# 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): AUGUST 30, 2022**

# NEXTPLAT CORP
(Exact Name of Registrant as Specified in its Charter)

| **NEVADA** | **001-40447** | **65-0783722** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation or Organization) | (Commission File No.) | (I.R.S. Employer Identification No.) |

**3250 Mary St., Suite 410**
**Coconut Grove, FL 33133**
(Address of principal executive offices and zip code)

**(305) 560-5355**
(Registrant's telephone number, including area code)
(Former name or former address, if changed from last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-14(c)).

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

Emerging growth company ☐

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

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

| Title of each class | Trading Symbol (s) | Name of each exchange on which registered |
|---|---|---|
| Common Stock, par value $0.0001 | NXPL | The Nasdaq Stock Market Inc. |
| Warrants | NXPLW | The Nasdaq Stock Market Inc. |

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

On August 30, 2022, NextPlat Corp (NASDAQ: NXPL, NXPLW) (the "Company" or "NextPlat") entered into a Securities Purchase Agreement (the "SPA") with Progressive Care Inc. (OTCQB: RXMD) ("Progressive Care"), pursuant to which the Company has agreed to purchase 3,000 newly issued units of securities from Progressive Care (the "Units") at a price per Unit of $2,000 for an aggregate purchase price of $6 million (the "Unit Purchase"). Each Unit consists of one share of Series B Convertible Preferred Stock of Progressive Care ("Series B Preferred Stock") and one warrant to purchase a share of Series B Preferred Stock ("Warrants").

Upon issuance, each share of Series B Preferred Stock will vote as a class with the common stock of Progressive Care, and will have 100,000 votes per share. Likewise, each share of Series B Preferred Stock will be convertible into 100,000 shares of Progressive common stock. In addition, the Series B Preferred Stock will have a liquidation and dividend preference. The Warrants have a five-year term, and will be immediately exercisable, in whole or in part, and contain cashless exercise provisions. Each Warrant is exercisable at $2,000 per share of Series B Preferred Stock.

NextPlat's obligations to close on the Unit Purchase are conditioned upon, among other things, Progressive Care's entry into a registration rights agreement to register the Progressive Care common stock issuable upon the conversion of the Series B Preferred Stock, including the shares underlying the Warrants, and the receipt of Lock-Up Agreements from Progressive Care's officers, directors, and 10% or greater shareholders.

Progressive Care intends to use the net proceeds from the Unit Purchase as follows:

- one-third will be used for the development and marketing of the healthcare data analytics platforms of Progressive Care's wholly owned subsidiary, ClearMetrX, as well as the development of its Remote Patient Monitoring Platform;
- one-third will be used for software development for internal use; and
- the final third for Progressive Care's working capital needs.

Following the consummation of the Unit purchase under the SPA, NextPlat's Chairman and Chief Executive Officer, Charles M. Fernandez, board member, Rodney Barreto, will be nominated for election to Progressive Care's Board of Directors. Further, Mr. Fernandez will be elected to serve as Chairman of Progressive Care's Board of Directors and Mr. Barreto will be elected as a Vice Chairman of Progressive Care's Board of Directors.

In addition, on August 30, 2022, NextPlat, Charles Fernandez, Rodney Barreto and certain other purchasers entered into a Confidential Purchase and Release Agreement (the "NPA") with Iliad Research and Trading, L.P. ("Iliad") pursuant to which NextPlat, Messrs. Fernandez and Barreto and the other purchasers agreed to purchase from Iliad (the "Note Purchase") a Secured Convertible Promissory Note, dated March 6, 2019, made by Progressive Care to Iliad (the "Note"). The accrued and unpaid principal and interest under the note is approximately $2.79 million. The aggregate purchase price to be paid to Iliad under the NPA is $2.3 Million of which NextPlat is responsible for $1 million and Messrs. Fernandez and Barreto are responsible for $400,000 each.

In connection with the Note Purchase, on August 30, 2022, NextPlat, Messrs. Fernandez and Barreto and the other purchasers of the Note entered into a Debt Modification Agreement with Progressive Care. Pursuant to the Debt Modification Agreement, the interest rate under the Note was reduced from 10% to 5% per annum and the maturity date was extended to May 31, 2027. In addition, the conversion price under the note was changed to $0.02 per share of Common Stock. Pursuant to the Debt Modification Agreement, NextPlat, Messrs. Fernandez and Barreto and the other purchasers of the Note will have the right, exercisable at any time, to redeem all or any portion of the Note. The Debt Modification Agreement also provides that the Note will automatically convert upon the later to occur of: (a) the completion by Progressive Care of a reverse stock split, and (b) the listing of Progressive Care's common stock on a national exchange. In consideration of the concessions in the Debt Modification Agreement, Progressive Care will issue 21,000,000 shares of its common stock to the purchasers of the Note, of which NextPlat, Charles Fernandez and Rodney Barreto, will receive 9,130,435, 3,652,174, and 3,652,174 shares, respectively.



The foregoing summaries of the SPA, NPA and Debt Modification Agreement do not purport to be complete and are subject to, and qualified in their entirety, by reference to the SPA, NPA and Debt Modification Agreement attached hereto as Exhibits 10.1, 10.2 and 10.3, respectively, which are incorporated herein by reference.

**Item 8.01. Other Events.**

On August 31, 2022, NextPlat issued a press release announcing the Unit Purchase and Note Purchase transactions, a copy of which is attached as Exhibit 99.1 to this Current Report on Form 8-K.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

**EXHIBIT INDEX**

| Exhibit No. | Description |
|---|---|
| 10.1 | Securities Purchase Agreement, dated August 30, 2022, by and between NextPlat and Progressive Care Inc. |
| 10.2 | Confidential Note Purchase and Release Agreement, dated August 30, 2022, by and between the Company, Progressive Care, Iliad Research and Trading, L.P., PharmCo, L.L.C., Charles Fernandez, Rodney Barreto, Daniyel Erdberg, and Sixth Borough Capital LLC |
| 10.3 | Debt Modification Agreement, dated August 30, 2022, by and between the Company, Progressive Care, Charles Fernandez, Rodney Barreto, Daniyel Erdberg, and Sixth Borough Capital LLC. |
| 99.1 | Press Release, dated August 31, 2022. |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document) |



**SIGNATURE**

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

**NEXTPLAT CORP.**

By: */s/ Charles M. Fernandez*
Name: Charles M. Fernandez
Title: Chairman and Chief Executive Officer

Dated: September 1, 2022

**Exhibit 10.1**

**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this "Agreement") is dated as of August 30, 2022, between Progressive Care Inc., a Delaware corporation (the "Company"), and NextPlat Corp, a Nevada corporation (including its successors and assigns, "Purchaser").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act (as defined below), and Rule 506 promulgated thereunder, the Company desires to issue and sell to Purchaser, and Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

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

**ARTICLE I.**
**DEFINITIONS**

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

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.7.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

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

"AFS" means ArentFox Schiff LLP, 1717 K Street, NW, Washington, DC 20006, counsel to Purchaser.

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

"Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

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

"Closing" means the closing of the purchase and sale of Securities pursuant to Section 2.1.

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchaser's obligations to pay the Closing Subscription Amount and (ii) the Company's obligations to deliver the Securities purchased at such Closing, in each case, have been satisfied or waived, but in no event later than the third Trading Day following the date hereof.

"Closing Statement" means the Closing Statement in the form onAnnex A attached hereto.

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

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

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means Lucosky Brookmna LLP, 101 Wood Avenue South | Woodbridge, New Jersey 08830.

"Conversion Price" shall have the meaning ascribed to such term in the Certificate of Designation.

"Conversion Shares" shall have the meaning ascribed to such term in the Certificate of Designation.

"Debt" shall mean the $2,781,122 face of debt held by Iliad Research & Trading, L.P. ("Iliad").

"Debt Repurchase" shall mean the purchase of the Debt by persons acceptable to the Purchaser.

"Disclosure Schedules" shall have the meaning ascribed to such term in Section 3.1.



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

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

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder, warrants to the Placement Agent in connection with the transactions pursuant to this Agreement and any securities upon exercise of warrants to the Placement Agent and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, (c) Common Stock to be issued to DL2 Capital LLC, representing payment for consulting services rendered, not to exceed 4.99% of the Common Stock outstanding prior to the execution of this Agreement, (d) the repricing of currently outstanding options and warrants issued to officers, directors and/or employees of the Company such that the exercise price per share of Common Stock will be $0.02 (subject to the adjustment for the Reverse Split, provided that such repricing is approved by a majority of the members of the Board of Directors of the Company, including a majority of the independent directors of the Company) (the "Options Repricing"), (e) securities issued in connection with the Debt Purchase, and (f) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the members of the Board of Directors of the Company, including a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibition period in Section 4.13(a) herein, and provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.



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

"FDA" shall have the meaning ascribed to such term in Section 3.1(jj).

"GAAP" shall have the meaning ascribed to such term in Section 3.1(h).

"Governmental Authority" shall have the meaning ascribed to such term in Section 3.1(tt).

"Health Care Laws" shall have the meaning ascribed to such term in Section 3.1(tt).

"Indebtedness" shall have the meaning ascribed to such term in Section 3.1(bb).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(p).

"Legend Removal Date" shall have the meaning ascribed to such term in Section 4.1(c).

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

"Lock-Up Agreement" means the Lock-Up Agreement, dated as of the date hereof, by and among the Company and the directors, officers, Purchaser, and 10% stockholders of the Company, in the form of Exhibit D attached hereto.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(m).

"Participation Maximum" shall have the meaning ascribed to such term in Section 4.12(a).

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

"Pharmaceutical Product" means each product subject to the jurisdiction of the FDA under the Federal Food, Drug and Cosmetic Act, as amended, or similar regulatory authorities outside the United States and the regulations thereunder that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its Subsidiaries.



"Placement Agent" means Dawson James Securities, Inc.

"Pledged Securities" means any and all certificates and other instruments representing or evidencing all of the capital stock and other equity interests of the Subsidiaries.

"Pre-Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Preferred Stock" means up to 3,000 shares of the Company's Series B Convertible Preferred Stock issued hereunder and up to 3,000 shares of the Company's Series B Convertible Preferred Stock issuable upon exercise of the Warrants issued hereunder, in each case, having the rights, preferences and privileges set forth in the Certificate of Designation. The Preferred Stock will vote as a class with the Common Stock, will have 100,000 votes per share, and each share will be convertible into 100,000 shares of Common Stock. The Preferred Stock will have a liquidation and a dividend preference.

"Pro Rata Portion" shall have the meaning ascribed to such term in Section 4.12(e).

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

"Public Information Failure" shall have the meaning ascribed to such term in Section 4.3(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 4.3(b).

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.10.

"Registration Rights Agreement" means the Registration Rights Agreement, dated on or about the date hereof, between the Company and Purchaser, in the

form of Exhibit C attached hereto.

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

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Required Minimum" means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon conversion in full of all shares of Preferred Stock issuable upon conversion in full of the Preferred Stock, ignoring any conversion or exercise limits set forth therein.



"Required Minimum Authorization" shall have the meaning ascribed to such term in Section 3.1(f).

"Reverse Split" shall have the meaning ascribed to such term in Section 4.11(a).

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

"Securities" means the Units, Warrants, Preferred Stock and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

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

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

"Subsidiary" means any subsidiary of the Company as set forth onSchedule 3.1(a), and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

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

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange, OTCQB or OTCQX as applicable; if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices).

"Transaction Documents" means this Agreement, the Certificate of Designation, the Registration Rights Agreement, the Security Agreement, the Subsidiary Guarantee, the Lock-Up Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means the transfer agent of the Company, and any successor transfer agent of the Company.



"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock, without respect to any limitation or restriction on the conversion set forth in the Certificate of Designation.

"Unit" means one share of Preferred Stock, and one Warrant.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 4.13(b).

"VWAP" means the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by Purchaser and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Warrant" means one warrant to purchase one (1) share of Preferred Stock, in the form attached asExhibit B. The Warrants shall have a five-year term, shall be immediately exercisable, in whole or in part, on one or more occasions, and shall contain cashless exercise provisions.

## ARTICLE II.
## PURCHASE AND SALE

2.1 Closing. Substantially concurrent with the execution and delivery of this Agreement by the parties hereto, subject to the conditions set forth herein, the Company agrees to sell, and Purchaser agrees to purchase, an aggregate of 3,000 Units at an aggregate Purchase Price of $6,000,000 (or $2,000 per Unit) at closing (the "Closing"). At Closing, the Company shall deliver to Purchaser its Units, as determined pursuant to Section 2.2(a), and the Company and Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, each Closing shall occur at the offices of AFS or such other location as the parties shall mutually agree.



2.2 Deliveries.

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

(i) this Agreement duly executed by the Company;

(ii) a legal opinion of Company Counsel, in a form acceptable to the Purchaser;

(iii) number of Units equal to Purchaser's Subscription Amount as to such Closing as set forth on the Purchaser's signature page hereto, registered in the name of Purchaser;

(iv) the Company shall have provided Purchaser with the Company's wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer

(v) the Lock-Up Agreements;

(vi) evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Delaware;

(vii) the Registration Rights Agreement duly executed by the Company;

(viii) evidence of the closing of the Debt Repurchase, and the delivery by the Company of revised documentation relating to the Debt acceptable to the Purchaser; and

(ix) evidence that the Yelena Braslavskaya 2020 Gift Trust has converted or exchanged all outstanding Series A Preferred Shares of the Company into 4.6% of the Company's total issued and outstanding pre-Closing Common Stock.

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

(i) this Agreement duly executed by Purchaser;

(ii) Purchaser's Subscription Amount as set forth on Purchaser's signature hereto by wire transfer to the account specified in writing by the Company;

(iii) the Registration Rights Agreement duly executed by Purchaser;

(iv) the Lock-Up Agreement; and

(v) closing of the Debt Repurchase, and the delivery of revised documentation relating to the Debt acceptable to Purchaser.



2.3 Closing Conditions.

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

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

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

(iii) the delivery by Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The obligations of Purchaser hereunder in connection with Closing are subject to the following conditions being met:

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

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

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

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

(v) All currently outstanding shares of preferred stock, convertible debt and shareholder loans shall have been converted as set forth onSchedule 3.1(g) attached hereto and, when aggregated with all outstanding warrants of the Company that remain after the Closing, do not exceed, in the aggregate, 74 million shares;



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

(vii) the Debt Repurchase and the delivery by the Company to the holders definitive executed documentation relating to the Debt acceptable to its holders.

## ARTICLE III.
## REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Company's disclosure schedules attached to this Agreement (the "Disclosure Schedules"), which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). Following the Debt Repurchase, the Company shall own, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification; provided, however, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions, (ii) conditions generally affecting the industry in which the Company or any Subsidiary operates, (iii) any changes in financial or securities markets in general, (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, (v) any pandemic, epidemics or human health crises (including COVID-19), (vi) any changes in applicable laws or accounting rules (including GAAP), (vii) the announcement, pendency or completion of the transactions contemplated by the Transaction Documents, or (viii) any action required or permitted by the Transaction Documents or any action taken (or omitted to be taken) with the written consent of or at the written request of Purchaser.



(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.



(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the filing with the Commission pursuant to the Registration Rights Agreement, (iii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Conversion Shares for trading thereon, (iv) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws and (v) Shareholder Approval (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities 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 imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth on Schedule 3.1(g), as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than Purchaser). Except as set forth on Schedule 3.1(g) and the Options Repricing, there are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital

stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.



(h) Financial Statements. The financial statements of the Company provided to Purchaser comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the 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, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 3.1(i), no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least one (1) Trading Day prior to the date that this representation is made.



(j) Litigation. Except as set forth on Schedule 3.1(j), to the knowledge of the Company, there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action"). None of the Actions set forth on Schedule 3.1(j), (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.



(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations, licenses and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the aggregate Subscription Amount. Neither the Company nor any Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(r) Transactions with Affiliates and Employees. Except as set forth on Schedule 3.1(r), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.



(s) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of each Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(t) Transaction Fees. Except pursuant to that certain agreement by and between the Company and the Placement Agent, dated August 13, 2022, no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. Purchaser shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Private Placement. Assuming the accuracy of Purchaser's representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to Purchaser as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.



(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. Other than Purchaser, no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(x) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to Purchaser as a result of Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and Purchaser's ownership of the Securities.

(y) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided Purchaser or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to Purchaser regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit 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 and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

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



(aa) Solvency. Based on the consolidated financial condition of the Company as of each Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the applicable Closing Date. Schedule 3.1(aa) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $100,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $100,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.



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

(dd) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ee) Accountants. The Company's accounting firm is set forth on Schedule 3.1(ee) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2021.

(ff) Seniority. As of each Closing Date, no Indebtedness or other claim against the Company is senior to the Preferred Stock in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by Purchaser or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to Purchaser's purchase of the Securities. The Company further represents to Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.



(ii) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company 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, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(jj) FDA. There is no pending, completed or, to the Company's knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its Subsidiaries, and none of the Company or any of its Subsidiaries has received any notice, warning letter or other communication from the U.S Food and Drug Administration ("FDA") or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the

withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (iv) enjoins production at any facility of the Company or any of its Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA and state and local authorities. The Company has not been informed by the FDA (or any state or local authority) that the FDA (or any state or local authority) will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed, or currently being produced and marketed, by the Company nor has the FDA (or any state or local authority) expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(kk) Non-Debarment and Non-Disqualification.

(i) Neither the Company, nor any of its Subsidiaries nor any of their respective agents or employees has been, and is not currently an individual who has been debarred by the FDA pursuant to 21 U.S.C. § 335a (a) or (b) ("Debarred Individual") from providing services in any capacity to a person that has an approved or pending drug product application, or an employer, employee or partner of a Debarred Individual, or



(ii) Neither the Company, nor any of its Subsidiaries nor any of their respective agents or employees has been, and is not currently a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. § 335a (a) or (b) ("Debarred Entity") from submitting or assisting in the submission of any drug application, or an employee, partner, shareholder, member, subsidiary or affiliate of a Debarred Entity.

(iii) Neither Company, nor its Subsidiaries, nor any of their respective agents or employees has ever been and is not currently the subject of a sanction or disciplinary action by any federal, state or local agency, including state licensing authorities or regulatory authorities, medical societies, or specialty boards, or of an agreement with any such agency that restricts their ability to practice medicine ("Disciplined Individual"); disqualified by FDA as a clinical investigator pursuant to 21 C.F.R. § 312.70 or 21 C.F.R. § 812.119 ("Disqualified Individual"); or excluded from participation in federal health care programs ("Excluded Individual").

(iv) No Debarred, Disqualified, Disciplined, or Excluded Individual or Debarred Entity has performed or rendered, or will perform or render, any services or assistance relating to activities of the Company. Company has no knowledge of any circumstances which may affect the accuracy of the foregoing warranties and representations, including but not limited to, FDA investigations of, or debarment proceedings against Company, its agents or employees, or any person or entity performing services or rendering assistance relating to Company's activities.

(ll) Health Care. Neither the Company and nor any of its Subsidiaries, in the past three (3) years, (i) has received written notice from any Governmental Authority alleging any material violation (whenever alleged to have occurred) of any applicable Health Care Law relating to the Company or any of its Subsidiares that has not been cured; (ii) has received written notice of any legal, administrative, arbitral or other claim, proceeding, suit, action or investigation alleging any material failure to comply with Health Care Laws by or from any Governmental Authority that is currently pending and, to the Company's and each of its Subsidiaries' knowledge, no such claim, proceeding, suit, action or investigation alleging any material failure to comply with Health Care Laws has been threatened in writing against or affecting the Company or any of its Subsidiaries; and (iii) is in compliance in all material respects with all applicable Health Care Laws. "Governmental Authority" means any government, governmental agency, department, bureau, office, commission, board, authority, or instrumentality, or court of competent jurisdiction, in each case whether foreign, federal, state, or local. "Health Care Laws" means (i) any and all laws relating to health care or insurance fraud and abuse, including, as applicable, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b) and 41 U.S.C. §§ 51-58), the civil False Claims Act (31 U.S.C. § 3729 et seq.), the Exclusion Laws (42 U.S.C. §§ 1320a-7 and 1320a-7a), the Civil Monetary Penalties Law (42 U.S.C. §§ 1320a and 1320a-7b, and the regulations promulgated pursuant to such statutes; (ii) any and all federal, state and local laws concerning privacy and data security for patient information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d-1329d-8), as amended, and all federal and state laws concerning medical record retention, privacy, security, patient confidentiality and informed consent, and the regulations promulgated thereunder; (iii) Medicare (Title XVIII of the Social Security Act), as amended and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (vi) the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended and the regulations promulgated thereunder; (vii) quality, safety and accreditation standards and requirements of all applicable state laws or regulatory bodies; and (viii) federal and state laws with respect to financial relationships between referral sources and referral recipients, including, but not limited to the federal Stark Law (42 U.S.C. § 1395nn et seq.) and the regulations promulgated thereunder.



(mm) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(nn) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(oo) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(pp) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.



(qq) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(rr) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to Purchaser a copy of any disclosures provided thereunder.

(ss) Other Covered Persons. Other than the Placement Agent, the Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(tt) Notice of Disqualification Events. The Company will notify Purchaser and the Placement Agent in writing, prior to the applicable Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants as of the date hereof and as of each Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

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



(b) Filings, Consents and Approvals. The Purchaser is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Purchasr of the Transaction Documents.

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

(d) Purchaser Status. At the time Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts any Warrants into Preferred Stock and/or converts any Preferred Stock into Conversion Shares it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12), or (a)(13) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(e) Experience of Purchaser. Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.



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

(g) Access to Information. Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Purchaser acknowledges and agrees that neither the Placement Agent nor any of its Affiliates have provided Purchaser with any information or advice with respect to the Securities nor is such information or advice necessary or desired. Neither the Placement Agent nor any of its Affiliates have made or makes any representation as to the Company or the quality of the Securities and the Placement Agent and any Affiliate of the Placement Agent may have acquired non-public information with respect to the Company which Purchaser agrees need not be provided to it. In connection with the issuance of the Securities to Purchaser, neither the Placement Agent nor any of its Affiliates has acted as a financial advisor or fiduciary to Purchaser.

(h) Litigation. There is no Action pending or threatened against Purchaser or affecting Purchaser that adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities.

(i) Office of Foreign Assets Control. Neither the Purchaser nor any Subsidiary nor, to the Purchaser's knowledge, any director, officer, agent, employee or affiliate of the Purchaser or any Subsidiary is currently subject to any U.S. sanctions administered by OFAC.

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

**ARTICLE IV.**
**OTHER AGREEMENTS OF THE PARTIES**

4.1 Transfer Restrictions.

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

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

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [CONVERTIBLE]] HAS BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

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



(c) The Company shall cause its counsel to issue a legal opinion to the Transfer Agent or the Purchaser promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder, or if requested by Purchaser, respectively. If all or any shares of Preferred Stock are converted at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such date, the "Legend Removal Date"), deliver or cause to be delivered to Purchaser a certificate representing such shares that is free from all restrictive and other legends. **Notwithstanding anything herein to the contrary the holder of Preferred Stock may simultaneously deliver to the Company a Notice of Conversion of the shares of Preferred Stock to be received upon such conversion and for all corporate purposes such holder shall be deemed to have become the holder of record of the Underlying Shares with respect to such Notice of Conversion, irrespective of the date of delivery of the Preferred Stock or Underlying Shares.** The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by Purchaser. As used herein, " Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend.



(d) In addition to Purchaser's other available remedies the Company shall pay to Purchaser, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), $5 per Trading Day (increasing to $10 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to Purchaser by the Legend Removal Date a certificate representing the Securities so delivered to the Company by Purchaser that is free from all restrictive and other legends and (b) if after the Legend Removal Date Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "**Buy-In Price**") over the product of (A) such number of Underlying Shares that the Company was required to deliver to Purchaser by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) Purchaser agrees with the Company that Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Until the earliest of the time that no Purchaser owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.



(b) At any time during the period commencing immediately and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144 (i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "Public Information Failure") then, in addition to Purchaser's other available remedies, the Company shall pay to Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of Purchaser's Securities on the day of a Public Information Failure and on every thirtieth ($30^{th}$) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for Purchaser to transfer the Underlying Shares pursuant to Rule 144. The payments to which Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third ($3^{rd}$) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit Purchaser's right to pursue actual damages for the Public Information Failure, and Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

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

4.5 Conversion Procedures. Each of the form of Notice of Conversion included in the Certificate of Designation sets forth the totality of the procedures required of Purchaser in order to convert the Preferred Stock. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the shares of Preferred Stock. No additional legal opinion, other information or instructions shall be required of Purchaser to convert its shares of Preferred Stock. The Company shall honor conversions of the Preferred Stock and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.



4.6 Securities Laws Disclosure; Publicity. As of a date three (3) business days following the Closing, the Company represents to Purchaser that it shall have publicly disclosed all material, non-public information delivered to Purchaser by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and Purchaser or any of its Affiliates on the other hand, shall terminate. The Company and Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of Purchaser, or without the prior consent of Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of Purchaser, or include the name of Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of Purchaser, except (a) as required by federal securities law in connection with (i) any registration statement contemplated by the Registration Rights Agreement and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide Purchaser with prior notice of such disclosure permitted under this clause (b).

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

4.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.6, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. To the extent that the Company, any of its Subsidiaries, or any of their respective officers, director, agents, employees or Affiliates delivers any material, non-public information to Purchaser without Purchaser's consent, the Company hereby covenants and agrees that Purchaser shall not have any duty of confidentiality to the Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.



4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

4.10 Indemnification of Purchaser. Subject to the provisions of this Section 4.10, the Company will indemnify and hold Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors,

officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.



4.11 Reservation and Listing of Securities.

(a) The Company will use commercially reasonable efforts to file a listing application with the Nasdaq promptly following the Closing and will use commercially reasonable efforts to take all actions necessary to effect a reverse stock split in a ratio that causes the Company's Common Stock price per share to satisfy the Nasdaq minimum listing requirement (the "Reverse Split").

(b) The Company will use commercially reasonable efforts to promptly take all actions necessary to increase the authorized but unissued shares of Common Stock to be sufficient to satisfy the Required Minimum, and shall thereafter maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(c) The Company will promptly seek to have the necessary corporate action taken to authorize an additional number of shares of Common Stock to accommodate the Required Minimum to be authorized (the "Required Minimum Authorization") and will promptly from its duly authorized capital stock reserve a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof. If, on any date, following the completion of the actions set forth in clauses (a) and (b) above, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 90th day after such date.

(d) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market, (iii) provide to Purchaser evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.



4.12 Participation in Future Financing.

(a) From the date hereof upon any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for cash consideration, Indebtedness or a combination of units thereof (a "Subsequent Financing"), Purchaser shall have the right to participate in the Subsequent Financing in an aggregate amount of up to 51% of the aggregate amount raised thereunder (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing.

(b) At least five (5) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to Purchaser a written notice of its intention to effect a Subsequent Financing ("Pre-Notice"), which Pre-Notice shall ask Purchaser if it wants to review the details of such financing (such additional notice, a "Subsequent Financing Notice"). Upon the request of Purchaser, and only upon a request by Purchaser, for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to Purchaser. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(c) If Purchaser desires to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after Purchaser has received the Pre-Notice that Purchaser is willing to participate in the Subsequent Financing, the amount of Purchaser's participation, and representing and warranting that Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from Purchaser as of such fifth (5th) Trading Day, Purchaser shall be deemed to have notified the Company that it does not elect to participate.

(d) If by 5:30 p.m. (New York City time) on the fifth (5th ) Trading Day after Purchaser has received the Pre-Notice, notifications by Purchaser of its willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the Participation Maximum, then the Company may effect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) The Company must provide Purchaser with a second Subsequent Financing Notice, and Purchaser will again have the right of participation set forth above in this Section 4.12, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(f) The Company and Purchaser agree that if Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision that, directly or indirectly, will, or is intended to, exclude Purchaser from participating in a Subsequent Financing, including, but not limited to, provisions whereby Purchaser shall be required to agree to any restrictions on trading as to any securities of the Company or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of Purchaser.

(g) Notwithstanding anything to the contrary in this Section 4.12 and unless otherwise agreed to by Purchaser, the Company shall either confirm in writing to Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that Purchaser will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Subsequent Financing Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by Purchaser, such transaction shall be deemed to have been abandoned and Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(h) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of an Exempt Issuance.

4.13 Subsequent Equity Sales.

(a) From the date hereof until the 90th day following the Closing Date, neither the Company nor any Subsidiary shall (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents or (ii) file any registration statement or any amendment or supplement thereto, in each case other than as contemplated pursuant to the Registration Rights Agreement.

(b) From the date hereof until such time as no Purchaser holds any of the Securities, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.



(c) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.14 Reserved.

4.15 Certain Transactions and Confidentiality. Purchaser covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.6.

4.16 Lock-Up Agreements. The Company and the Purchaser shall not amend, modify, waive or terminate any provision of any of the Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each Lock-Up Agreement in accordance with its terms. If any party to a Lock-Up Agreement breaches any provision of a Lock-Up Agreement, the Company and the Purchaser shall promptly use its best efforts to seek specific performance of the terms of such Lock-Up Agreement.

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



4.18 Composition of Company Board; Officers and Management. Immediately following the Closing, Purchaser and the Company agree that two (2) representatives of the Purchaser (Charles M. Fernandez and Rodney Barreto) shall be nominated for election to the Board of Directors of the Company and that Jervis Hough (or his successor) and Alan Jay Weisberg (or his successor) shall remain on the Company's Board. Mr. Fernandez shall be elected to serve as the Chairman of the Company's Board, and Mr. Barreto and Mr. Weisberg (or his successor) shall be elected as Vice Chairmen of the Company's Board with each serving for a period of three (3) years following the Closing Date. The Purchaser acknowledges and agrees that the Company's current officers and management shall remain in their respective offices and positions for a period of at least one (1) year following the Closing Date. The Purchaser, in its capacity as a shareholder of the Company, shall not take any action inconsistent with this Section.

## ARTICLE V.
## MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by Purchaser by written notice to the other parties, if the Closing has not been consummated on or before the fifth (5th) Trading Day following the date hereof, provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Closing, the Company has agreed to pay to Purchaser $125,000 representing its legal fees and expenses. The Company shall deliver to Purchaser, prior to each Closing, a completed and executed copy of the Closing Statement, attached hereto as Annex A. Except as expressly set forth in the Transaction

Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to Purchaser.

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



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

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchaser which purchased at least 50.1% in interest of the Preferred Stock based on the Subscription Amounts hereunder or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts Purchaser, the consent of such disproportionately impacted Purchaser shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any amendment effected in accordance with this Section 5.5 shall be binding upon Purchaser and each holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

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

5.8 No Third Party Beneficiaries. The Placement Agent shall be the third-party beneficiary of the representations and warranties of the Company in Section 3.1 and the representations and warranties of Purchaser in Section 3.2. 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, except as otherwise set forth in Section 4.10 and this Section 5.8.



5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in Broward County, Florida. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Broward County, Florida for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such 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 other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

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

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

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.



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

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

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

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

5.17 Reserved.

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

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

5.20 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

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

*(Signature Pages Follow)*



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

**PROGRESSIVE CARE INC.**

By: */s/ Alan Jay Weisberg*
Name: Alan Jay Weisberg
Title: Chief Executive Officer

Address for Notice:

400 Ansin Blvd Hallandale Beach, FL 33009

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

PURCHASER SIGNATURE PAGES TO PROGRESSIVE CARE INC. SECURITIES PURCHASE AGREEMENT

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

Name of Purchaser: NEXTPLAT CORP

*Signature of Authorized Signatory of Purchaser*: /s/ Charles M. Fernandez

Name of Authorized Signatory: Charles M. Fernandez

Title of Authorized Signatory: Chairman and Chief Executive Officer

Email Address of Authorized Signatory: cfernandez@nextplat.com

Address for Notice to Purchaser:

NextPlat Corp
3250 Mary Street
Suite 410
Coconut Grove, FL
Attention: Charles Fernandez

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: $6,000,000

Units: 3,000

Shares of Preferred Stock issuable: 3,000

Underlying Shares of Common Stock issuable: 300,000,000

Number of Warrants issuable: 3,000

EIN Number: 65-0783722

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**Annex A**

**CLOSING STATEMENT**

Pursuant to the attached Securities Purchase Agreement, dated as of the date hereto, the purchaser shall purchase up to $6,000,000 of 3,000 Units (each Unit consisting of one share of Series B Preferred Stock and one warrant to purchase 1 share of Preferred Stock) from Progressive Care Inc., a Delaware corporation (the "Company"). All funds will be wired into an account maintained by the Company. All funds will be disbursed in accordance with this Closing Statement.

**Disbursement Date:** August ___, 2022

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**I. PURCHASE PRICE**

| | |
|---|---|
| **Gross Proceeds to be Received** | $ |

**II. DISBURSEMENTS**

| | |
|---|---|
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| **Total Amount Disbursed:** | **$** |

**WIRE INSTRUCTIONS:**
**Please see attached.**

Acknowledged and agreed to
this ___ day of _____, _____

PROGRESSIVE CARE INC.

By: _____
Name: Alan Jay Weisberg
Title: Chief Executive Officer

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**Exhibit 10.2**

**CONFIDENTIAL PURCHASE AND RELEASE AGREEMENT**

**THIS CONFIDENTIAL PURCHASE AND RELEASE AGREEMENT** (this "***Agreement***") is entered into as of August 30, 2022, by and among, Iliad Research and Trading, L.P., a Utah limited partnership ("***Iliad***"), Progressive Care Inc., a Delaware corporation (the "***Company***"), PharmCo, L.L.C., a Florida limited liability company ("***PharmCo***"), NextPlat Corp, a Nevada corporation ("***NextPlat***"), Charles Fernandez ("***Fernandez***"), Rodney Barreto ("***Barreto***"), Daniyel Erdberg ("***Erdberg***"), and Sixth Borough Capital Fund, LP, a Delaware limited partnership ("***6B***", and together with NextPlat, Bareto, Fernandez and Erdberg, the "***Purchasers***"), each a "***Party***" and collectively the "***Parties***", upon the following premises:

**WHEREAS,** On March 6, 2019, the Company sold and issued to Iliad a certain Secured Convertible Promissory Note dated March 6, 2019 in the original principal amount of $3,310,000.00 (as heretofore amended or modified, the "***Iliad Note***") pursuant to a certain Securities Purchase Agreement dated as of March 6, 2019 between Company and Iliad (the "***Iliad Purchase Agreement***");

**WHEREAS**, the Iliad Note is secured by a lien upon and security interest in all of the tangible and intangible property of the Company's subsidiary, PharmCo, as more fully described in that certain Security Agreement, dated as of March 6, 2019, made by PharmCo in favor of Iliad (as heretofore amended or modified, the "***Security Agreement***");

**WHEREAS**, the obligations of the Company under the Iliad Note are guaranteed by PharmCo, as more fully described in that certain Guaranty, dated as of March 6, 2019, made by PharmCo for the benefits Iliad (as heretofore amended or modified, the "***Guaranty***" and together with the Iliad Note, Iliad Purchase Agreement, Security Agreement, and all other documents entered into in conjunction therewith, the "***Financing Documents***");

**WHEREAS**, on January 20, 2022, Iliad and the Company entered into that certain Settlement Agreement, Waiver and Release of Claims which*inter alia* modified the terms of such Note;

**WHEREAS**, Iliad wishes to sell to Purchasers, and Purchasers wish to purchase, (a) all of Iliad's right, title and interest in the Iliad Note and (b) all of Iliad's right, title and interest in the Financing Documents other than the Iliad Note, including without limitation the Guaranty, the Security Agreement, and Iliad's rights, title and interest in and to the Collateral (collectively with the Iliad Note, the "***Purchased Assets***"), for the aggregate purchase price of $2,300,000;

**WHEREAS**, the Parties intend that this Agreement become effective on the date and time that the Remittance (as defined below) from all Purchasers is received by Iliad pursuant to Section 4.1(b) hereof (the "***Effective Date***");

**NOW THEREFORE**, on the stated premises and for and in consideration of the mutual covenants and agreements hereinafter set forth and the mutual benefits to the Parties to be derived herefrom, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

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**ARTICLE I**
**DEFINITIONS**

Each of the foregoing recitals is incorporated herein and together form part of this Agreement.

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"***Affiliate***" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act, or is serving as counsel to such Person; without limiting the foregoing the term "Affiliate" shall with respect to a limited liability company, corporation, or partnership, include parent and subsidiary corporations, liability companies, corporations, or partnership divisions, shareholders, members, managers, predecessors, successors and assigns, officers, directors, trustees, fiduciaries, managers, administrators, agents, attorneys, insurers and representatives.

"***Allonge***" has the meaning set forth in Section 4.2(b).

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

"***Closing***" has the meaning set forth in Section 4.2(a).

"***Collateral***" has the meaning set forth in the Security Agreement.

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

"***Company Acknowledgement***" has the meaning set forth in Section 4.2(b).

"***Effective Date***" has the meaning set forth in the recitals to this Agreement.

"***Financing Statements***" means: (a) that certain UCC-1 financing statement filed with the State of Delaware on May 31, 2019 with Chicago Venture Partners, L.P. as the secured party and the Company as the debtor; and (b) that certain UCC-1 financing statement filed with the State of Florida on May 29, 2019 with Chicago Venture Partners, L.P. as the secured party and the Company as the debtor.

"***Iliad Note***" has the meaning set forth in the recitals to this Agreement.

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



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

"***Proceeding***" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a

deposition), whether commenced or threatened.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Transaction Documents***" means:

- this Agreement,
- the Allonge,
- UCC assignments transferring the Financing Statements,
- any and all guarantees, security interests, and any other documents and agreements executed and delivered by the Iliad in connection with the Financing Documents, and
- any and all other agreements and documents reasonably requested by the Purchasers relating to the transactions contemplated hereunder.

**ARTICLE II**
**REPRESENTATIONS, COVENANTS, AND WARRANTIES OF ILIAD**

Section 2.1 Iliad Representation and Warranties.

Iliad hereby makes the following representations and warranties to each of the Purchasers:

(a) Authorization; Enforcement. It has the requisite limited partnership power and authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents and otherwise to carry out its obligations thereunder. The execution and delivery of each of the Transaction Documents by it and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on its part and no further action is required by it in connection therewith. Each Transaction Document has been (or upon delivery will have been) duly executed by it and, when delivered in accordance with the terms hereof, will constitute a valid and binding obligation enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.



(b) No Conflicts. The execution, delivery and performance of the Transaction Documents by it and the consummation by it of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of its certificate of limited partnership, partnership agreement or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument or other understanding to which it is a party or by which any of its property or assets is bound or affected, or (iii) is subject to any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any United States court or other federal, state, local or other governmental authority or other Person in connection with its execution, delivery and performance of the Transaction Documents, that could result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which it is subject (including federal and state securities laws and regulations), or by which any of its property or assets is bound or affected.

(c) Filings, Consents and Approvals. It is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any federal, state, local or other governmental authority or other Person, or any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by it of the Transaction Documents.

(d) Purchased Assets. The Purchased Assets are owned by Iliad. No other person has an interest in the Purchased Assets or the right to approve, disapprove or oppose the transactions contemplated by this Agreement. The Purchased Assets have not been transferred, pledged, sold, assigned, encumbered or hypothecated, and are free and clear of all Liens and contract claims.

(e) Positive & Negative Assurances. Neither Iliad nor any Affiliate of Iliad owns any securities issued by the Company other than those included in the Purchased Assets and 1,296,163 shares of the Company's common stock owned by Iliad not being transferred as part of this Agreement (the "***Iliad Shares***"). Iliad is not aware of any facts that would give rise to a claim against the Company or any of its Affiliates by it.

(f) Non-Reliance on and Disclaimer of Representations or Promises Not Reflected in This Agreement. No representations or promises that are not reflected in this Agreement have been made to Iliad to induce it to execute this Agreement and the Transaction Documents, and it disclaims reliance on any representation or promise not set forth in this Agreement or the Transaction Documents, and expressly disclaims any right to assert negligent or intentional misrepresentation or fraud on the basis of any pre-suit communication.

(g) Broker's, Finder's or Similar Fees. To Iliad's knowledge, except for the Company's agreement with Dawson James Securities, Inc., there are no brokerage commissions, finder's fees or similar fees or commissions payable by any party in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with Iliad or any action taken by Iliad.

(h) Limitations on Representations and Warranties. Except for the foregoing representations and warranties, this Agreement is made by Iliad without representation or warranty of any nature or kind, express or implied, and Iliad specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future with respect to the Iliad Note, any portion thereof, or any instruments evidencing same.



Section 2.2 Iliad's Covenant Not to Purchase Any Securities of the Company. Iliad represents, warrants and agrees that for a period of three years from the Effective Date none of Iliad or any Affiliate of Iliad will purchase or cause any other Person to purchase any securities issued by the Company.

**ARTICLE III**
**REPRESENTATIONS AND WARRANTIES OF PURCHASERS**

Section 3.1 Purchasers Representations and Warranties.

As an inducement to, and to obtain the reliance of Iliad, each Purchaser, severally and not jointly, represents and warrants to Iliad that:

(a) Legal Capacity; Organization. If an entity, Purchaser is duly organized and validly existing under the laws of the jurisdiction of its formation; and has the requisite

power and authority to execute, deliver and perform its obligations hereunder. If an individual, Purchaser is an individual over the age of 21 and the legal capacity to execute, deliver and perform his or her obligations set forth in this Agreement.

(b) Authorization; No Contravention. If an entity, the execution, delivery and performance by Purchaser of this Agreement and the transactions contemplated hereby (a) have been duly authorized by all necessary officers, partners, managers or members of Purchaser, (b) do not contravene the terms of Purchaser's organizational documents, or any amendment thereof, (c) do not materially violate, conflict with or result in any material breach or contravention of, or the creation of any Lien under, any contractual obligation of Purchaser or any requirement of law applicable to Purchaser, and (d) do not materially violate any orders of any governmental authority against, or binding upon, Purchaser to the knowledge of Purchaser.

(c) Governmental Authorization; Third Party Consents. No approval, consent, compliance, exemption, authorization or other action by, or notice to, or filing with, any governmental authority or any other Person, and no lapse of a waiting period under any requirement of law, is necessary or required in connection with the execution, delivery or performance by, or enforcement against, Purchaser, of this Agreement.

(d) Binding Effect. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability (regardless of whether considered in a proceeding at law or in equity).

(e) Restricted Securities. Purchaser understands that the Iliad Note and any shares received from conversions thereunder will not be registered under the Securities Act at the time of purchase and, therefore, cannot be resold unless registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. Purchaser is aware that the Company is under no obligation to effect any such registration with respect to the Iliad Note or any shares received from conversions thereunder or to file for or comply with any exemption from registration.



(f) Accredited Investor. Purchaser is an "Accredited Investor" within the meaning of Rule 501 of Regulation D under the Securities Act, as presently in effect.

(g) Affiliate Status. Erdberg and 6B are not Affiliates of any of the other Purchasers. Fernandez and Barreto are Affiliates of NextPlat. No Purchaser is, and has at any time been, an Affiliate of the Company.

(h) Broker's, Finder's or Similar Fees. Except for the Company's agreement with Dawson James Securities, Inc., there are no brokerage commissions, finder's fees or similar fees or commissions payable by any party in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with Purchaser or any action taken by Purchaser.

(i) Disclosure of Information. Purchaser has been furnished with, and has had access to, such information as it considers necessary or appropriate for deciding whether to enter into this Agreement, and Purchaser has had an opportunity to ask questions and receive answers from the Company and its officers concerning the Company's financial situation, business, prospects, and any other matter that Purchaser has deemed relevant or important in determining whether to enter into this Agreement. Among other things, Purchaser is aware that the Company's business prospects are speculative. Purchaser has had the opportunity to consult with counsel of its choosing with respect to this Agreement and the transactions contemplated herein. No representations or warranties have been made to Purchaser by Iliad, or any of its respective officers, directors, employees, agents, sub-agents, affiliates or subsidiaries, other than the representations of Iliad contained herein, and in purchasing the Iliad Note hereunder, Purchaser is not relying upon any representations of Iliad other than those contained herein.

(j) Financing Statements. Purchaser acknowledges and agrees that the assignment and acceptance of the Financing Statements is made on an "AS IS," "WHERE IS" basis, with all faults and defects. Purchaser acknowledges and agrees that Iliad has made no warranties or representations, express or implied, or arising by operation of law, relating to the Financing Statements, including, without limitation, with respect to the validity, existence or priority of any lien or security interest evidenced by the Financing Statements.

(k) Investment Risk. Purchaser is aware that its purchase of the Iliad Note pursuant to this Agreement is a speculative investment that is subject to the risk of complete loss. Purchaser is able, without impairing Purchaser's financial condition, to suffer a complete loss of such investment in the Company.

(l) Sophisticated Purchaser. Purchaser has such knowledge and experience in financial and business matters that Purchaser is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment and is able to bear the economic risk of such investment for an indefinite period of time. Purchaser has not been formed solely for the purpose of making this investment and is purchasing the Iliad Note for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof.



## ARTICLE IV
## PURCHASE AND SALE OF PURCHASED ASSETS

Section 4.1 The Purchase.

(a) On the terms and subject to the conditions set forth in this Agreement, contemporaneous with the execution of this Agreement, Iliad shall sell, assign, transfer and deliver to the Purchasers the Purchased Assets, free and clear of all Liens and known claims of any kind, nature, or description effective as of the Effective Date. Each of the Parties represents, warrants and agrees that the aggregate purchase price for the Purchased Assets is $2,300,000 (the "***Purchase Price***"). Each of Iliad and the Purchasers will be responsible for its own costs and expenses, including legal fees.

(b) Each Purchaser shall remit to Iliad its pro rata portion of the Purchase Price (as set forth onExhibit A) (together, the "***Remittance***") by way of a federal funds wire to Iliad and in accordance with the wire instructions provided by Iliad. Each of the Parties represents and warrants to the other Party that the Remittance once received from all Purchasers represents the aggregate consideration for the purchase of the Purchased Assets and for the releases set forth in this Agreement, as well as the satisfaction of all financial obligations owing from the Company to Iliad or its Affiliates, whether arising out of this Agreement or otherwise. On the Effective Date, all right title and interest to the Purchased Assets shall transfer to the Purchasers. In connection with the sale of the Purchased Assets hereunder, in advance of the initiation of the wire transfer of the Remittance, Iliad shall deliver to counsel for the Purchasers the Transaction Documents, to be held in escrow by such counsel pending the occurrence of the Release Event (defined below), at which time it will be released to the Purchasers. The electronically signed PDFs of the Transaction Documents shall be held in escrow by Purchaser's and Iliad's respective counsel pending Iliad's notification to Purchasers of Iliad's receipt of the full Purchase Price (together, the " ***Release Event***"), at which time the Transaction Documents will be released from escrow to the Parties.

(c) The Company and PharmCo consent to the transfer of the Purchased Assets contemplated by Sections 4.1(a) and 4.1(b). The Company represents and warrants that as of the date of this Agreement, the aggregate amount of principal and interest outstanding under the Iliad Note is $2,790,885.63.

(d) This Agreement shall become effective as of the Effective Date.

Section 4.2 Closing.

(a) The closing ("***Closing***") of the transaction contemplated by this Agreement shall occur on the Effective Date.

(b) At Closing, Iliad shall deliver to the Purchasers an allonge to the Iliad Note (the "***Allonge***") duly executed by Iliad, assigning the Iliad Note to the Purchasers and (ii) deliver to NextPlat an electronically signed PDF version of the Iliad Note.



Section 4.3 Disposition of Iliad Shares. Iliad will, or will cause its Affiliates to use reasonable best efforts to, sell, transfer, exchange or otherwise dispose of all of the Iliad Shares in a timely manner but in no event longer than sixty (60) days following Closing. Thereafter, neither Iliad nor any of its Affiliates will acquire any securities of the Company for a period of three (3) years.

## ARTICLE V
## WAIVER AND RELEASE, INDEMNIFICATION AND CLAIMS

Section 5.1 Iliad Release of the Company.

(a) As of the Effective Date, Iliad and each of its Affiliates (hereinafter collectively referred to as the "***Releasors***") hereby irrevocably and unconditionally waives, releases, and forever discharges and covenants not to sue each of the Company and its past, present and future Affiliates and related entities, parent and subsidiary corporations, divisions, shareholders, members, managers, predecessors, successors and assigns, and each of its and their respective past, present or future shareholders, members, owners, officers, directors, trustees, fiduciaries, managers, administrators, agents, attorneys, insurers and representatives (hereinafter collectively referred to as "***Releasees***") from, any and all claims, charges, demands, sums of money, actions, rights, promises, agreements (except this Agreement and any agreements included in the Transaction Documents), causes of action, obligations and liabilities of any kind or nature whatsoever, at law or in equity, whether known or unknown, existing or contingent, suspected or unsuspected, apparent or concealed (hereinafter collectively referred to as "claims") which the Releasors now or in the future may have or claim to have against any of the Releasees based upon or arising out of any facts, acts, conduct, omissions, transactions, occurrences, contracts, claims, events, causes, matters or things of any conceivable kind or character whatsoever existing or occurring or claimed to exist or to have occurred at any time on or before the Effective Date; and any and all claims for attorney's fees, costs, disbursements or the like.

Section 5.2 Iliad Claims. To the fullest extent permitted by law, and subject to the provisions of this Agreement, Iliad represents, affirms, agrees and covenants that (i) it has not filed or caused to be filed on its behalf any claim for relief against any Releasee, and, to the best of its knowledge and belief, no outstanding claims for relief have been filed or asserted against any Releasee on its behalf; (ii) Iliad has not reported any purported improper, unethical or illegal conduct or activities to any regulatory agency having jurisdiction over the activities of the Company, or any of its Affiliates; and (iii) it will not file, commence, prosecute or participate in any judicial or arbitral action or proceeding against any Releasee based upon or arising out of any act, omission, transaction, occurrence, contract, claim or event existing or occurring on or before the Effective Date except as required by law.

Section 5.3 Company Release of Iliad. Each of the Company and its Affiliates (hereinafter collectively referred to as the "***Company Releasor***"), hereby irrevocably and unconditionally waives, releases, and forever discharges and covenants not to sue Iliad, and its respective managers, officers, directors, partners, Affiliates, predecessors, legal representatives, successors and assigns (hereinafter collectively referred to as the "***Iliad Releasees***") from, any and all claims, charges, demands, sums of money, actions, rights, promises, agreements (except any agreements included in the Transaction Documents), causes of action, obligations and liabilities of any kind or nature whatsoever, at law or in equity (hereinafter collectively referred to as "claims"), arising from any facts, acts, conduct, omissions, transactions, occurrences, contracts, claims, events, causes, matters or things existing or occurring or claimed to exist or to have occurred at any time on or before the Effective Date; provided, however, that in the event that if Iliad materially breaches any of its obligations under any of the Transaction Documents, then in any action or proceeding against it on account of such breach, Iliad covenants and agrees not to assert the foregoing release as a defense to any claim or demand in such action.



Section 5.4 Company Claims. To the fullest extent permitted by law, and subject to the provisions of this Agreement, the Company represents, affirms, agrees and covenants that (i) it has not filed or caused to be filed on its behalf any claim for relief against any Iliad Releasee, and, to the best of its knowledge and belief, no outstanding claims for relief have been filed or asserted against any Iliad Releasee on its behalf; (ii) the Company has not reported any purported improper, unethical or illegal conduct or activities to any regulatory agency having jurisdiction over the activities of Iliad or any of its Affiliates; and (iii) it will not file, commence, prosecute or participate in any judicial or arbitral action or proceeding against any Iliad Releasee based upon or arising out of any act, omission, transaction, occurrence, contract, claim or event existing or occurring on or before the Effective Date except as required by law.

Section 5.5 Full and Final Release. It is understood and agreed that Sections 5.1, 5.2 5.3 and 5.4 are full and final releases covering the respective released claims of the Parties and the Releasees and the Iliad Releasees. Therefore, each of the Parties expressly waives any rights it may have under any statute or common law principle under which a general release does not extend to respective released claims that such Party does not know or suspect to exist in its favor at the time of executing the release in this Agreement, which if known by such Party would have affected such Party's agreement with the other Party. In connection with such waiver and relinquishment, each Party acknowledges that such Party or such Party's attorneys or agents may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the released claims, and which, if known on the date of the execution of this Agreement, might have materially affected such Party's decision to enter into and execute this Agreement, but that it is their respective intention hereby fully, finally and forever to settle and release all of their respective released claims. In furtherance of such intention, the respective releases herein given by the Parties shall be and remain in effect as full and complete releases with regard to their respective released claims notwithstanding the discovery or existence of any such additional or different claim or fact. Each Party further agrees that by reason of the releases contained herein, such Party is expressly assuming the risk of such unknown released claims and agrees that this Agreement applies thereto.

Iliad, on behalf of itself and its Affiliates, hereby covenants to each of the Purchasers and to the Company not to, with respect to any released claim, directly or indirectly encourage or solicit or voluntarily assist or participate in any way in the filing, reporting or prosecution by such Party or its Affiliates or any third party of an action against any other Party or its Affiliates relating to any released claims. Each Party may plead this Agreement as a complete bar to any released claim brought in derogation of this Section 5.



Nothing in this Section 5.5 shall: (i) apply to any action by any Party to enforce its rights or obligations pursuant to this Agreement; or (ii) constitute a release by either Party for any claim arising under this Agreement. The covenants contained in this Section 5.5 shall survive the execution and delivery of this Agreement indefinitely regardless of any statute of limitations.

## ARTICLE VI
## NON-DISCLOSURE AND NON-DISPARAGEMENT

Section 6.1 Non-Disclosure; Confidentiality. Iliad agrees that neither it nor any of its Affiliates will disclose or use for its benefit or the benefit of any other Person, any information regarding the Company and received by Iliad prior to the date of this Agreement or pursuant to this Agreement that (i) has not been disclosed publicly by the Company, or (ii) is otherwise not a matter of public knowledge.

Section 6.2 Non-Disparagement.

During the period ending on the later of five years following the date of this Agreement Iliad shall not make any disparaging comments or statements, whether or not true, to any other Person or Persons, which could affect adversely the conduct of the Company's business or its reputation or the conduct of business or the business or reputation of any of the Company's Affiliates. The Company, and each of its respective officers and directors shall not make any disparaging comments or statements to any Person or Persons, which could affect adversely Iliad's or any of its Affiliates' business reputation. Nothing in this Agreement shall prohibit or restrict any of the Parties, or their respective Affiliates from: (i) making any disclosure of information required by law or necessary to further their business; (ii) providing information to, or testifying or otherwise assisting in any investigation or proceeding brought by any federal or state regulatory or law enforcement agency or legislative body, any self-regulatory organization; or (iii) testifying, participating in or otherwise assisting in a proceeding relating to an alleged violation of the any federal, state or municipal law or regulation.

Section 6.3 Confidentiality of the Transaction Documents. Iliad agrees to, and to cause its Affiliates to, keep secret and strictly confidential the terms of this Agreement and the other Transaction Documents and further represents and warrants that it will not disclose, make known, discuss or relay any information concerning this Agreement or any of the other Transaction Documents, or any of the discussions leading up to this Agreement or the other Transaction Documents, to anyone (other than its accountant, tax advisor or attorney who have first agreed to keep said information confidential and not to disclose it to others), and that it has not done so as of the Effective Date. The foregoing shall not prohibit or restrict such disclosure as required by law or as may be necessary for the prosecution of claims relating to the performance or enforcement of this Agreement or prohibit or restrict Iliad (or its attorney) from responding to any such inquiry about this separation or its underlying facts and circumstances by any governmental organization. Prior to making any disclosure other than to its accountants, tax advisors or attorneys, Iliad shall provide the Company with as much notice as possible that it has been requested or compelled to make disclosure and use its best efforts to ensure that if such disclosure occurs it does so in a manner designed to fully maintain the confidentiality of this Agreement.



**ARTICLE VII**
**MISCELLANEOUS**

Section 7.1 Further Assurances. Each Party shall, and shall cause its Affiliates to, cooperate with each other in the taking of all actions necessary, proper or advisable under this Agreement and applicable laws to effectuate the purposes contemplated by this Agreement.

Section 7.2 Governing Law and Venue. This Agreement will be deemed to have been made and delivered in the State of Utah, and both the binding provisions of this Agreement and the transactions contemplated hereby will be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of Utah, without regard to the conflict of laws principles thereof. Each of the Parties: (i) agrees that any legal suit, action or proceeding arising out of or relating to Agreement and/or the transactions contemplated hereby will be instituted exclusively in the courts located in Salt Lake City, Utah, (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the exclusive jurisdiction of the state courts located in Salt Lake City, Utah, in any such suit, action or proceeding, waiving any, and agreeing not to assert any, basis for seeking transfer or removal of such action to any other court, whether federal or state, unless the Utah court in which such action or proceeding was commenced first declines jurisdiction. Each of the Parties further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in such courts and agrees that service of process upon Party mailed by certified mail to the Party's address will be deemed in every respect effective service of process upon that Party.

Section 7.3 Entire Agreement. This Agreement and the Transaction Documents represent the entire agreement among the Parties relating to the subject matter thereof and supersedes all prior agreements, term sheets, understandings and negotiations, written or oral, with respect to such subject matter.

Section 7.3 Communication and Notice. All communications hereunder and under any of the other Transaction Documents, except as herein otherwise specifically provided, shall be in writing and shall be mailed (registered or certified mail, return receipt requested), personally delivered or sent by e-mail or facsimile transmission and confirmed and shall be deemed given when so delivered, e-mailed or faxed and confirmed or if mailed, two (2) days after such mailing.

**If to the Purchasers:**

NextPlat Corp
3250 Mary Street
Suite 410
Coconut Grove, Florida 33133
Attention: Charles M. Fernandez
Email: cfernandez@nextplat.com

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

Ralph V. De Martino, Esquire
Partner
ArentFox Schiff LLP
1717 K Street NW
Washington, DC 20006
Email: ralph.demartino@afslaw.com



**If to Iliad:**

Iliad Research & Trading, L.P.
Attn: John M. Fife
303 East Wacker Drive, Suite 1040
Chicago, Illinois 60601

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

Hansen Black Anderson Ashcraft PLLC
Attn: Jonathan K. Hansen

3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043

**If to the Company or PharmCo:**

Progressive Care, Inc.
400 Ansin Blvd, Suite A
Hallandale Beach, FL 33009

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

Lucosky Brookman LLP
101 Wood Avenue South
Woodbridge, New Jersey 08830
Attention: Seth Brookman, Esq.
Email: sbrookman@lucbro.com

Section 7.4 Third Party Beneficiaries. Each of the Releasees and Iliad Releasees addressed in Section 5 are intended third party beneficiaries of this Agreement, with the full power and authority to enforce those provisions of this Agreement to the same extent as if they were parties to this Agreement.

Section 7.5 Further Assurances. Each Party agrees that it shall take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective this Agreement and the transactions contemplated herein.



Section 7.6 Remedies. The Parties agree that the covenants and obligations contained in this Agreement relate to special, unique and extraordinary matters and that a violation of any of the terms hereof or thereof would cause irreparable injury in an amount which would be impossible to estimate or determine and for which any remedy at law would be inadequate. As such, the Parties agree that if either Party fails or refuses to fulfill any of its obligations under this Agreement or to make any payment or deliver any instrument required hereunder or thereunder, then the other Party shall have the remedy of specific performance, which remedy shall be cumulative and nonexclusive and shall be in addition to any other rights and remedies otherwise available under any other contract or at law or in equity and to which such Party might be entitled.

Section 7.7 Construction. The Parties acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement with its legal counsel and that this Agreement shall be construed as if jointly drafted by the Parties hereto. In this Agreement, the word "include", "includes", "including" and "such as" are to be construed as if they were immediately followed by the words, without limitation.

Section 7.8 Severability. The invalidity or unenforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision of this Agreement shall in no way affect the validity or enforcement of any other provision or any part thereof.

Section 7.9 Headings; Gender. The paragraph headings contained in this Agreement are for convenience only and shall in no manner be construed as part of this Agreement. All references in this Agreement as to gender shall be interpreted in the applicable gender of the Parties.

Section 7.10 Counterparts; Effect of Facsimile and Photocopied Signatures. This Agreement may be executed in several counterparts, each of which is an original. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. A copy of this Agreement signed by one Party and faxed or scanned and emailed to another Party (as a PDF, DocuSign, or similar image file) shall be deemed to have been executed and delivered by the signing Party as though an original. A photocopy or PDF of this Agreement shall be effective as an original for all purposes.

***[Remainder of page left intentionally blank. Signature page follows.]***



**IN WITNESS WHEREOF**, the Parties hereto have caused this Confidential Purchase and Release Agreement to be executed as of the date first-above written.

**PURCHASERS**:

NextPlat Corp

By: */s/ Charles M. Fernandez*
Name: Charles M. Fernandez
Title: Chief Executive Officer

Sixth Borough Capital Fund, LP

By: */s/ Robert D. Keyser*
Name: Robert D. Keyser
Title: Chief Executive Officer

Charles Fernandez, Individually

*/s/ Charles M. Fernandez*

Rodney Barreto, Individually

*/s/ Rodney Barreto*

Daniyel Erdberg, Individually

*/s/ Daniyel Erdberg*

**ILIAD:**

Iliad Research and Trading, L.P.

By: */s/ John M. Fife*
Name: John M. Fife
Title: President of the Manager of the General Partner

**THE COMPANY:**

Progressive Care, Inc.

By: */s/ Alan Jay Weisberg*
Alan Jay Weisberg
Title: Chief Executive Officer

**PharmCo:**

PharmCo, L.L.C.

By: */s/ Alan Jay Weisberg*
Alan Jay Weisberg
Title: Chief Executive Officer



**Exhibit A**

| Purchaser | | Pro Rata Portion of Purchase Price |
|---|---|---|
| **NextPlat Corp** | $ | 1,000,000 |
| **Charles Fernandez** | $ | 400,000 |
| **Rodney Barreto** | $ | 400,000 |
| **Daniyel Erdberg** | $ | 100,000 |
| **Sixth Borough Capital Fund, LP** | $ | 400,000 |
| **Total:** | **$** | **2,300,000** |

**Exhibit 10.3**

**DEBT MODIFICATION AGREEMENT**

**THIS DEBT MODIFICATION AGREEMENT** (this "***Agreement***") is entered into as of August 30, 2022, by and among, Progressive Care Inc., a Delaware corporation (the "***Company***") and NextPlat Corp, a Nevada corporation ("***NextPlat***"), Charles Fernandez ("***Fernandez***"), Rodney Barreto ("***Barreto***"), Daniyel Erdberg ("***Erdberg***"), and Sixth Borough Capital Fund, LP, a Delaware limited partnership ("***6B***", and together with NextPlat, Barreto, Fernandez and Erdberg, the "***Purchasers***"), each a "***Party***" and collectively the "***Parties***", upon the following premises:

**WHEREAS,** On March 6, 2019, Company sold and issued to Iliad Research and Trading, L.P., a Utah limited partnership ("***Iliad***") a certain Secured Convertible Promissory Note in the original principal amount of $3,310,000.00 (the "***Iliad Note***") pursuant to a certain Securities Purchase Agreement between Company and Iliad (the "***Iliad Purchase Agreement***," and together with the Iliad Note, and all other documents entered into in conjunction therewith (the "***Iliad Financing Documents***");

**WHEREAS**, on January 20, 2022, Iliad and the Company entered into that certain Settlement Agreement, Waiver And Release of Claims (the "***Iliad Settlement Agreement***") which *inter alia* modified the terms of such Note;

**WHEREAS**, as of the date of this Agreement, the aggregate amount of principal and interest outstanding under the Iliad Note is $2,790,885.63;

**WHEREAS**, in consideration of the Purchasers agreement to reduce the interest rate under the Iliad Note and to fix the conversion price of the Iliad Note, the Company has agreed to issue 21,000,000 shares of its Common Stock to the Purchaser *pro rata* in proportion to the amount of the consideration paid by each Purchaser under the NPA (defined below);

**WHEREAS**, Purchasers have entered into a Confidential Securities Purchase And Release Agreement with Iliad and the Company dated August 30, 2022 *inter alia* pursuant to which the Purchasers have agreed purchase the Iliad Note from Iliad (the "***NPA"***), and NextPlat has entered into a Securities Purchase Agreement dated August 30, 2022 (the ***"SPA"***) to purchase equity securities to be issued by the Company;

**WHEREAS,** the Purchasers and the Company wish to modify the terms of the Iliad Note, and the Company has induced the Purchasers to enter into the NPA and the SPA by offering to modify the Iliad Note as contemplated by this Agreement;

**WHEREAS,** the Purchasers require that the Company obligate itself to modify the terms of the Iliad Note in advance of the Purchasers closing under the SPA and the NPA; and

**WHEREAS**, the Parties intend that this Agreement become effective contemporaneously with the date and time of the NPA and SPA (the "***Effective Date***");

---

**NOW THEREFORE**, on the stated premises and for and in consideration of the mutual covenants and agreements hereinafter set forth and the mutual benefits to the Parties to be derived herefrom, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

**ARTICLE I**
**DEFINITIONS**

Each of the foregoing recitals is incorporated herein and together form part of this Agreement.

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act, or is serving as counsel to such Person; without limiting the foregoing the term "Affiliate" shall with respect to a limited liability company, corporation, or partnership, include parent and subsidiary corporations, liability companies, corporations, or partnership divisions, shareholders, members, managers, predecessors, successors and assigns, officers, directors, trustees, fiduciaries, managers, administrators, agents, attorneys, insurers and representatives.

"Effective Date" has the meaning set forth in the recitals to this Agreement.

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

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

"Securities Act shall mean the Securities Act of 1933, as amended.

**ARTICLE II**
**COMPANY ISSUANCE OF COMMON STOCK**

Section 2.1 Commitment Shares. At the Effective Date, the Company will issue 21,000,000 shares of its Common Stock (the "***Commitment Shares***") to the Purchaser *pro rata* in accordance with the amount of the consideration paid by each Purchaser under the NPA in consideration inter alia of the Purchasers' agreement to reduce the interest rate under the Iliad Note and to fix the conversion price of the Iliad Note.



---

**ARTICLE III**
**REPRESENTATIONS, COVENANTS, AND WARRANTIES OF THE COMPANY**

Section 3.1 Company Representation and Warranties.

Company hereby makes the following representations and warranties to each of the Purchasers:

(a) Authorization; Enforcement. It has the requisite corporate power and authority to enter into and to consummate this Agreement and the transactions contemplated

by this Agreement and otherwise to carry out its obligations thereunder. The execution and delivery of this Agreement by it and the consummation by it of the transactions contemplated thereby have been duly authorized by all necessary action on its part and no further action is required by it in connection therewith. This Agreement has been (or upon delivery will have been) duly executed by it and, when delivered in accordance with the terms hereof, will constitute its valid and binding obligation enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(b) No Conflicts. The execution, delivery and performance of this Agreement by it and the consummation by it of the transactions contemplated thereby do not and will not (i) conflict with or violate any provision of the it's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument or other understanding to which it is a party or by which any of its property or assets is bound or affected, or (iii) be subject to any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any United States court or other federal, state, local or other governmental authority or other Person in connection with its execution, delivery and performance under this Agreement, that could result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which it is subject (including federal and state securities laws and regulations), or by which any of its property or assets is bound or affected.

(c) Filings, Consents and Approvals. It is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any federal, state, local or other governmental authority or other Person, or any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by this Agreement.

(d) Representations and Warrants Set Forth in the SPA. Company hereby makes the representations, warranties and covenants set forth in the SPA, which representations, warranties and covenants are incorporated herein by reference.



**ARTICLE IV**
**REPRESENTATIONS AND WARRANTIES OF PURCHASERS**

Section 4.1 Purchasers Representations and Warranties. As an inducement to, and to obtain the reliance of the Company,

(a) Authority. Each of the Purchasers represents and warrants to Company that it has the power and is duly authorized, qualified, franchised, and licensed under all applicable laws, regulations, ordinances, and orders of public authorities to enter into this Agreement.

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

(c) Purchaser Status. At the time such Purchaser was offered the Commitment Shares, it was, and as of the date hereof it is, (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12), or (a)(13) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has 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 Commitment Shares, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Commitment Shares and, at the present time, is able to afford a complete loss of such investment.

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

(f) Access to Information. Such Purchaser acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Commitment Shares and the merits and risks of investing in the Commitment Shares; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.



The Company acknowledges and agrees that the representations contained in this Section 4.1 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

**ARTICLE V**
**MODIFICATION OF THE ILIAD NOTE**

Section 5.1 Modification of the Iliad Note.

Effective on the Effective Date, the Company shall modify the Iliad Note as follows and shall reissue an amended and restated note (the**"*Amended and Restated Note*"**) to the Purchasers reflecting the following modifications (capitalized terms not defined in this Agreement shall have the meanings set forth in the Iliad Note):

(a) The Maturity Date set forth in the Iliad Note shall be modified to August 31, 2027.

(b) Outstanding Balance shall bear interest at the simple annual rate of five percent (5%) per annum from the Effective Date until the same is paid in full.

(c) Section 1.2 of the Iliad Note shall be deleted, and the Amended and Restated Note shall reflect that the Company is prohibited from prepaying the Note.

(d) Section 3.1 shall be amended and restated to read:

"Subject to the adjustments set forth herein, the conversion price for each Conversion (as defined below) shall be $0.02 per share of Common Stock (the "***Conversion Price***")."

(e) The first sentence of Section 3.2 shall be amended and restated to read:

"Each Lender shall have the right, exercisable at any time in its sole and absolute discretion, to redeem all or any portion of the Note (such amount, the "Redemption Amount") by providing Borrower with a notice substantially in the form attached hereto as Exhibit A (each, a "Redemption Notice", and each date on which Lender delivers a Redemption Notice, a "Redemption Date").

(f) Sections 5.1, 5.2 and 5.3 of the Iliad Note shall be deleted in their entirety.

(g) The Note shall provide for mandatory conversion upon the later to occur of: (a) the completion of the Company's reverse stock split as set forth in the SPA, and (b) the listing of the Company's Common Stock on a national exchange, including the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange.



(g) The Amended and Restated Note will reflect that four separate Purchasers are purchasing the Amended and Restated Note, and each will have the status of "Lender."

(h) The Amended and Restated Note will reflect that NextPlat will have the sole right to modify, amend, or waive the terms of the Amended and Restated Note or issue a consent thereunder, and that any such modification, amendment, waiver or consent shall be binding upon all of the Lenders.

**ARTICLE VI**
**AUTHORIZATION; ENFORCEMENT.**
**NON-DISCLOSURE**

Section 6.1 Non-Disclosure. Each Purchaser agrees that neither it nor any of its Affiliates will disclose or use for its benefit or the benefit of any other Person, any information regarding the Company and received prior to the date of this Agreement or pursuant to this Agreement that (i) has not been disclosed publicly by Company, (ii) is otherwise not a matter of public knowledge, and that such Purchaser will not engage in any market transactions in the securities of Company until the existence of this Agreement, the SPA and the NPA have been publicly disclosed by Company. Company agrees to promptly disclose the existence and terms of this Agreement, the SPA and the NPA promptly following the Effective Date.

Section 6.2 Confidentiality of this Agreement. Each Party agrees to, and to cause its Affiliates to, keep secret and strictly confidential the terms of this Agreement and further represents and warrants that it will not disclose, make known, discuss or relay any information concerning this Agreement, or any of the discussions leading up to this Agreement, to anyone (other than its accountant, tax advisor or attorney who have first agreed to keep said information confidential and not to disclose it to others), and that it has not done so as of the Effective Date. The foregoing shall not prohibit or restrict such disclosure as required by law or as may be necessary for the prosecution of claims relating to the performance or enforcement of this Agreement or prohibit or restrict any Party (or its attorney) from responding to any such inquiry about this separation or its underlying facts and circumstances by any governmental organization. Prior to making any disclosure other than to its accountants, tax advisors or attorneys, a Purchaser shall provide the Company with as much notice as possible that it has been requested or compelled to make disclosure and use its best efforts to ensure that if such disclosure occurs it does so in a manner designed to fully maintain the confidentiality of this Agreement.

**ARTICLE VII**
**MISCELLANEOUS**

Section 7.1 Further Assurances. Each Party shall, and shall cause its Affiliates to, cooperate with each other in the taking of all actions necessary, proper or advisable under this Agreement and applicable laws to effectuate the purposes contemplated by this Agreement.



Section 7.2 Governing Law and Venue. This Agreement will be deemed to have been made and delivered in the State of New York, and both the binding provisions of this Agreement and the transactions contemplated hereby will be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of the Parties: (i) agrees that any legal suit, action or proceeding arising out of or relating to Agreement and/or the transactions contemplated hereby will be instituted exclusively in the courts located in the City of New York, State of New York, (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the exclusive jurisdiction of the state courts located in the City of New York, State of New York, in any such suit, action or proceeding, waiving any, and agreeing not to assert any, basis for seeking transfer or removal of such action to any other court, whether federal or state, unless the New York court in which such action or proceeding was commenced first declines jurisdiction. Each of the Parties further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in such courts and agrees that service of process upon Party mailed by certified mail to the Party's address will be deemed in every respect effective service of process upon that Party.

Section 7.3 Entire Agreement. Except as specifically contemplated by this Agreement, this Agreement represent the entire agreement among the Parties relating to the subject matter thereof and supersedes all prior agreements, term sheets, understandings and negotiations, written or oral, with respect to such subject matter.

Section 7.3 Communication and Notice. All communications hereunder, except as herein otherwise specifically provided, shall be in writing and shall be mailed (registered or certified mail, return receipt requested), personally delivered or sent by e-mail or facsimile transmission and confirmed and shall be deemed given when so delivered, e-mailed or faxed and confirmed or if mailed, two (2) days after such mailing.

**If to the Purchasers:**

NextPlat Corp
3250 Mary Street
Suite 410
Coconut Grove, Florida 33133
Attention: Charles M. Fernandez
Email: cfernandez@nextplat.com

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

Ralph V. De Martino, Esquire
Partner

ArentFox Schiff LLP
1717 K Street NW
Washington, DC 20006
Email: ralph.demartino@afslaw.com



**If to the Company:**

400 Ansin Blvd, Suite A
Hallandale Beach, FL 33009

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

Lucosky Brookman LLP
101 Wood Avenue South
Woodbridge, New Jersey 08830
Attention: Seth Brookman, Esq.
Email: sbrookman@lucbro.com

Section 7.4 Further Assurances. Each Party agrees that it shall take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective this Agreement and the transactions contemplated herein.

Section 7.5 Remedies. The Parties agree that the covenants and obligations contained in this Agreement relate to special, unique and extraordinary matters and that a violation of any of the terms hereof or thereof would cause irreparable injury in an amount which would be impossible to estimate or determine and for which any remedy at law would be inadequate. As such, the Parties agree that if either Party fails or refuses to fulfill any of its obligations under this Agreement or to make any payment or deliver any instrument required hereunder or thereunder, then the other Party shall have the remedy of specific performance, which remedy shall be cumulative and nonexclusive and shall be in addition to any other rights and remedies otherwise available under any other contract or at law or in equity and to which such Party might be entitled.

Section 7.6 Construction. The Parties acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement with its legal counsel and that this Agreement shall be construed as if jointly drafted by the Parties hereto. In this Agreement, the word "include", "includes", "including" and "such as" are to be construed as if they were immediately followed by the words, without limitation.

Section 7.7 Severability. The invalidity or unenforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision of this Agreement shall in no way affect the validity or enforcement of any other provision or any part thereof.

Section 7.8 Headings; Gender. The paragraph headings contained in this Agreement are for convenience only and shall in no manner be construed as part of this Agreement. All references in this Agreement as to gender shall be interpreted in the applicable gender of the Parties.

Section 7.9 Counterparts; Effect of Facsimile and Photocopied Signatures. This Agreement may be executed in several counterparts, each of which is an original. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. A copy of this Agreement signed by one Party and faxed or scanned and emailed to another Party (as a PDF, DocuSign or similar image file) shall be deemed to have been executed and delivered by the signing Party as though an original. A photocopy or PDF of this Agreement shall be effective as an original for all purposes.

***[Remainder of page left intentionally blank. Signature page follows.]***



**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date first-above written.

**PURCHASERS**:

NextPlat Corp

By: */s/ Charles M. Fernandez*
Name: Charles M. Fernandez
Title: Chief Executive Officer

Sixth Borough Capital Fund, LP

By: */s/ Robert D. Keyser*
Name: Robert D. Keyser
Title: Chief Executive Officer

Charles Fernandez, Individually

*/s/ Charles M. Fernandez*

Rodney Barreto, Individually

*/s/ Rodney Barreto*

Daniyel Erdberg, Individually

*/s/ Daniyel Erdberg*

**THE COMPANY:**

Progressive Care, Inc.

By: */s/ Alan Jay Weisberg*

Name: Alan Jay Weisberg
Title: Chief Executive Officer

**Exhibit 99.1**

**NextPlat Invests $7 Million in Recapitalization of Progressive Care Inc.**

*Investment to Accelerate Progressive's Digital Healthcare Transformation and Launch of Global E-Commerce Platform for New Healthcare Products for Domestic and International Markets*

**COCONUT GROVE, FL – August 31 , 2022** – NextPlat Corp (NASDAQ: NXPL, NXPLW) ("NextPlat" or the "Company"), a global e-commerce provider today announced that it has completed a strategic $7 million investment in Progressive Care Inc. (OTCQB: RXMD), a personalized healthcare services and technology company ("Progressive Care").

Under the recapitalization plan, NextPlat Corp, its Executive Chairman and CEO, Charles M. Fernandez, and board member, Rodney Barreto, and certain other investors will invest an aggregate of $8.3 million into Progressive Care. In connection with the recapitalization, NextPlat will purchase 3,000 newly issued Units of Progressive Care valued at $6 million, with each Unit comprised of one share of Progressive Care's Series B Preferred Stock and one Warrant to purchase a share of Series B Preferred Stock. In addition, NextPlat Corp, Messrs. Fernandez and Barreto, and certain other investors will purchase $2.3 million of outstanding convertible debt from an existing holder. In connection with debt purchase, NextPlat Corp and the other purchasers agreed to a fixed conversion price of $0.02 per share of common stock and removal of the blocker. NextPlat Corp and the other purchasers also agreed to reduce the interest rate on the purchased debt from 10% to 5% per annum.

NextPlat's management team and select members of its Board of Directors will provide Progressive Care with their market-proven expertise in healthcare and digital technology including the development of new healthcare and lifestyle products to be sold via NextPlat's global e-commerce marketplaces. As part of this transaction, Mr. Fernandez will be appointed as Chairman of Progressive Care replacing Alan Jay Weisberg who will step down from his current positions to assume the new roles of Vice Chairman and CEO. Mr. Barreto will also be joining Progressive Care's board as Vice Chairman. Dawson James Securities Inc. ("Dawson") served as the placement agent for this transaction. Progressive Care intends to utilize a portion of the growth capital to further fund deployment of its digital platforms and the development and sale of new OTC health, fitness, and beauty products.

Progressive Care Inc. is a Florida-based technology-centric healthcare organization. It provides prescription pharmaceuticals and contracted pharmacy services directly to consumers, long-term care facilities as well to 340B covered entities in underserved or vulnerable communities in 13 states. Progressive Care also has developed and provides extensive healthcare data management and analytics services in addition to providing virtual healthcare to customers. In 2021, Progressive Care reported annual revenues of approximately $40 million.

Over the past 30 years, Mr. Fernandez has successfully identified profitable start-up and dislocation opportunities, and built significant shareholder value, executing both private and public exits. Mr. Fernandez's expertise in technology and healthcare includes co-founding Lakeview Health Systems (acquired by a private equity firm for approximately $70 million) and Continucare Corporation (acquired by Metropolitan Health Networks, Inc. for approximately $400 million) where he served as chairman, president and CEO. He also served as an investor, director, and Chairman of the Audit Committee of IVAX Corporation for nearly a decade prior to its purchase by Teva Pharmaceuticals for $8.7 billion.

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"Progressive Care has built a vibrant and rapidly growing healthcare services and technology company currently serving tens of thousands of customers who rely on its PharmcoRx platform and services every day. As a technology and healthcare entrepreneur, I see tremendous value in Progressive Care's capabilities which is why I am personally investing alongside of NextPlat. I believe we can leverage our expertise, industry knowhow and global e-commerce platforms to accelerate their continued growth domestically as well as internationally. As long-term investors, we are committed to harnessing the power of digital technologies including Web3, to capitalize on the ongoing digital transformation of Progressive Care and the entire healthcare industry," said Charles M. Fernandez.

Alan Jay Weisberg commented, "Progressive Care has pursued a vision of being able to transform the healthcare industry by creating data-driven tools and technology. Charlie and the team at NextPlat have extensive knowledge and experience in utilizing digital technology and we believe will help Progressive Care build significant value for all stakeholders including patients, payors, practitioners, and investors. We are excited to have this team of industry leaders as our new long-term investors and partners, and look forward to working together advancing our vision for modern healthcare."

**About NextPlat Corp**

NextPlat is a global e-commerce platform company created to capitalize on multiple high-growth sectors and markets for physical and digital assets. The Company intends to collaborate with businesses, optimizing their ability to sell their goods online, domestically, and internationally, and enabling customers and partners to optimize their e-commerce presence and revenue. NextPlat currently operates an e-commerce communications services division through its Global Telesat Communications Ltd and Orbital Satcom Corp business units that offer voice, data, tracking, and IoT services to customers worldwide through multiple global storefronts.

**Progressive Care Inc.**

Progressive Care Inc. (OTCQB: RXMD), through its subsidiaries, is a Florida health services organization and provider of prescription pharmaceuticals, compounded medications, provider of tele-pharmacy services, the sale of anti-retroviral medications, medication therapy management (MTM), the supply of prescription medications to long-term care facilities, and health practice risk management.

**Forward-Looking Statements**

Certain statements in this release constitute forward-looking statements. These statements include the capabilities and success of the Company's business and any of its products, services or solutions. The words "believe," "forecast," "project," "intend," "expect," "plan," "should," "would," and similar expressions and all statements, which are not historical facts, are intended to identify forward-looking statements. These forward-looking statements involve and are subject to known and unknown risks, uncertainties and other factors, including the Company's ability to launch new data-driven tools and services and its ability to grow and expand as intended, any of which could cause the Company to not achieve some or all of its goals or the Company's previously reported actual results, performance (finance or operating), including those expressed or implied by such forward-looking statements. More detailed information about the Company and the risk factors that may affect the realization of forward-looking statements is set forth in the Company's filings with the Securities and Exchange Commission (the "SEC"), copies of which may be obtained from the SEC's website at www.sec.gov. The Company assumes no, and hereby disclaims any, obligation to update the forward-looking statements contained in this press release.

**Media and Investor Contact for NextPlat Corp:**

Michael Glickman
MWGCO, Inc.
917-397-2272
mike@mwgco.net