, any common stock of the Issuer previously purchased by Junior Lender from the Issuer, any amounts paid or contributed thereunder or thereby, any unpaid dividends or other distributions (whether or not declared) thereunder, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect Junior Lender's Conversion Rights to administer, manage, transfer, assign, or exercise such Conversion Rights for its own account.

2. Representations.

2.1 The Junior Lender represents and warrants to the Senior Lender that the Junior Lender has not assigned or otherwise transferred the Junior Debt or the Junior Lender's Subordinated Collateral, or any interest therein to any person or entity, and that the Junior Lender will make no such assignment or other transfer thereof.

2.2 The Junior Lender represents and warrants to the Senior Lender that, to the knowledge of Junior Lender, no default or of any event which, with the lapse of time, the giving of notice or both, would constitute a default under the Junior Debt or any instrument evidencing or securing the Junior Debt, has occurred and is continuing (a "**Junior Debt Default**"), and the Junior Lender further agrees to promptly provide the Senior Lender with written notice of any Junior Debt Default.

2.3 The Junior Lender represents and warrants to the Senior Lender that the outstanding amount of Junior Debt evidenced by the Junior Debt Instruments as of the date hereof is $2,000,000.00.

3. Further Agreements.

3.1 The Junior Lender expressly waives all notice of the acceptance by the Senior Lender of the subordination and other provisions of this Agreement and all notices not specifically required pursuant to the terms of this Agreement, and the Junior Lender expressly waives reliance by the Senior Lender upon the subordination and other provisions of this Agreement as herein provided.

3.2 The Junior Lender consents and agrees that all Senior Debt shall be deemed to have been made, incurred and/or continued at the request of the Junior Lender and in reliance upon this Agreement.

3.3 The Junior Lender agrees that the Senior Lender has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the documents, instruments and agreements evidencing the Senior Debt, that the Senior Lender shall be entitled to manage and supervise its financial arrangements with the Junior Lender in accordance with its usual practices, without impairing or affecting this Agreement.

3.4 The Junior Lender agrees that the Senior Lender shall have no liability to the Junior Lender, and in particular, the Junior Lender hereby waives any claim which it may now or hereafter have against the Senior Lender arising out of (i) any and all actions which the Senior Lender takes or omits to take (including without limitation actions with respect to the creation, perfection or continuation of liens or security interests in any existing or future the Senior Lender's Collateral, actions with respect to the occurrence of an event of default under any documents, instruments or agreements evidencing the Senior Debt, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the Senior Lender's Collateral and actions with respect to the collection of any claim for all or any part of the Senior Debt from any account debtor, guarantor or other person or entity) with respect to the documents, instruments and agreements evidencing the Senior Debt or to the collection of the Senior Debt or the valuation, use, protection or release of the Senior Lender's Collateral, (ii) the Senior Lender's election (whether on behalf of the Senior Lender or the Junior Lender) in any proceeding instituted under the Bankruptcy Code, and/or (iii) any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by the Obligors, as debtor-in-possession.

3.5 The Junior Lender agrees that the ERTC Claim Proceeds shall be deposited in an account of the Obligors maintained with the Senior Lender. The Senior Lender shall remit the ERTC Claim Proceeds to the Junior Lender or at Junior Lender's direction upon either (i) Junior Lender's notification in writing to the Senior Lender that an event of default has occurred and is continuing under the Junior Debt Instruments or (ii) Junior Lender's notification in writing to the Senior Lender that the Junior Lender will use the ERTC Claim Proceeds to pay amounts owing to Junior Lender and satisfy obligations owing to Junior Lender under the Junior Debt Instruments.

4. Further Assurances. The Junior Lender agrees that the Senior Lender, at any time and from time to time hereafter, may enter into such agreements with the Obligors as the Senior Lender may deem proper extending the time of payment of or renewing or otherwise altering the terms of all or any of the Senior Debt or affecting any of the Senior Lender's Collateral, and may sell or surrender or otherwise deal with any of the Senior Lender's Collateral (other than the Junior Lender's Priority Collateral, which shall be governed by Section 3.5 so long as the Junior Debt is outstanding), and may release any balance of funds of the Obligors with the Senior Lender, without notice to the Junior Lender and without in any way impairing or affecting this Agreement.

5. Continuing Agreement. This Agreement shall be irrevocable and shall constitute a continuing agreement of subordination and shall be binding on the Junior Lender and its heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Senior Lender, its successors and assigns until the Senior Lender has, in writing, notified the Junior Lender that all of the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged. The Senior Lender may continue, without notice to the Junior Lender, to lend monies, extend credit and make other accommodations to or for the account of the Obligors on the faith hereof. The Junior Lender hereby agrees that all payments received by the Senior Lender may be applied, reversed and reapplied, in whole or in part, to any of the Senior Debt, without impairing or affecting this Agreement.

6. No Reliance. The Junior Lender hereby assumes responsibility for keeping itself informed of the financial condition of the Obligors, any and all endorsers and any and all guarantors of the Senior Debt and the Junior Debt, and of all other circumstances bearing upon the risk of nonpayment of the Senior Debt and the Junior Debt that diligent inquiry would reveal, and the Junior Lender hereby agrees that the Senior Lender shall have no duty to advise the Junior Lender of information known to the Senior Lender regarding such condition or any such circumstances or to undertake any investigation. If the Senior Lender, in its sole discretion, undertakes, at any time or from time to time, to provide any information of the type described herein to the Junior Lender, the Senior Lender shall be under no obligation to subsequently update any such information or to provide any such information to the Junior Lender on any subsequent occasion.

7. Senior Lender's Duty Limited. The rights granted to the Senior Lender in this Agreement are solely for its protection and nothing herein contained imposes on the Senior Lender any duties with respect to any property of either the Obligors or of the Junior Lender received by the Senior Lender beyond the duty to exercise reasonable care in the custody and preservation of such property while in the Senior Lender's possession. The Senior Lender shall have no duty to preserve rights against prior parties on any instrument or chattel paper received from the Obligors or the Junior Lender as collateral security for the Senior Debt or any portion thereof.

8. No Marshalling. The Junior Lender, on its own behalf and on behalf of its successors and assigns hereby expressly waives all rights, if any, to require a marshalling of the Obligors' assets by the Senior Lender or to require that the Senior Lender first resort to some or any portion of any collateral for the Senior Debt before foreclosing upon, selling or otherwise realizing on any other portion thereof.

9. Reinstatement. To the extent that any Obligor makes a payment to the Senior Lender or the Senior Lender receives any payment or proceeds of the collateral securing the Senior Debt for such Obligor's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then, to the extent of such payment or proceeds received and not retained by the Senior Lender, the Junior Lender's obligations intended to be satisfied thereby and this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to the Senior Lender. The Junior Lender agrees to hold in trust for the Senior Lender and promptly remit to the Senior Lender any payments received by the Junior Lender after such invalidated, rescinded or returned payment was originally made.

10. Waiver In Writing. No waiver shall be deemed to be made by the Senior Lender of any of its rights hereunder unless the same shall be in writing signed on behalf of the Senior Lender and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of the Senior Lender or the obligations of the Junior Lender to the Senior Lender in any other respect at any other time.

11. Choice Of Law. This Agreement shall be governed and controlled by the internal laws of the State of Florida.

12. FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF MIAMI-DADE COUNTY, THE STATE OF FLORIDA OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE SENIOR LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. THE JUNIOR LENDER AND EACH OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF MIAMI-DADE COUNTY, STATE OF FLORIDA AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. THE JUNIOR LENDER AND EACH OBLIGOR FURTHER IRREVOCABLY CONSENT TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF FLORIDA. THE JUNIOR LENDER AND EACH OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

13. WAIVER OF JURY TRIAL. THE JUNIOR LENDER AND THE SENIOR LENDER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS SUBORDINATION AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE SENIOR LENDER AND THE JUNIOR LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE OBLIGORS AND ENTERING INTO THIS AGREEMENT.

14. Additional Agreements of the Obligors.

14.1 Each Obligor hereby agrees that until all Senior Debt is paid in full and all obligations arising in connection therewith (including the Obligations (as defined in the Senior Loan Agreement)) have been satisfied, such Obligor will make no payments or distributions contrary to the provisions hereof and will do every other thing necessary to carry out such provisions. Each Obligor will give the Senior Lender notice of any suit or action brought in violation of said agreement.

14.2 Each Obligor represents and warrants to the Senior Lender that no Junior Debt Default exists and agrees to promptly provide the Senior Lender with written notice of any Junior Debt Default.

14.3 In the event of any violation of any of the provisions of this Agreement, then, at the election of the Senior Lender, any and all obligations of the Obligors to the Senior Lender (including the Obligations (as defined in the Senior Loan Agreement)) shall immediately become due and payable and any and all agreements of the Senior Lender to make loans, advances or other financial accommodations to the Obligors shall immediately terminate, notwithstanding any provision hereof to the contrary.

[EXECUTION COMMENCES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Junior Lender, the Senior Lender and the Obligors have executed this Agreement as of the date set forth above.

JUNIOR LENDER:

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

[EXECUTION CONTINUES ON THE FOLLOWING PAGE]

SENIOR LENDER:

CITY NATIONAL BANK OF FLORIDA

By: /s/ Luis F. Moran
Name: Luis F. Moran
Title: SVP

[EXECUTION CONTINUES ON THE FOLLOWING PAGE]

OBLIGORS:

VENUS CONCEPT INC., a Delaware corporation

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

VENUS CONCEPT CANADA CORP., a corporation incorporated under the laws of the Province of Ontario

By: /s/ Hemanth Varghese
Name: Hemanth Varghese
Title: President and General Manager

VENUS CONCEPT USA INC., a Delaware corporation

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: President and Assistant Secretary

VENUS CONCEPT LTD., a company formed under the Companies Law of Israel

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

Exhibit 10.6

Execution Version

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement (this "**Modification**"), dated as January 18, 2024, is made by and among (a) VENUS CONCEPT USA INC., a Delaware corporation (the "**Borrower**"), (b) each of (i) VENUS CONCEPT INC., a Delaware corporation (the "**Venus Inc.**"), (c) VENUS CONCEPT CANADA CORP., a corporation incorporated under the laws of the Province of Ontario ("**Venus Canada**" and, together with Venus Inc., the "**Existing Guarantors**"), (d) VENUS CONCEPT LTD., a company formed under the Companies Law of Israel (the "**Israeli Grantor**" and, together with the Existing Guarantors, the "**Guarantors**"; the Guarantors, together with the Borrower, the "**Loan Parties**"), (e) CITY NATIONAL BANK OF FLORIDA, as the lender (the "**Lender**") and (f) each of (i) MADRYN HEALTH PARTNERS, LP, a Delaware limited partnership ("**Madryn US**") and (ii) MADRYN HEALTH PARTNERS (CAYMAN MASTER), LP, a Cayman Islands limited partnership ("**Madryn Cayman**" and, together with Madryn US, the "**Madryn Junior Creditors**"; the Madryn Junior Creditors, together with the Lender and the Loan Parties are hereinafter referred to as the "**Parties**"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Main Street Loan Agreement (as defined below).

RECITALS:

A. The Borrower and Lender entered into that certain Loan and Security Agreement (Main Street Priority Loan Facility), dated as of December 8, 2020 (as amended by that certain Loan Modification Agreement, dated as of October 4, 2023 (the "**First Loan Modification**"), between the Loan Parties, the Lender and the Madryn Junior Creditors, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Main Street Loan Agreement**"; the Original Main Street Loan Agreement, as amended by this Modification, the "**Main Street Loan Agreement**").

B. The Main Street Loan is further evidenced by that certain Promissory Note (Main Street Priority Loan Facility), dated December 8, 2020 (as amended by the First Loan Modification, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time the "**Main Street Note**"), executed and delivered by the Borrower to and in favor of the Lender in the original principal amount of $50,000,000.00.

C. In connection with the Main Street Loan, on December 8, 2020, the Borrower executed and delivered to the Lender that certain Main Street Priority Loan Facility Borrower Certifications and Covenants, Instructions and Guidance issued on June 11, 2020 (the "**Certifications**").

D. In connection with the Main Street Loan, Venus Inc. issued a Guaranty of Payment and Performance, dated as of December 8, 2020 (as amended by the First Loan Modification, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Main Street Guaranty**"; the Original Main Street Guaranty, as amended by this Modification, the "**Main Street Guaranty**"), in favor of the Lender, and Venus Canada acceded to the Original Main Street Guaranty pursuant to the First Loan Modification.

E. In connection with the Main Street Loan, (i) the Borrower, each Madryn Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended by the First Loan Modification, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Borrower Main Street Subordination Agreement**"), (ii) Venus Inc., each Madryn Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended by the First Loan Modification, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Venus Inc. Main Street Subordination Agreement**"), (iii) Venus Canada, each Madryn Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of December 8, 2020 (as amended by the First Loan Modification, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Canada Main Street Subordination Agreement**"), and (iv) the Israeli Grantor, each Madryn Junior Creditor and the Lender entered into that certain Subordination of Debt Agreement, dated as of October 4, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Israeli Main Street Subordination Agreement**" and, together with the Borrower Main Street Subordination Agreement, the Venus Inc. Main Street Subordination Agreement and the Canada Main Street Subordination Agreement, the "**Madryn Main Street Subordination Agreements**"), in each case, pursuant to which each Madryn Junior Creditor subordinated the Junior Debt (as defined in the applicable Madryn Main Street Subordination Agreement) to the Obligations. The Main Street Loan Agreement, the Main Street Note, the Main Street Guaranty, the Madryn Main Street Subordination Agreements and the New Main Street Subordination Agreement (as defined below) are hereinafter referred to as the "**Main Street Loan Documents**".

F. The Borrower (a) will be unable to comply with the Minimum Deposit Relationship obligations set forth in Section 7(a) of the Main Street Loan Agreement for the monthly period ending on November 30, 2023 and an Event of Default will occur if such compliance is not cured within the time period set forth therein as has been extended by Lender prior to the date hereof and as set forth herein and (b) will be unable to comply with the Minimum Deposit Relationship obligations set forth in Section 7(a) of the Main Street Loan Agreement for the monthly period ending on December 31, 2023 and an Event of Default will occur if such compliance is not cured within the time period set forth therein as may be extended by Lender prior to the date hereof and as set forth herein (the "**2023 Minimum Deposit Requirements**").

G. In order to satisfy the 2023 Minimum Deposit Requirements and avoid the occurrence of any Event of Default relating thereto and as a condition to Lender's agreement herein to defer the testing of the Minimum Deposit Relationship obligations set forth in Section 7(a) of the Main Street Loan Agreement for the monthly periods ending on January 31, 2024, February 28, 2024, March 31, 2024, and April 30, 2024, the Borrower has requested that the Lender (i) consent to Venus Inc.'s issuance of secured subordinated convertible promissory notes (as amended, modified or supplemented from time to time, the "**EW Notes**") in an aggregate principal amount not to exceed $2,000,000 (the "**EW Junior Debt**") to EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (collectively, the "**EW Junior Creditor**" and together with the Madryn Junior Creditor, the "**Junior Creditors**") pursuant to the terms of a Note Purchase and Registration Rights Agreement (as amended, modified or supplemented from time to time, the "**EW NPA**") dated as of the date hereof by and among the Loan Parties and the EW Junior Creditor, which will be secured pursuant to the terms of that certain Guaranty and Security Agreement (as amended, modified or supplemented from time to time, the "**EW Security Agreement**" and, together with the EW NPA and the EW Notes, the "**EW Notes Documents**") dated as of the date hereof by and among the Loan Parties and the EW Junior Creditor by a first priority lien over the ERC Claim (as defined therein) and proceeds thereof (the "**ERTC Collateral**") and a lien over the other Collateral (as defined therein) subordinated to the Lender's lien pursuant to the New Subordination Agreement (as defined below) and (ii) subordinate its security interest over the ERTC Collateral to the security interest of the EW Junior Creditor over the ERTC Collateral pursuant to the terms of, and in accordance with, the New Main Street Subordination Agreement (as defined below) (collectively the "**EW Notes Transaction**").

H. As consideration for the Lender's consent to the EW Notes Transaction and its entry into this Modification, (i) each Madryn Junior Creditor has agreed to reaffirm the subordination of the Junior Debt (as defined in the applicable Madryn Main Street Subordination Agreement) to the Obligations as set forth in the Madryn Main Street Subordination Agreements, (ii) the EW Junior Creditor has agreed to subordinate the EW Junior Debt to the Obligations as set forth in the New Main Street Subordination Agreement, (iii) each Loan Party has agreed to reaffirm the terms of the Main Street Loan Documents to which it is a party as set forth herein and (iv) the Parties have agreed to amend the Original Main Street Loan Agreement and the Original Main Street Guaranty as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the Parties, intending to be legally bound, agree as follows:

SECTION 1. Amendments to the Original Main Street Loan Agreement. Effective as of the Effective Date (as defined below), the Original Main Street Loan Agreement is hereby amended as follows:

(a) Section 1(s) is hereby deleted in its entirety and replaced with the following:

" "Loan Documents" shall mean any and all documents evidencing, securing or executed in connection with the Loan, including, without limitation, (i) the Note, (ii) this Agreement, (iii) that certain Loan Modification Agreement, dated as of October 4, 2023 (the "First Modification"), among the Lender, the Borrower, the Guarantors, Venus Concept Ltd., a company formed under the Companies Law of Israel (the "Israeli Grantor", and together with the Original Guarantor and the Borrower, the "IP Grantors"; the Israeli Grantor, together with the All-Assets Grantors, the "Grantors") Madryn Health Partners, LP, a Delaware limited partnership ("Madryn DE"), and Madryn Health Partners (Cayman Master), LP, a Cayman Islands limited partnership ("Madryn Cayman" and, together with Madryn DE, the "Madryn Junior Creditors"), (iv) that certain Loan Modification Agreement, dated as of January 18, 2024 (the "Second Modification") among the Lender, the Obligors, and the Madryn Junior Creditors, (v) the Main Street Subordination Agreements (as defined in the Second Modification) and (vi) that certain intercreditor agreement, dated as of January 18, 2024, (the "Intercreditor Agreement") among the Obligors, the Lender, the Madryn Junior Creditors, EW Healthcare Partners, L.P. and EW Healthcare Partners-A, L.P. (collectively, the "EW Junior Creditors")."

(b) Section 1(x) is hereby deleted in its entirety and replaced with the following:

" "Obligor" shall mean the Borrower, the Grantors, any subsidiary of the Borrower, any other guarantor, accommodation endorser, third-party grantor, or any other party liable with respect to the Obligations."

(c) Section 1(y) is hereby amended by deleting "and (x) the Madryn Debt." and replacing it with the following:

" (x) the Madryn Debt and (y) the EW Junior Debt."

(d) Section 1(z)(iii) is hereby deleted in its entirety and replaced with the following:

" (iii) (1) liens over the ERTC Collateral securing the EW Junior Debt and (2) liens securing Permitted Debt that are junior or pari-passu to any lien securing the Loan;"

(e) Section 4(a) is hereby amended by deleting the last sentence thereof in its entirety and replacing it with the following:

"Notwithstanding anything to the contrary set forth herein, (x) the term "Collateral" shall not include any Excluded Property and (y) the Lender's security interest over the ERTC Collateral (as defined in the Second Modification) shall be subordinated pursuant to the terms of the New Main Street Subordination Agreement (as defined in the Second Modification) to the EW Junior Creditor's security interest over such ERTC Collateral as security for Venus Inc.'s obligations to the EW Junior Creditor as issuer of secured subordinated convertible promissory notes in an aggregate principal amount not to exceed $2,000,000 (the "EW Junior Debt")."

(f) Section 7(a) is hereby deleted in its entirety and replaced with the following:

"Depository Relationship. At all times during the term of the Loan, the Borrower shall maintain with Lender (i) its primary depository account(s), including its primary Operating Account(s), and (ii) its primary Treasury Management Services. As used herein, "Operating Account(s)" shall mean bank accounts that facilitate the collection of sales, including accounts receivable, and the payment of expenses and payroll disbursements; and "Treasury Management Services" shall mean commercial banking platforms that facilitate the origination of wire transfers and ACH transactions, the transfer of funds between accounts, positive pay decisioning, remote capture of check deposits and/or other electronic banking services. In addition, (i) as of October 24, 2023, Borrower shall have a deposit ledger balance with Lender of not less than $3,000,000 and (ii) commencing with the month ending November 30, 2023 the Borrower shall maintain a minimum average daily deposit ledger balance with the Lender together with funds in all other Related Accounts (as defined below) in an amount equal to or greater than $3,000,000 as of the end of each month (the "Minimum Deposit Relationship"), to be tested on a monthly basis in accordance with Section 7(a)(ii). The Minimum Deposit Relationship may be satisfied by reference to the aggregate funds on deposit at any given time in all accounts of the Loan Parties maintained with Lender plus the aggregate funds on deposit at any given time in all accounts of the Loan Parties maintained with any other bank or financial institution that are subject to a deposit account control agreement (or similar agreement) in favor of Lender (collectively, the "Related Accounts"). To the extent such Related Accounts are included in the calculation of the Minimum Deposit Relationship, Lender may exercise its right of setoff against any such Related Accounts. Notwithstanding the foregoing, if the Minimum Deposit Relationship is not satisfied in accordance with the foregoing for any test date with respect to any month ending on or prior to March 31, 2024, Borrower shall have until April 30, 2024 (or such longer period as Lender may agree in writing (including by e-mail)) to obtain or provide additional funds such that the aggregate deposit ledger balance of the Loan Parties with the Lender together with funds in all other Related Accounts equals or exceeds $3,000,000 (or such greater amount agreed to by the Lender and the Borrower pursuant to Section 4(j)(ii)) (the "Liquidity Cure") and if Borrower completes such Liquidity Cure no default or Event of Default shall have occurred hereunder with respect to such failure to satisfy the Minimum Deposit Relationship."

SECTION 2. Subordination of Security Interest over ERTC Collateral, Consent to EW Notes Transaction and Acknowledgement. As of the Effective Date, the Lender hereby (a) subordinates solely its security interest over the ERTC Collateral pursuant to and in accordance with the terms of the New Main Street Subordination Agreement, (b) consents to the EW Notes Transaction and the terms of the EW Notes Documents and, (c) acknowledges and agrees that upon deposit of the net proceeds from the sale of the EW Notes pursuant to the EW Notes Transaction in a bank account of the Loan Parties maintained with the Lender, the Minimum Deposit Relationship obligations set forth in Section 7(a) of the Main Street Loan Agreement for the testing dates occurring on November 30, 2023 and December 31, 2023 shall be deemed satisfied and no default or Event of Default shall be deemed to have occurred with respect thereto.

SECTION 3. Subordination of Junior Debt. As of the Effective Date, each Madryn Junior Creditor reaffirms the subordination of the Junior Debt (as defined in the applicable Madryn Main Street Subordination Agreement) to the Obligations as set forth in the Madryn Main Street Subordination Agreements.

SECTION 4. Conditions Precedent. This Modification and its provisions shall become effective on the first date on which all of the following conditions precedent shall have been satisfied (the "**Effective Date**"), as such satisfaction is determined by the Lender and evidenced by the Lender's confirmation of the same to the Borrower, either in writing or by e-mail:

(a) On or before the Effective Date, the Lender shall have received the following documents, each of which shall be satisfactory to the Lender in form and substance:

(i) This Modification, executed and delivered by a duly authorized officer of each Loan Party;

(ii) That certain subordination of debt agreement, dated as of the date hereof, between the EW Junior Creditor, the Lender and each Loan Party (the "**New Main Street Subordination Agreement**"), executed and delivered by a duly authorized officer of each party thereto;

(iii) The EW Note Documents, executed and delivered by a duly authorized officer of each party thereto;

(iv) The Pari Passu Intercreditor Agreement (as defined in the EW Security Agreement), executed and delivered by a duly authorized officer of each party thereto; and

(v) The following supporting documents with respect to each Loan Party (A) a copy of its constituent documents certified as of a date reasonably close to the Effective Date to be a true and accurate copy by the Secretary of State or similar governmental authority of its jurisdiction of formation, (B) a certificate of the Secretary of State or similar governmental authority of each Loan Party's jurisdiction of formation as to its existence and good standing, (C) a certificate of the Secretary of State or similar governmental authority of each jurisdiction (other than its jurisdiction of formation) in which each Loan Party does business as to its qualification as a foreign entity in such jurisdiction, (D) a copy of its by-laws, partnership agreement or operating agreement, certified by its secretary or assistant secretary, general partner, manager or other appropriate person to be a true and accurate copy in effect on the Effective Date, (E) a certificate of its secretary or assistant secretary, general partner, manager or other appropriate person as to the incumbency and signatures of its officers or other persons who have executed any documents on behalf of such Loan Party in connection with the transactions contemplated by this Modification and (F) a copy of the resolutions or unanimous written consent of its board of directors, sole manager, sole member or governing body, as applicable, certified by its secretary or assistant secretary to be a true and accurate copy of the resolutions or unanimous written consent of such board of directors, sole manager, sole member or governing body, as applicable, or other appropriate resolutions or consents of its partners or members certified by its general partner or manager (as applicable) to be true and correct copies thereof duly adopted, approved or otherwise delivered by its partners or members (to the extent necessary and applicable), each of which is certified to be in full force and effect on the Effective Date, authorizing the execution and delivery by it of this Modification and any other document related to the Main Street Loan Documents delivered on the Effective Date and the performance by it of all its obligations hereunder and thereunder.

(b) On the Effective Date, (i) the representations and warranties made by each Loan Party in each Main Street Loan Document (including, for the avoidance of doubt, this Modification and the New Main Street Subordination Agreement) to which such Loan Party is a party, in each case, are true and correct in all material respects and (ii) after giving effect to this Modification, no Default or Event of Default under any Main Street Loan Document (including this Modification and the New Main Street Subordination Agreement) shall exist.

(c) The Lender shall have received evidence, in form and substance satisfactory to it in its sole discretion, that the EW Notes Transaction has closed and that the net proceeds from the issuance of the EW Junior Debt pursuant to the EW Notes Transaction have been deposited into an account of the Loan Parties maintained with the Lender.

(d) The Borrower shall have paid to or as directed by the Lender any and all fees, costs and expenses incurred by the Lender in connection with the transactions contemplated herein, including the negotiation and preparation of this Modification and all of the documents related thereto, including all costs associated with due diligence, field audit fees, and the Lender's legal fees, costs and expenses.

SECTION 5. Reaffirmation by the Loan Parties. Each Loan Party hereby reaffirms all the terms, provisions, and representations contained in the Main Street Loan Documents to which it is a party (including, for the avoidance of doubt, the continued effectiveness of the security interest in favor of the Lender, for its own benefit and as agent for its affiliates, over such Loan Party's Collateral created pursuant to Section 4(a) of the Main Street Loan Agreement). Each Loan Party agrees and confirms that, as of the Effective Date, the Main Street Loan Documents to which it is a party are in full force and effect and are binding upon and enforceable against such Loan Party in accordance with their respective terms and provisions. As used in the Main Street Loan Documents, the Parties agree that the term "Loan Agreement" shall mean the Main Street Loan Agreement and the term "Guaranty" shall mean the Main Street Guaranty. The Parties hereby agree that this Modification shall constitute a "Loan Document" as such term is used in the Main Street Loan Documents. Each Loan Party represents, warrants and covenants that (a) the execution, delivery and performance of this Modification has been duly authorized by all requisite action of such Loan Party and (b) the representations and warranties made by such Loan Party in the Main Street Loan Documents to which it is a party are true and correct immediately prior to, and as of, the Effective Date. The Borrower hereby represents, warrants and covenants that all of the representations and warranties made by the Borrower in the Certifications are true and correct immediately prior to, and as of, the Effective Date and reaffirms all of the terms, provisions, and representations contained in the Certifications.

SECTION 6. No Implied Waiver or Course of Dealing. Except as expressly amended, consented to or waived in this Modification, nothing contained herein or in any course of dealing between the Parties shall be deemed or construed as a waiver, expressed or implied, of any of the terms and provisions of the Main Street Loan Documents or to otherwise impair the rights and remedies available to the Lender thereunder.

SECTION 7. Successors and Assigns. This Modification shall inure to the benefit of and be binding on the Parties hereto and their heirs, legal representatives, successors and assigns, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (and any attempted assignment or transfer by such Loan Party without such Lender consent shall be null and void).

SECTION 8. Limited Effect. Except as expressly amended and modified by this Modification, the Main Street Loan Documents shall continue to be, and shall remain, in full force and effect in accordance with their respective terms; provided, that, upon the Effective Date, each (a) reference therein and herein to "Loan Documents" or "Main Street Loan Documents" shall be deemed to include, in any event, this Modification and the New Main Street Subordination Agreement, (b) each reference to the "Loan Agreement" in any of the Main Street Loan Documents shall be deemed to be a reference to the Main Street Loan Agreement as amended hereby, (c) each reference to the "Guaranty" in any Main Street Loan Document shall be deemed to be a reference to the Main Street Guaranty as amended hereby and (d) each reference in any Main Street Loan Document to "this Agreement" or "this Guaranty" as applicable, or "hereof", "herein" or words of similar effect in referring to such Main Street Loan Document shall be deemed to be references to such Main Street Loan Document as amended by this Modification. This Modification shall not constitute a novation of any Main Street Loan Document but shall constitute modifications thereof.

SECTION 9. Counterparts. This Modification may be executed in any number of counterparts, each of which shall be deemed an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Modification may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the Parties hereto may execute this Modification by signing any such counterpart. This Modification may be executed and delivered via facsimile or electronic mail via .pdf., and when executed and delivered shall be deemed an original.

SECTION 10. Enforceability. Should any one or more of the provisions of this Modification be determined to be illegal or unenforceable as to one or more of the Parties hereto, all other provisions shall nevertheless remain effective and binding upon the Parties hereto.

SECTION 11. Governing Law. This Modification and its validity, construction and performance shall be governed in all respects by the laws of the State of Florida, without giving effect to principles of conflict of laws. The Parties hereto consent to the jurisdiction of the courts of the State of Florida located in Miami-Dade County, Florida and the federal courts of the United States located in Miami-Dade County, Florida for the purpose of any action or proceeding instituted by any party relating to this Modification, and waive as a defense in any such action or proceeding any assertion that they are not subject to such jurisdiction or that such action or proceeding may not be brought in such courts.

SECTION 12. Further Assurances. From time to time, upon the request of Lender, the Loan Parties shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as Lender may deem reasonably necessary or desirable to confirm this Modification and the terms and conditions hereof, to carry out the purpose and intent hereof or to enable Lender to enforce any of its rights hereunder.

SECTION 13. No Defenses, Set-offs, Claims or Counterclaims. Each Loan Party acknowledges and agrees that, as of the Effective Date, they have no defenses, counterclaims, offsets, cross-complaints, causes of action, rights, claims or demands of any kind or nature whatsoever, including without limitation, any usury or lender liability claims or defenses, arising out of the Main Street Loan Documents, or any past or present relationship between or among any of them, the Lender, or any of their respective past, present and/or future parent, subsidiary and affiliated entities and, with respect to each of the foregoing, their respective past and present officers, directors, shareholders, partners, limited partners, members, representatives, principals, owners, affiliates, attorneys, accountants, agents and employees, and their successors, heirs and assigns and each of them, that can be asserted either to reduce or eliminate all or any part of the Obligations, or to seek affirmative relief or damages of any kind or nature from Lender.

SECTION 14. Waiver and Release. As of the Effective Date, each of the Loan Parties, on their own behalf and on behalf of each of their respective past, present and future predecessors, successors, subsidiaries, parent entities, assigns, shareholders, partners, members, owners, other principals, affiliates, managers, and, with respect to each Loan Party and each of the other foregoing entities and individuals, each of their respective predecessors, successors, assigns, and past and present shareholders, partners, members, owners, other principals, affiliates, managers, employees, officers, directors, attorneys, agents, other representatives, insurers and any other individuals and entities claiming or acting by, through, under or in concert with any of the Loan Parties (collectively, the "**Loan Party Releasors**"), hereby fully and forever release, relinquish, discharge and acquit Lender and their respective past, present, and future predecessors, successors, subsidiaries, parent entities, assigns, participants, shareholders, partners, members, owners, other principals, affiliates, managers, and, with respect to each of the foregoing entities and individuals, each of their respective predecessors, successors, assigns, participants and past and present shareholders, partners, members, owners, other principals, affiliates, managers, employees, officers, directors, attorneys, agents, other representatives, insurers and any other individuals and/or entities claiming or acting by, through, under or in concert with each such entity or individual (collectively, the "**Lender Party Releasees**"), of and from and against any and all claims, demands, obligations, duties, liabilities, damages (including, without limitation, special, punitive, indirect or consequential damages), expenses, claims of offset, indebtedness, debts, breaches of contract, duty or relationship, acts, omissions, misfeasance, malfeasance, causes of action, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and remedies therefor, choses in action, rights of indemnity or liability of any type, kind, nature, description or character whatsoever, arising prior to the Effective Date, directly or indirectly, in any manner from and/or out of (i) any Main Street Loan Document, including this Modification, (ii) Lender's acts, statements, conduct, representations and omissions made in connection therewith and the negotiation of this Modification, and (iii) any fact, matter, transaction or event relating thereto, whether known or unknown, suspected or unsuspected, which could, might or may be claimed to have existed, whether liquidated or unliquidated, each though fully set forth herein at length (collectively, the "**Released Claims**").

As of the Effective Date, the Loan Party Releasors hereby waive the provisions of any applicable laws restricting the release of the Released Claims which the Loan Party Releasors do not know or suspect to exist at the time of release, which, if known, would have materially affected the decision to agree to these releases. The Loan Party Releasors hereby agree, represent and warrant to Lender that they realize and acknowledge that factual matters now unknown may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Loan Party Releasors further agree, represent and warrant that the releases provided herein have been negotiated and agreed upon in light of that realization and that the Loan Party Releasors nevertheless hereby intend to release, discharge and acquit the Lender Party Releasees set forth hereinabove from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to the Main Street Loan Documents and all dealings in connection therewith.

The Loan Party Releasors hereby acknowledge that they have not relied upon any representation of any kind made by the Lender or any affiliate of Lender in making the foregoing release.

The Loan Party Releasors represent and warrant to Lender that they have not heretofore assigned or transferred, or purported to assign or to transfer, to any person or entity any matter released by such party hereunder or any portion thereof or interest therein, and each Loan Party Releasor agrees to indemnify, protect, defend and hold each of the Lender Party Releasees harmless from and against any and all claims based on or arising out of any such assignment or transfer or purported assignment or transfer by such party.

SECTION 15. WAIVER OF JURY TRIAL. EACH LOAN PARTY HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS MODIFICATION OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH LOAN PARTY HEREBY WAIVES ANY RIGHT WHICH IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION REFERRED TO IN THE PRECEDING SENTENCE ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. EACH LOAN PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OR ATTORNEY OF THE LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (B) ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THIS MODIFICATION BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN. EACH LOAN PARTY REPRESENTS THAT IT REVIEWED THESE WAIVERS AND AFTER CONSULTATION WITH LEGAL COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES SUCH RIGHTS. IN THE EVENT OF LITIGATION, A COPY OF THIS MODIFICATION MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Modification is made effective as of the day and year first above written.

BORROWER:

VENUS CONCEPT USA INC., a Delaware corporation

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: President and Assistant Secretary

GUARANTORS:

VENUS CONCEPT INC., a Delaware corporation

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

VENUS CONCEPT CANADA CORP., a
Corporation incorporated under the laws of
the Province of Ontario

By: /s/ Hemanth Varghese
Name: Hemanth Varghese
Title: President and General Manager

ISRAELI GRANTOR:

VENUS CONCEPT LTD., a company
formed under the Companies Law of Israel

By: /s/ Rajiv DeSilva
Name: Rajiv DeSilva
Title: Chief Executive Officer

LENDER:
CITY NATIONAL BANK OF FLORIDA

By: /s/ Luis F. Moran
Name: Luis F. Moran
Title: Vice President

[*Signature Page to Second Loan Modification Agreement*]

MADRYN JUNIOR CREDITORS, for purposes of Section 3 hereof:

MADRYN HEALTH PARTNERS, LP, a Delaware limited partnership

By: MADRYN HEALTH ADVISORS, LP, its general partner

By: MADRYN HEALTH ADVISORS GP, LLC, its general partner

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

MADRYN HEALTH PARTNERS, (CAYMAN MASTER), LP, a Cayman Islands limited partnership

By: MADRYN HEALTH ADVISORS, LP, its general partner

By: MADRYN HEALTH ADVISORS GP, LLC, its general partner

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

Exhibit 99.1

Venus Concept Inc. Announces Issuance of $2.0M of Convertible Notes

Sale of convertible notes provides additional financial flexibility and support for the Company's path to cash flow breakeven

TORONTO, January 19, 2024 (GLOBE NEWSWIRE) – Venus Concept, Inc. ("Venus Concept" or the "Company") (NASDAQ: VERO), a global medical aesthetic technology leader, announced today that it has issued new secured convertible notes to EW Healthcare Partners, L.P. and one of its affiliates ("EW Healthcare") in an aggregate principal amount of $2.0 million. The convertible notes have a maturity date of December 9, 2025 and an annual interest rate of 90-day Adjusted SOFR + 8.5% that is payable in kind on a quarterly basis. The notes are convertible at any time into shares of common stock of the Company ("Common Stock") at an initial conversion price of $1.251 per share, subject to adjustment. The convertible notes include a mandatory redemption provision for part or all of the notes upon the Company or Venus Concept USA Inc. receiving payments in connection with employee retention credits, and the occurrence of certain specified events.

"I want to thank EW Healthcare for their valuable partnership and support of the Company over many years," said Rajiv De Silva, Chief Executive Officer of Venus Concept. "While our fourth quarter 2023 revenue results were softer-than-expected due to the impact of restructuring activities related to improving profitability in our international markets and the difficult financing environment for customers in all markets including the US, we are pleased to deliver on our primary objective for 2023 - to reduce our cash used in operations by approximately 50% year-over-year. This new debt financing provides Venus Concept with additional liquidity to support ongoing operations and execution of our near-to-intermediate term strategic turnaround objectives."

Additional information regarding the convertible notes will be set forth in a Current Report on Form 8-K, which the Company expects to file with the Securities and Exchange Commission ("SEC") today.

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 "1933 Act"), or applicable state securities laws. The securities may not be offered or sold in the United States absent registration or pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws. The Company has agreed to file a registration statement covering the resale of the Common Stock issuable upon conversion of the notes.

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 1933 Act and Section 21E of the Securities Exchange Act of 1934, as amended, including, without limitation, statements about the Company's financial condition, and other statements containing the words "expect," "intend," "may," "will," and similar expressions, constitute forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on current expectations, estimates, forecasts, and projections about the Company's business and the industry in which it 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. Factors that could materially affect the Company's business operations and financial performance and condition include, but are not limited to, those risks and uncertainties described under Part I Item 1A—"Risk Factors" in the Company's most recent Annual Report on Form 10-K, Part II Item 1A—"Risk Factors" in the Company's most recent Form 10-Q and in other documents the Company may file with the SEC. 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 the Company as of the date hereof. 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.

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