

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

FORM 10-Q

(Mark one)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2023

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 001-38241



**OPTINOSE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State of other jurisdiction of incorporation or organization)

**42-1771610**

(I.R.S. Employer Identification Number)

**1020 Stony Hill Road, Suite 300  
Yardley, Pennsylvania 19067**

(Address of principal executive offices, including zip code)

**(267) 364-3500**

(Registrant's telephone number including area code)

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 \$0.001 per share	OPTN	Nasdaq Global Select Market

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The number of shares of the registrant's common stock outstanding at May 1, 2023 was 111,955,893 shares.

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Unless the context otherwise requires, all references in this Form 10-Q to "Optinose," "Company," "we," "us," and "our" refer to OptiNose, Inc. and its subsidiaries.

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**Trademark Notice**

OPTINOSE®, XHANCE®, EDS® and EXHALATION DELIVERY SYSTEM™ are trademarks of ours in the United States. All other trademarks, trade names and service marks appearing in this Form 10-Q are the property of their respective owners. We do not intend our use or display of other companies' trademarks, trade names or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

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## NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Form 10-Q contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements include, among others, statements relating to:

- the potential uses for and advantages of XHANCE®, our product candidates and the Exhalation Delivery System (EDS) and related technologies;
- our planned activities in pursuit of a follow-on indication for chronic sinusitis;
- the potential for XHANCE to be the first product approved by the U.S. Food and Drug Administration (FDA) for the treatment of chronic sinusitis;
- the potential to expand into the primary care segment and our plans to seek a partner for such expansion;
- our belief that the current practice of postoperative intranasal steroid (INS) use could support XHANCE's adoption as a maintenance therapy to improve outcomes following sinus surgery;
- the potential for XHANCE to be the standard of care for the treatment of chronic rhinosinusitis with and without nasal polyps;
- the potential benefits of our patient affordability programs and their potential effect on XHANCE demand and financial results;
- our expectation for XHANCE prescriptions to be impacted by the seasonality observed in the INS market and the seasonal variation in patient visits with their doctor;
- our expectation for XHANCE prescriptions and average net revenue per prescription to be adversely impacted by the annual resetting of patient healthcare insurance plan deductibles and changes in individual patients' healthcare insurance coverage, both of which often occur in January;
- XHANCE prescription, net revenue, prescriber and other business trends;
- the potential for increasing rates of enforcement of payor utilization management criteria to negatively impact XHANCE prescription volumes;
- our expectation that the research and development costs will significantly decrease in 2023 as compared to 2022;
- our expectation that our operating expenses (consisting of selling, general and administrative expenses and research and development expenses) in 2023 will be between \$88.0 million and \$93.0 million and that our non-cash stock-based compensation expense will be approximately \$6.0 million;
- our expectation that XHANCE net product revenues for the full year of 2023 will be between \$62.0 million and \$68.0 million;
- our expectation that the average net product revenue per prescription for XHANCE for the full year of 2023 will be approximately \$200;
- our potential non-compliance with certain covenants of the A&R Note Purchase Agreement, and the consequences of failing to achieve compliance with such covenants or obtain a waiver or modification of such covenants;
- our belief that our existing cash and cash equivalents will be sufficient to fund our operations and debt service obligations for approximately the next 12 months if we are able to maintain compliance with the financial and other covenants and terms of the A&R Note Purchase Agreement or obtain a waiver to or modification of such covenants;
- our expectations and the accuracy of our estimates regarding our future expenses, revenue, capital requirements, potential sources of capital and consequences of failing to obtain additional capital;

- our ability to continue as a going concern;
- the rate and degree of market acceptance and market opportunity of XHANCE;
- the potential for us to decrease our reliance on sole-source suppliers and increase the third party manufacturing capacity that is available to us;

as well as other statements relating to our future operations, financial performance and financial condition, prospects, strategies, objectives or other future events. Forward-looking statements appear primarily in the sections of this Form 10-Q entitled "Item 1. Financial Statements," and "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations." In some cases, you can identify forward-looking statements by words such as "may," "will," "could," "would," "should," "expect," "intend," "plan," "anticipate," "target," "believe," "estimate," "predict," "project," "potential," "continue," "ongoing," "scheduled" and similar expressions, although not all forward-looking statements contain these identifying words.

Forward-looking statements are based upon our current expectations and assumptions and are subject to a number of known and unknown risks, uncertainties and other factors that could cause actual results to differ materially and adversely from those expressed or implied by such statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this Form 10-Q and in our annual report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission (SEC), and in particular, the risks and uncertainties discussed therein under the caption "Risk Factors". Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. As a result, you should not place undue reliance on forward-looking statements.

Additionally, the forward-looking statements contained in this Form 10-Q represent our views only as of the date of this Form 10-Q (or any earlier date indicated in such statement). While we may update certain forward-looking statements from time to time, we specifically disclaim any obligation to do so, even if new information becomes available in the future. However, you are advised to consult any further disclosures we make on related subjects in the reports that we file with the SEC.

The foregoing cautionary statements are intended to qualify all forward-looking statements wherever they may appear in this Form 10-Q. For all forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

## **MARKET, INDUSTRY AND OTHER DATA**

This Form 10-Q contains estimates, projections, market research and other data generated by independent third parties, by third parties on our behalf and by us concerning prescription data, markets for XHANCE, XHANCE market access and the INS market. Information that is based on estimates, projections, market research or similar methodologies is inherently subject to uncertainties and actual results, events or circumstances may differ materially from results, events and circumstances reflected in this information. As a result, you are cautioned not to give undue weight to such information.

## PART I

## ITEM 1. FINANCIAL STATEMENTS

**OptiNose, Inc.**  
**Consolidated Balance Sheets**  
(in thousands, except share and per share data)

	March 31, 2023 (unaudited)	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 83,928	\$ 94,244
Accounts receivable, net	16,979	33,932
Inventory	8,303	9,443
Prepaid expenses and other current assets	2,961	2,865
Total current assets	112,171	140,484
Property and equipment, net	722	795
Other assets	2,032	2,943
Total assets	\$ 114,925	\$ 144,222
<b>Liabilities and stockholders' deficit</b>		
Current liabilities:		
Accounts payable	\$ 6,244	\$ 5,291
Accrued expenses and other current liabilities	31,080	44,864
Short term debt, net	128,979	128,575
Total current liabilities	166,303	178,730
Warrant liability	22,000	21,490
Other liabilities	407	626
Total liabilities	188,710	200,846
Stockholders' deficit:		
Common stock, \$0.001 par value; 200,000,000 shares authorized at March 31, 2023 and December 31, 2022; 111,955,924 and 111,492,791 shares issued and outstanding at March 31, 2023 and December 31, 2022, respectively	112	111
Additional paid-in capital	629,927	628,242
Accumulated deficit	(703,740)	(684,893)
Accumulated other comprehensive loss	(84)	(84)
Total stockholders' deficit	(73,785)	(56,624)
Total liabilities and stockholders' deficit	\$ 114,925	\$ 144,222

See accompanying notes to unaudited interim consolidated financial statements

**OptiNose, Inc.**  
**Consolidated Statements of Operations**  
**For the Three Months Ended March 31, 2023 and 2022**  
**(in thousands, except share and per share data)**  
**(Unaudited)**

	Three Months Ended March 31,	
	2023	2022
Revenues:		
Net product revenues	\$ 11,846	\$ 14,760
Total revenues	<u>11,846</u>	<u>14,760</u>
Costs and expenses:		
Cost of product sales	1,706	2,014
Research and development	1,785	4,802
Selling, general and administrative	22,723	29,339
Total operating expenses	<u>26,214</u>	<u>36,155</u>
Loss from operations	<u>(14,368)</u>	<u>(21,395)</u>
Other (income) expense:		
Unrealized loss on fair value of warrants	510	—
Interest income	(705)	(134)
Interest expense	4,672	4,073
Foreign currency (gains) losses	2	(1)
Net loss	<u>\$ (18,847)</u>	<u>\$ (25,333)</u>
Net loss per share of common stock, basic and diluted	<u>\$ (0.17)</u>	<u>\$ (0.31)</u>
Weighted average common shares outstanding, basic and diluted	<u>111,774,425</u>	<u>82,447,861</u>

See accompanying notes to unaudited interim consolidated financial statements



**OptiNose, Inc.**  
**Consolidated Statements of Comprehensive Loss**  
**For the Three Months Ended March 31, 2023 and 2022**  
**(in thousands)**  
**(Unaudited)**

	<u>Three Months Ended March 31, 2023</u>	<u>Three Months Ended March 31, 2022</u>
Net loss	\$ (18,847)	\$ (25,333)
Other comprehensive loss:		
Foreign currency translation adjustment	—	(1)
Comprehensive loss	<u>\$ (18,847)</u>	<u>\$ (25,334)</u>

See accompanying notes to unaudited interim consolidated financial statements

**OptiNose, Inc.**  
**Consolidated Statements of Changes in Stockholders' Deficit**  
**(in thousands, except share data)**

Three Months Ended March 31, 2023

	Stockholders' Equity (Deficit)					
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance at December 31, 2022	111,492,791	\$ 111	\$ 628,242	\$ (684,893)	\$ (84)	\$ (56,624)
Stock compensation expense	—	—	1,520	—	—	1,520
Vesting of restricted stock units	343,406	1	—	—	—	1
Issuance of common stock under employee stock purchase plan	119,727	—	164	—	—	164
Foreign currency translation adjustment	—	—	—	—	—	—
Net loss	—	—	—	(18,847)	—	(18,847)
Balance at March 31, 2023	<u>111,955,924</u>	<u>\$ 112</u>	<u>\$ 629,927</u>	<u>\$ (703,740)</u>	<u>\$ (84)</u>	<u>\$ (73,785)</u>

Three Months Ended March 31, 2022

	Stockholders' Equity (Deficit)					
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance at December 31, 2021	82,238,900	\$ 82	\$ 588,288	\$ (610,061)	\$ (81)	\$ (21,772)
Stock compensation expense	—	—	1,998	—	—	1,998
Vesting of restricted stock units	262,942	—	—	—	—	—
Issuance of common stock under employee stock purchase plan	179,206	1	249	—	—	250
Foreign currency translation adjustment	—	—	—	—	(1)	(1)
Net loss	—	—	—	(25,333)	—	(25,333)
Balance at March 31, 2022	<u>82,681,048</u>	<u>\$ 83</u>	<u>\$ 590,535</u>	<u>\$ (635,394)</u>	<u>\$ (82)</u>	<u>\$ (44,858)</u>

See accompanying notes to unaudited interim consolidated financial statements

**OptiNose, Inc.**  
**Consolidated Statements of Cash Flows**  
**For the Three Months Ended March 31, 2023 and 2022**  
**(in thousands)**  
**(Unaudited)**

	Three Months Ended March 31,	
	2023	2022
<b>Operating activities:</b>		
Net loss	\$ (18,847)	\$ (25,333)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	72	119
Stock-based compensation	1,523	1,997
Change in fair value of warrant liability	510	—
Amortization of debt discount and issuance costs	405	536
Changes in operating assets and liabilities:		
Accounts receivable	16,953	12,747
Prepaid expenses and other assets	874	71
Inventory	1,118	509
Accounts payable	953	(371)
Accrued expenses and other liabilities	(14,039)	(9,610)
Cash used in operating activities	<u>(10,478)</u>	<u>(19,335)</u>
<b>Investing activities:</b>		
Purchases of property and equipment	—	(48)
Cash used in investing activities	<u>—</u>	<u>(48)</u>
<b>Financing activities:</b>		
Proceeds from issuance of common stock under employee stock purchase plan	162	249
Cash provided by financing activities	<u>162</u>	<u>249</u>
Effects of exchange rate changes on cash and cash equivalents	<u>—</u>	<u>(3)</u>
Net decrease in cash, cash equivalents and restricted cash	(10,316)	(19,137)
Cash, cash equivalents and restricted cash at beginning of period	94,244	110,515
Cash, cash equivalents and restricted cash at end of period	<u>\$ 83,928</u>	<u>\$ 91,378</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	4,255	3,494
<b>Supplemental disclosure of noncash activities:</b>		
Fixed asset purchases within accounts payable and accrued expenses	\$ —	\$ 11
Recognition of right-of-use assets and lease liabilities	\$ 37	\$ 287

See accompanying notes to unaudited interim consolidated financial statements

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements**  
**(in thousands, except share and per share data)**

## **1. Organization and Description of Business**

OptiNose, Inc. (the Company) was incorporated in Delaware in May 2010 (inception) and has facilities in Yardley, Pennsylvania and Ewing, New Jersey. The Company's predecessor entity, OptiNose AS, was formed under the laws of Norway in September 2000. In 2010, OptiNose AS became a wholly-owned subsidiary of the Company as part of an internal reorganization. During 2022, the Company's board of directors approved the liquidation of Optionse AS and Optinose UK, which is expected to be completed in 2023, in order to simplify the corporate structure.

The Company is a specialty pharmaceutical company focused on the development and commercialization of products for patients treated by ear, nose and throat (ENT) and allergy specialists. The Company's first commercial product, XHANCE<sup>®</sup> (fluticasone propionate) nasal spray, 93 microgram (mcg), is a therapeutic utilizing the Company's proprietary Exhalation Delivery System (EDS) that delivers a topically-acting corticosteroid for the treatment of chronic rhinosinusitis with nasal polyps and, if approved, chronic rhinosinusitis without nasal polyps (also known as chronic sinusitis). XHANCE was approved by the United States (US) Food and Drug Administration (FDA) in September 2017 for the treatment of nasal polyps in patients 18 years of age or older. XHANCE was made widely available through commercial channels in April 2018. In January 2023, the indication statement for XHANCE was changed from "for the treatment of nasal polyps" to "for the treatment of chronic rhinosinusitis with nasal polyps" to reflect current FDA labeling terminology and not based on new XHANCE clinical trial data.

## **2. Liquidity**

Since inception, the Company's operations have focused on organization and staffing, business planning, raising capital, establishing an intellectual property portfolio, conducting preclinical studies and clinical trials, pursuing regulatory approvals and most recently, launching XHANCE in the US. As of March 31, 2023, the Company had cash and cash equivalents of \$83,928 and a working capital deficiency of \$54,132.

The Company is subject to a number of risks similar to other life sciences companies, including successful discovery, development and commercialization of its products and product candidates, raising additional capital, the development by its competitors of new technological innovations, protection of proprietary technology and market acceptance of the Company's products. The Company has incurred recurring net losses since its inception and has accumulated a deficit of \$703,740 as of March 31, 2023.

The Company entered into a Note Purchase Agreement (the Note Purchase Agreement) on September 12, 2019 with funds managed by Pharmakon Advisors, LP (Pharmakon), the investment manager of the BioPharma Credit Funds (BioPharma) which was subsequently amended on August 13, 2020, March 2, 2021, November 16, 2021, August 10, 2022, and November 9, 2022. On November 23, 2022, the Company amended and restated the Note Purchase Agreement (the A&R Note Purchase Agreement). Pursuant to the A&R Note Purchase Agreement, the financial covenants requiring the Company to achieve minimum trailing twelve-month consolidated XHANCE net product sales and royalties were modified (See [Note 8](#)). The principal balance outstanding under the A&R Note Purchase Agreement was \$130,000 at March 31, 2023.

The Company's continuation as a going concern is dependent on its ability to maintain compliance with its covenants under the A&R Note Purchase Agreement, including minimum trailing twelve-month consolidated XHANCE net sales and royalties the Company is required to achieve commencing with the trailing twelve months ending March 31, 2024 and its ability to generate sufficient cash flows from operations to meet its obligations and/or obtain additional capital through equity or debt financings, partnerships, collaborations, or other sources, as may be required. The A&R Note Purchase Agreement includes events of default, in certain cases subject to customary periods to cure, following which Pharmakon may accelerate all amounts outstanding pursuant to the Note Purchase Agreement. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business.

The A&R Note Purchase Agreement also requires the Company to maintain at all times a minimum of \$30,000 of cash and cash equivalents. The Company believes that it is probable that its existing cash and cash equivalents will not be adequate to fund its operations and maintain at least \$30,000 of cash and cash equivalents as required

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements**  
**(in thousands, except share and per share data)**

under the A&R Note Purchase Agreement for at least twelve-months following the filing of this Form 10-Q, which will also constitute a default of the liquidity financial covenant under the A&R Note Purchase Agreement if the Company is unable to obtain additional capital or obtain a waiver or modification to this liquidity covenant prior to falling below such \$30,000 threshold.

The Company also believes it is probable that it will not achieve the trailing twelve-month minimum consolidated XHANCE net sales and royalties thresholds under the A&R Note Purchase Agreement for the initial period ending March 31, 2024, which will constitute a default under the A&R Note Purchase Agreement if the Company is unable to obtain a modification or waiver of such minimum consolidated XHANCE net sales and royalties thresholds.

Further, the A&R Note Purchase Agreement includes a requirement that the report and opinion on the consolidated financial statements commencing with the year ending December 31, 2023, not be subject to any statement as to "going concern." In addition, the consolidated financial statements commencing with the quarter ended March 31, 2024, shall also not be subject to any statement as to "going concern." The Company has concluded that it is unlikely that it will be able to comply with these provisions in 2024. Failure to comply with these provisions would also constitute an event of default under the A&R Note Purchase Agreement.

In the event of any of the foregoing defaults, the holders of the Pharmakon Senior Secured Notes may declare an event of default under the A&R Note Purchase Agreement and may elect to accelerate the repayment of all unpaid principal, accrued interest and other amounts due, which may require the Company to delay or curtail its operations until additional funding is received. The terms of the A&R Note Purchase Agreement and the Pharmakon Senior Secured Notes, including applicable covenants, are described in [Note 8](#).

Management's plans to mitigate this risk may include reducing expenses, raising additional capital through equity or debt financings, partnerships, collaborations or other sources and requesting a modification or waiver of the covenants under the A&R Note Purchase Agreement. However, there can be no assurance that the Company will be successful in reducing expenses, raising additional capital, or obtaining a modification or waiver of the covenants under the A&R Note Purchase Agreement. If the Company is unable to reduce expenses, raise additional capital or obtain a modification or waiver of the covenants under the A&R Note Purchase Agreement, the Company may need to delay or curtail its operations. As a result of these factors, management has concluded that substantial doubt exists about the Company's ability to continue as a going concern within one year after the date these consolidated financial statements are issued.

### **3. Basis of Presentation and Summary of Significant Accounting Policies**

The accompanying unaudited interim consolidated financial statements have been prepared in conformity with US generally accepted accounting principles (GAAP). Any reference in these notes to applicable guidance is meant to refer to GAAP as found in the Accounting Standards Codification (ASC) and Accounting Standards Updates (ASU) of the Financial Accounting Standards Board (FASB).

In the opinion of management, the accompanying unaudited interim financial statements include all normal and recurring adjustments (which consist primarily of accruals and estimates that impact the financial statements) considered necessary to present fairly the Company's financial position as of March 31, 2023 and its results of operations for the three months ended March 31, 2023 and 2022 and cash flows for the three months ended March 31, 2023 and 2022. Operating results for the three months ended March 31, 2023 are not necessarily indicative of the results that may be expected for the year ending December 31, 2023. The unaudited interim financial statements, presented herein, do not contain the required disclosures under GAAP for annual financial statements. The accompanying unaudited interim financial statements should be read in conjunction with the annual audited financial statements and related notes as of and for the year ended December 31, 2022 contained in the Company's annual report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 7, 2023.

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**  
**(in thousands, except share and per share data)**

**Use of estimates**

The preparation of the unaudited interim consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the unaudited interim consolidated financial statements and reported amounts of expenses during the reporting period. Due to the uncertainty of factors surrounding the estimates or judgments used in the preparation of the unaudited interim consolidated financial statements, actual results may materially vary from these estimates. Estimates and assumptions are periodically reviewed and the effects of revisions are reflected in the unaudited interim consolidated financial statements in the period they are determined to be necessary.

**Concentration of credit risk**

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash and accounts receivable. The Company generally invests its cash in deposits with high credit quality financial institutions. Additionally, the Company performs periodic evaluations of the relative credit standing of these financial institutions.

**Customer and supplier concentration**

The Company has exposure to credit risk in accounts receivable from sales of product. XHANCE is sold to wholesale pharmaceutical distributors and preferred pharmacy network (PPN) partners, who, in turn, sell XHANCE to pharmacies, hospitals and other customers. Five customers represented approximately 58% and 45% of the Company's accounts receivable at March 31, 2023 and 2022, respectively. Five customers represented approximately 39% and 35% of the Company's net product sales for the three months ended March 31, 2023 and 2022, respectively.

The Company purchases XHANCE and its components from several third-party suppliers and manufacturing partners, certain of which are available through a single source. Although the Company could obtain each of these components from alternative third-party suppliers, it would need to qualify and obtain FDA approval for another supplier as a source for each such component. The Company has initiated the process of qualifying an alternate third-party supplier for select components of XHANCE. Alternate third party suppliers of XHANCE components are subject to qualification and approval from the FDA.

**Fair value of financial instruments**

The Company measures certain assets and liabilities at fair value, which is defined as the price that would be received to sell an asset or paid to transfer a liability (the exit price) in an orderly transaction between market participants at the measurement date. The FASB accounting guidance outlines a valuation framework and creates a fair value hierarchy in order to increase the consistency and comparability of fair value measurements and the related disclosures. In determining fair value, the Company uses quoted prices and observable inputs. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from independent sources. The fair value hierarchy is broken down into three levels based on the source of the inputs as follows:

- Level 1 — Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 — Valuations based on observable inputs (other than Level 1 quoted prices), such as quoted prices in active markets for similar assets or liabilities, quoted prices in markets that are not active for identical or similar assets or liabilities, or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — Valuations based on inputs that are unobservable and models that are significant to the overall fair value measurement.

At March 31, 2023 and 2022, the Company's financial instruments included cash and cash equivalents, accounts receivable, grants receivable, accounts payable, accrued expenses and certain liability classified warrants. The

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**  
**(in thousands, except share and per share data)**

carrying amounts reported in the Company's financial statements for cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximates their respective fair values because of the short-term nature of these instruments. In addition, at March 31, 2023, the Company believed the carrying value of debt approximates fair value as the interest rates were reflective of the rate the Company could obtain on debt with similar terms and conditions. At March 31, 2023, there were no financial assets or liabilities measured at fair value on a recurring basis other than the liability classified warrants.

In November 2022, the Company issued warrants in connection with a public offering. Pursuant to the terms of the warrant agreement, the Company could be required to settle the warrants in cash in the event of an acquisition of the Company and, as a result, the warrants are required to be measured at fair value and reported as liability in the consolidated balance sheet. The Company recorded the fair value of the warrants upon issuance using a Monte Carlo simulation and is required to revalue the warrants at each reporting date with any changes in fair value recorded on our statement of operations. The valuation of the warrants is considered under Level 3 of the fair value hierarchy due to the need to use assumptions in the valuation that are both significant to the fair value measurement and unobservable. The change in the fair value of the Level 3 warrants liabilities is reflected in the statement of operations for the three months ended March 31, 2023.

### **Net product revenues**

The Company accounts for revenue in accordance with ASC Topic 606, *Revenue from Contracts with Customers* (ASC 606), which the Company adopted on January 1, 2018. The Company recognizes revenue from XHANCE sales at the point customers obtain control of the product, which generally occurs upon delivery. The transaction price that is recognized as revenue for products includes an estimate of variable consideration. The Company's estimates of variable consideration and determination of whether to include estimated amounts in the transaction price are based largely on an assessment of its anticipated performance and all information (historical, current and forecasted) that is reasonably available. The components of the Company's variable consideration include the following:

*Provider Chargebacks and Discounts.* Chargebacks for fees and discounts to providers represent the estimated obligations resulting from contractual commitments to sell products to qualified healthcare providers at prices lower than the list prices charged to customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. These components of variable consideration are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable.

*Trade Discounts and Allowances.* The Company generally provides customers with discounts that include incentive fees which are explicitly stated in the Company's contracts. These discounts are recorded as a reduction of revenue and accounts receivable in the period in which the related product revenue is recognized.

*Product Returns.* Consistent with industry practice, the Company has a product returns policy that provides customers a right of return for product purchased within a specified period prior to and subsequent to the product's expiration date. The Company estimates the amount of its product that may be returned and presents this amount as a reduction of revenue in the period the related product revenue is recognized, in addition to establishing a liability. The Company considers several factors in the estimation process, including expiration dates of product shipped to customers, inventory levels within the distribution channel, product shelf life, prescription trends and other relevant factors.

*Government Rebates.* The Company is subject to discount obligations under state Medicaid programs and Medicare. Reserves related to these discount obligations are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability. The Company's liability for these rebates consists of estimates of claims for the current quarter and estimated future claims that will be made for product that has been recognized as revenue but remains in the distribution channel inventories at the end of the reporting period.

*Payor Rebates.* The Company contracts with certain third-party payors, primarily health insurance companies and pharmacy benefit managers, for the payment of rebates with respect to utilization of its products. These rebates are

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**  
**(in thousands, except share and per share data)**

based on contractual percentages applied to the amount of product prescribed to patients who are covered by the plan or the organization with which it contracts. The Company estimates these rebates and records such estimates in the same period the related revenue is recognized, resulting in a reduction of product revenue and the establishment of a current liability.

**Patient Assistance.** Other programs that the Company offers include voluntary co-pay patient assistance programs intended to provide financial assistance to eligible patients with prescription drug co-payments required by payors and coupon programs for cash payors. The calculation of the current liability for this assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with product that has been recognized as revenue but remains in the distribution channel inventories at the end of each reporting period.

**Distribution and Other Fees.** The Company pays distribution and other fees to certain customers in connection with the sales of its products. The Company records distribution and other fees paid to its customers as a reduction of revenue, unless the payment is for a distinct good or service from the customer and the Company can reasonably estimate the fair value of the goods or services received. If both conditions are met, the Company records the consideration paid to the customer as an operating expense. These costs are typically known at the time of sale, resulting in minimal adjustments subsequent to the period of sale.

**Net income (loss) per common share**

Basic net income (loss) per common share is determined by dividing net income (loss) applicable to common stockholders by the weighted average common shares outstanding during the period. For the three months ended March 31, 2023 and 2022, the outstanding Common Stock options, Restricted Stock units, Common Stock warrants and shares to be issued under the Company's 2017 Employee Stock Purchase Plan have been excluded from the calculation of diluted net loss per share because their effect would be anti-dilutive. Therefore, the weighted average shares used to calculate both basic and diluted net loss per share are the same.

Diluted net loss per common share for the periods presented do not reflect the following potential common shares, as the effect would be antidilutive:

	March 31,	
	2023	2022
Stock options	10,489,593	10,462,195
Restricted stock units	2,691,174	2,785,746
Common stock warrants	32,768,000	2,500,000
Employee stock purchase plan	97,817	213,693
Total	46,046,584	15,961,634

**Income taxes**

In accordance with ASC 270, *Interim Reporting*, and ASC 740, *Income Taxes*, the Company is required at the end of each interim period to determine the best estimate of its annual effective tax rate and then apply that rate in providing for income taxes on a current year-to-date (interim period) basis. For the three months ended March 31, 2023 and 2022, the Company recorded no tax expense or benefit due to the expected current year loss and its historical losses. As of March 31, 2023 and December 31, 2022, the Company concluded that a full valuation allowance would be necessary for all of its net deferred tax assets. The Company had no amounts recorded for uncertain tax positions, interest or penalties in the accompanying consolidated financial statements.

**4. Fair Value Measurements**

**Assets and Liabilities Measured at Fair Value on a Recurring Basis**

The Company applies the guidance in ASC 820, *Fair Value Measurements*, to account for financial assets and liabilities measured on a recurring basis. Fair value is measured as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As



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**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**  
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such, fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or liability.

The Company uses a fair value hierarchy, which distinguishes between assumptions based on market data (observable inputs) and an entity's own assumptions (unobservable inputs). The guidance requires that fair value measurements be classified and disclosed in one of the following 3 categories:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Determining which category an asset or liability falls within the hierarchy requires significant judgment. The Company evaluates its hierarchy disclosures each reporting period. There were no transfers between Level 1, 2 and 3 during the three months ended March 31, 2023.

The table below presents the liabilities (in thousands) measured and recorded in the financial statements at fair value on a recurring basis at March 31, 2023 categorized by the level of inputs used in the valuation of each liability.

	March 31, 2023			
	Total	Level 1	Level 2	Level 3
<b>Liabilities</b>				
Warrant Liability	\$ 22,000	\$ —	\$ —	\$ 22,000
<b>Total Liabilities</b>	<b>\$ 22,000</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 22,000</b>

**Changes in Level 3 Liabilities Measured at Fair Value on a Recurring Basis**

*Warrant Liability*

The reconciliation of the Company's warrant liability measured at fair value on a recurring basis using unobservable inputs (Level 3) is as follows (in thousands):

	<u>Warrant Liability</u>
Balance, December 31, 2022	\$ 21,490
Warrants issued	—
Change in fair value of liability	510
Balance, March 31, 2023	<u>\$ 22,000</u>

**Assumptions Used in Determining Fair Value of Liability-Classified Warrants**

The Company utilizes a Monte Carlo simulation valuation model which incorporates assumptions as to the stock price volatility, the expected life of the warrants, a risk-free interest rate, as well as timing and probability of equity financing. The Company values the Warrant Liability at each reporting period, with changes in fair value recognized in the consolidated statements of operations. The estimated fair value of the warrant liability is determined using Level 3 inputs. The inputs and values were as follows:

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements (Continued)**  
(in thousands, except share and per share data)

	March 31, 2023	December 31, 2022
Stock price	\$ 1.93	\$ 1.85
Strike price	\$ 2.57	\$ 2.57
Expected volatility	45.0 %	45.0 %
Risk-free interest rate	3.6 %	3.8 %
Expected dividend yield	— %	— %
Expected life (years)	4.60	4.90
Fair value per warrant	\$ 0.73	\$ 0.71

### 5. Inventory

Inventory consisted of the following:

	March 31, 2023	December 31, 2022
Raw materials	\$ 1,882	\$ 1,691
Work-in-process	4,143	5,010
Finished goods	2,278	2,742
Total inventory	<u>\$ 8,303</u>	<u>\$ 9,443</u>

Inventories are stated at the lower of cost or net realizable value, as determined on a first-in, first-out, basis.

### 6. Property and Equipment

Property and equipment, net, consisted of the following:

	March 31, 2023	December 31, 2022
Computer equipment and software	\$ 1,190	\$ 1,203
Furniture and fixtures	366	366
Machinery and equipment	3,067	3,067
Leasehold improvements	609	609
Construction in process	115	115
	<u>5,347</u>	<u>5,360</u>
Less: accumulated depreciation	<u>(4,625)</u>	<u>(4,565)</u>
	<u>\$ 722</u>	<u>\$ 795</u>

Depreciation expense was \$72 and \$118 for the three months ended March 31, 2023 and 2022, respectively. In addition, depreciation expense of \$643 and \$22 was charged to inventory and prepaid expenses and other assets, respectively, as of March 31, 2023, which represents depreciation expense related to equipment involved in the manufacturing process.

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements**  
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## 7. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of:

	March 31, 2023	December 31, 2022
Accrued expenses:		
Selling, general and administrative expenses	\$ 4,486	\$ 3,799
Research and development expenses	981	1,298
Payroll expenses	5,572	7,888
Product revenue allowances	17,236	27,993
Other	1,161	1,915
Total accrued expenses	29,436	42,893
Other current liabilities:		
Lease liability	1,644	1,971
Total other current liabilities	1,644	1,971
Total accrued expenses and other current liabilities	\$ 31,080	\$ 44,864

## 8. Debt

On September 12, 2019 (the Closing Date), the Company entered into a Note Purchase Agreement with funds managed by Pharmakon Advisors, LP (Pharmakon), the investment manager of BioPharma Credit Funds (BioPharma). The Note Purchase Agreement provided the Company with \$130,000 in debt financing, of which \$80,000 of senior secured notes (the Pharmakon Senior Secured Notes) was issued on the Closing Date, \$30,000 was issued on February 13, 2020 after achieving the \$9,000 consolidated XHANCE net sales and royalties threshold for the quarter ended December 31, 2019 and \$20,000 was issued on December 1, 2020 after achieving the \$14,500 consolidated XHANCE net sales and royalties threshold for the quarter ended September 30, 2020.

On November 23, 2022, the Company amended and restated the Note Purchase Agreement, initially entered into on September 12, 2019 and amended through November 9, 2022, among the Company, its subsidiaries, OptiNose US, Inc., OptiNose AS and OptiNose UK, Ltd. and BioPharma Credit PLC, as collateral agent, and the purchasers party thereto from time to time (the A&R Note Purchase Agreement). Pursuant to the A&R Note Purchase Agreement, certain modifications to the affirmative and negative covenants, events of default and other provisions were made, including, without limitation, (i) the requirement for the Company to deliver quarterly and annual financial statements that, commencing with the Company's consolidated financial statements for the year ending December 31, 2023, are not subject to a "going concern" statement (the Going Concern Covenant) and (ii) the removal of certain exceptions to the negative covenants which previously permitted the Company to enter into certain transactions without the consent of the holders of the Pharmakon Senior Secured Notes, including permitted acquisitions, swap contracts, convertible bonds and revolving credit facilities. The financial covenants requiring the Company to achieve minimum trailing twelve-month consolidated XHANCE net product sales and royalties were amended to be pushed back to March 31, 2024.

The A&R Note Purchase Agreement provided for an extension of the maturity date of the Pharmakon Senior Secured Notes from September 12, 2024 to June 30, 2027 (New Maturity Date), an extension of the interest-only period from September 2023 to September 2025, after which principal repayments will commence starting on September 30, 2025 and will be made in eight equal quarterly installments of principal and interest through the New Maturity Date. As part of the A&R Note Purchase Agreement the Pharmakon Senior Secured Notes will now bear an amended interest rate through the New Maturity Date equal to the 3-month Secured Overnight Financing Rate (subject to a 2.50% floor), determined as of the date that is two business days prior to the commencement of each quarter, plus 8.50% per annum, which interest rate shall be increased by an additional 3.00% per annum upon the occurrence and during the continuation of any event of default. The Effective Interest Rate as of March 31, 2023 is 13.62%.

In conjunction with the A&R Note Purchase Agreement, a modification was made to the "make-whole" premium payment due in connection with any principal prepayments (whether mandatory or voluntary) made prior to the 3-

**OptiNose, Inc.**  
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**(in thousands, except share and per share data)**

year anniversary of the date of the A&R Note Purchase Agreement. On any such prepayment date, the Company will be required to pay a make-whole premium in the amount of (i) for any prepayment date occurring up until and including the 18-month anniversary of the date of the A&R Note Purchase Agreement, the foregone interest from such prepayment date through the 18-month anniversary of such prepayment date; and (ii) for any prepayment after the 18-month anniversary of the date of the A&R Note Purchase Agreement, the foregone interest from such prepayment date through the 3-year anniversary of the date of the A&R Note Purchase Agreement; provided, however, that in no event shall the amount of all make-whole premium payments exceed \$24,000 in the aggregate.

As an inducement for the holders of the Pharmakon Senior Secured Notes to enter into the A&R Note Purchase Agreement, the Company is required to pay the holders of the Pharmakon Senior Secured Notes an amendment fee of \$3,900 (representing 3.00% of the outstanding principal balance of such notes) due on the New Maturity Date or the earlier repayment of the Pharmakon Senior Secured Notes, which amendment fee shall be (i) reduced to \$1,300 in the event that the Company repays the Pharmakon Senior Secured Notes in full prior to the one-year anniversary of the date of the A&R Note Purchase Agreement and (ii) reduced to \$2,600 in the event that the Company repays the Pharmakon Senior Secured Notes in full on or after the one-year anniversary of the date of the A&R Note Purchase Agreement and prior to second anniversary of the date of the A&R Note Purchase Agreement. Additionally, the \$1,300 fee payable under the Fourth Amendment to the Note Purchase Agreement that the Company entered into on November 9, 2022 will be credited against the amendment fee payable in connection with the A&R Note Purchase Agreement.

The Pharmakon Senior Secured Notes are secured by a pledge of substantially all of the assets of the Company and the Guarantors and the A&R Note Purchase Agreement contains affirmative and negative covenants customary for financings of this type, including limitations on the Company's and its subsidiaries' ability, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions, repay junior indebtedness, incur a material adverse change and enter into affiliate transactions, in each case, subject to certain exceptions. In addition, the A&R Note Purchase Agreement contains financial covenants requiring the Company to maintain certain minimum trailing twelve-month consolidated XHANCE net sales and royalties, tested on a quarterly basis, and to have at least \$30,000 of cash and cash equivalents at all times. The A&R Note Purchase Agreement also includes events of default customary for financings of this type, in certain cases subject to customary periods to cure, following which BioPharma may accelerate all amounts outstanding under the Pharmakon Senior Secured Notes.

The Company believes that it is probable that it will not achieve the trailing twelve-month minimum consolidated XHANCE net sales and royalties thresholds that it is required to achieve commencing with the period ending March 31, 2024. Additionally, without additional capital, the Company believes that it is probable that it will not be able to maintain at least \$30,000 of cash and cash equivalents for at least twelve-months following the filing of this Form 10-Q. In addition, the Company believes that it is unlikely that it will be able to maintain compliance with the Going Concern Covenant in 2024. As a result, in accordance with FASB Accounting Standards Codification 470, the Company has classified all outstanding principal and the payment of additional fees upon maturity as a current liability in the accompanying consolidated balance sheet as of March 31, 2023.

The Company recorded interest expense of \$4,672 and \$4,073 during the three months ended March 31, 2023 and 2022, respectively. Interest expense included total coupon interest and the amortization of debt issuance costs.

The Pharmakon debt balance is comprised of the following:

	March 31, 2023	December 31, 2022
Face amount	\$ 130,000	\$ 130,000
Front end fees	(630)	(666)
Debt issuance costs	(6,371)	(6,739)
Back end fees	5,980	5,980
Debt, net	<u>\$ 128,979</u>	<u>\$ 128,575</u>

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements**  
(in thousands, except share and per share data)

**9. Employee Benefit Plans**

For US employees, the Company maintains a defined contribution 401(k) retirement plan. As of March 31, 2023, \$61 was recorded in accrued liabilities related to the Company match. The Company's contributions are made in cash.

**10. Stockholders' Equity**

As of March 31, 2023, the Company had the following warrants outstanding to purchase shares of Common Stock:

Number of Shares	Classification	Exercise Price Per Share	Expiration Date
2,500,000	Equity	\$1.60	November 15, 2024
30,268,000	Liability	\$2.565	November 23, 2027

**11. Stock-based Compensation**

The Company recorded stock-based compensation expense related to stock options and shares issued under the Company's 2010 Stock Incentive Plan and 2017 Employee Stock Purchase Plan (2017 Plan) in the following expense categories of its accompanying consolidated statements of operations for the three and three months ended March 31, 2023 and 2022:

	Three Months Ended March 31, 2023	Three Months Ended March 31, 2022
Cost of product sales	\$ 6	\$ 13
Research and development	155	196
General and administrative	1,361	1,791
	<u>\$ 1,522</u>	<u>\$ 2,000</u>

In addition, stock-based compensation expense of \$82 and \$6 was capitalized to inventory and prepaid expenses and other assets, respectively, as of March 31, 2023, which represents the stock-based compensation expense incurred related to employees involved in the manufacturing process of finished goods and samples.

**Stock Options**

The Company issues stock-based awards pursuant to its 2010 Stock Incentive Plan. Effective as of October 12, 2017, the Company's 2010 Stock Incentive Plan was amended and restated (A&R Plan). The Company has issued service-based, performance-based, and market-based stock options that generally have a contractual life of up to 10 years and may be exercisable in cash or as otherwise determined by the Company's board of directors or committee thereof. Vesting generally occurs over a period of not greater than four years. Performance-based options may vest upon the achievement of certain milestones. As of March 31, 2023, all of the performance conditions related to performance-based stock options issued by the Company had been achieved. Market-based options may vest upon the achievement of certain market-based objectives relating to the trading price of the Company's Common Stock.

**OptiNose, Inc.**  
**Notes to Unaudited Interim Consolidated Financial Statements**  
(in thousands, except share and per share data)

The following table summarizes the activity related to stock option grants to employees and non-employees for the three months ended March 31, 2023:

	Shares	Weighted average exercise price per share	Weighted average remaining contractual life
Outstanding at December 31, 2022	9,364,070	\$ 6.88	6.05
Granted	1,543,677	1.84	
Exercised	—	—	
Expired	(289,909)	7.08	
Forfeited	(128,245)	2.61	
Outstanding at March 31, 2023	<u>10,489,593</u>	\$ 7.03	6.50
Exercisable at March 31, 2023	<u>5,740,215</u>	\$ 9.51	4.68

During the three months ended March 31, 2023, stock options to purchase 1,543,677 shares of Common Stock were granted to employees and generally vest over four years. The stock options, including the market-based options, had an estimated weighted average grant date fair value of \$1.27. The grant date fair value of each service-based and performance-based option grant was estimated at the time of grant using the Black-Scholes option-pricing model. The grant date fair value of each market-based stock option grant was estimated at the time of grant using a Monte Carlo simulation.

The aggregate intrinsic value of stock options outstanding and stock options exercisable, other than market-based stock options, as of March 31, 2023 was \$358 and \$39, respectively. At March 31, 2023, the unrecognized compensation cost related to unvested stock options, other than market-based stock options, expected to vest was \$5,339. This unrecognized compensation will be recognized over an estimated weighted-average amortization period of 2.88 years.

Included in the table above are 959,215 market-based options granted. These options generally become eligible to vest over four years, subject to the achievement of certain market-based objectives relating to the trading price of the Common Stock. Stock based compensation for these awards is recognized over the derived service period of approximately 2 years. The grant date fair value of each stock option grant, as well as the derived service period for these awards, was estimated at the time of grant using a Monte Carlo simulation. During the three months ended March 31, 2023, no market-based options vested upon the achievement of certain market-based objectives relating to the trading price of the Company's Common Stock.

Included in the table above are 753,500 options granted outside the A&R Plan. The grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq Listing Rule 5635(c)(4).

#### **Restricted Stock Units**

The Company has issued service-based and performance-based restricted stock units (RSUs). Vesting generally occurs over a period not greater than four years. Vesting of the performance-based RSUs is subject to the achievement of certain milestones in connection with the Company's development programs.

The following table summarizes the activity related to RSUs granted to employees for the three months ended March 31, 2023:

	Shares
Balance at December 31, 2022	1,477,660
Granted	1,627,174
Vested and settled	(343,406)
Expired/forfeited/canceled	(70,254)
Balance at March 31, 2023	<u>2,691,174</u>
Expected to vest at March 31, 2023	<u>2,691,174</u>

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**Notes to Unaudited Interim Consolidated Financial Statements**  
**(in thousands, except share and per share data)**

During the three months ended March 31, 2023, the Company granted 1,627,174 RSUs at a weighted-average grant date fair value of \$1.86, all of which were service-based RSUs. No performance-based RSUs were granted in the three months ended March 31, 2023. As of March 31, 2023, the milestone associated with the previously granted performance based-RSUs was achieved. At March 31, 2023, the recognized compensation cost related to vested performance-based RSUs was \$1,660. At March 31, 2023, the unrecognized compensation cost related to unvested service-based RSUs expected to vest was \$5,031, to be recognized over an estimated weighted-average amortization period of 3.03 years. The unrecognized compensation cost related to unvested performance-based RSUs was \$401, which will be recognized over the remaining service period.

Included in the table above are 60,000 RSUs granted outside the A&R Plan. The grants were made pursuant to the Nasdaq inducement grant exception in accordance with Nasdaq Listing Rule 5635(c)(4).

**2017 Employee Stock Purchase Plan**

Under the 2017 Plan, shares of Common Stock may be purchased by eligible employees who elect to participate in the 2017 Plan at 85% of the lower of the fair market value of Common Stock on the first or last day of designated offering periods. The Company recognized stock-based compensation expense related to the 2017 Plan of \$33 and \$89 during the three months ended March 31, 2023 and 2022, respectively.

The Company calculated the fair value of each option grant and the shares issued under the 2017 Plan on the respective dates of grant using the following weighted average assumptions:

	Three Months Ended March 31,	
	2023	2022
Risk free interest rate	0.05 %	0.22 %
Expected term (in years)	0.5	0.5
Expected volatility	71.43 %	88.56 %
Annual dividend yield	0.00 %	0.00 %

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read this section in conjunction with our unaudited interim consolidated financial statements and related notes included in Part I, Item 1 of this Form 10-Q and our audited consolidated financial statements and related notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission (SEC) on March 7, 2023. In addition to historical information, some of the information contained in this discussion and analysis includes forward-looking statements that involve risks and uncertainties. As a result of many factors, our actual results could differ materially from the results described in or implied by such forward-looking statements. Please refer to the "Note Regarding Forward-Looking Statements" section of this Form 10-Q for additional information.*

### Company Overview

We are a specialty pharmaceutical company focused on the development and commercialization of products for patients treated by ear, nose and throat (ENT) and allergy specialists. Our first commercial product, XHANCE® (fluticasone propionate) nasal spray, 93 micrograms (mcg), is a therapeutic utilizing our proprietary Exhalation Delivery System (EDS) that delivers a topically-acting corticosteroid for the treatment of chronic rhinosinusitis with nasal polyps and, if approved, chronic rhinosinusitis without nasal polyps (also known as chronic sinusitis). Chronic rhinosinusitis is a serious nasal inflammatory disease that is treated using therapies, such as intranasal steroids (INS), which have significant limitations. We believe XHANCE has a differentiated clinical profile with the potential to become part of the standard of care for this disease because it is able to deliver medication to the primary site of inflammation high and deep in the nasal passages in regions not adequately reached by conventional INS.

In September 2017, the U.S. Food and Drug Administration (FDA) approved XHANCE for the treatment of nasal polyps in patients 18 years of age or older. XHANCE was made widely available through commercial channels in April 2018. In January 2023, the indication statement for XHANCE was changed from "for the treatment of nasal polyps" to "for the treatment of chronic rhinosinusitis with nasal polyps" to reflect current FDA labeling terminology and not based on new XHANCE clinical trial data.

In March and June 2022, we announced positive top line results from our two Phase 3b clinical trials (ReOpen1 and ReOpen2) of XHANCE for a follow-on indication for the treatment of chronic sinusitis. The results of ReOpen1 and ReOpen2 were summarized in our Form 10-K for the year period ended December 31, 2022, filed with the Securities and Exchange Commission on March 7, 2023. In February 2023, we submitted a prior approval efficacy supplement (sNDA) to support the approval of a new indication for XHANCE for the treatment of chronic rhinosinusitis. The FDA accepted the sNDA for review and assigned a Prescription Drug User Fee Act (PDUFA) target goal date of December 16, 2023. If the sNDA is approved, XHANCE has the potential to be the first drug therapy approved by the FDA for the treatment of chronic sinusitis.

We believe XHANCE could become a part of the standard of care for the treatment of patients with chronic rhinosinusitis with and without nasal polyps before they progress to more costly treatment alternatives and could also be adopted as a maintenance therapy to improve outcomes following sinus surgery.

### XHANCE Business Update

We track and report metrics that we believe are an important part of assessing our progress in key strategic areas including:

- XHANCE Prescriptions and Market Share. Based on third-party prescription data as well as data from PPN partners, the total estimated number of XHANCE prescriptions in the first quarter of 2023 was 84,400, which represents a 1% increase for prescriptions when compared to estimated first quarter 2022 prescriptions of 83,500. In first quarter 2023 we updated the methodology used to estimate XHANCE prescriptions. For reference, under the prior methodology we estimated prescriptions of 80,600 in the first quarter of 2022. The INS prescription market increased 5% from first quarter 2022 to first quarter 2023 based on third-party prescription data.

A seasonal effect has historically been observed in the INS prescription market in which market volume generally peaks near the middle of the second quarter and declines into the early part of the third quarter of each calendar year. Based on third-party prescription data, INS market prescriptions were flat from the fourth quarter of 2021 to the first quarter of 2022, increased 7% from the first quarter of 2022 to the second quarter 2022, decreased 7% from the second quarter of 2022 to the third quarter 2022, increased 4% from



the third quarter of 2022 to the fourth quarter 2022, and increased 1% from the fourth quarter of 2022 to the first quarter 2023.

Although the underlying disease that we are treating is chronic and causes symptoms year-round, we believe the variation in patient flow through the offices of relevant physician specialists, and seasonality in disease flare-ups, has an impact on the number of patients that present themselves and who are therefore available to receive a new prescription for XHANCE.

Additionally, we believe that first quarter prescription demand and average net revenue per prescription for XHANCE is adversely impacted by the annual resetting of patient healthcare insurance plan deductibles and changes in individual patients' healthcare insurance coverage, both of which often occur in January.

Previously we tracked the market share of XHANCE within our current target audience because market share normalizes XHANCE prescriptions for market effects including the INS market seasonality, seasonal variation in patient visits with their doctor, annual deductible resets and annual changes in individual patient's healthcare insurance coverage referenced above. We calculated market share as the proportion of XHANCE prescriptions to the number of prescriptions written for other INS within our current target audience of approximately 21,000 physicians. However, most of the INS prescriptions written within our target physician audience are for chronic sinusitis, allergic rhinitis and other conditions outside of our nasal polyp indication. Due to the limitations of this denominator, which also does not include prescriptions for the several biologic products that are indicated to treat chronic rhinosinusitis with nasal polyps, and the fact that we now have five years of historical XHANCE prescription data, we have stopped tracking market share but will continue to remain focused on year-over-year prescription growth.

- XHANCE New Prescriptions and Refill Prescriptions. The underlying disease that we are treating is chronic and, as a result, many patients may fill multiple prescriptions per year. We monitor new prescriptions as they create the potential for future refill prescriptions. Based on third-party prescription data as well as data from PPN partners, the total estimated number of XHANCE new prescriptions in the first quarter of 2023 was 30,400, which represents a 3% increase for new prescriptions when compared to estimated first quarter 2022 new prescriptions of 29,500. In first quarter 2023 we updated the methodology used to estimate XHANCE new prescriptions. For reference, under the prior methodology we estimated new prescriptions of 28,200 in the first quarter of 2022. Based on third-party prescription data, the INS market for new prescriptions increased 8% from the first quarter of 2022 to the first quarter of 2023 and increased 5% from the fourth quarter of 2022 to the first quarter of 2023.

We track refill prescriptions and provide patient assistance to support refill programs that are administered by our PPN partners. Based on third-party prescription data as well as data from PPN partners, the total estimated number of XHANCE refill prescriptions in the first quarter of 2023 was 54,000, which is unchanged compared to estimated first quarter 2022 refill prescriptions of 54,000. In first quarter 2023 we updated the methodology used to estimate XHANCE refill prescriptions. For reference, under the prior methodology we estimated refill prescriptions of 52,400 in the first quarter of 2022.

- Prescribing Breadth and Depth. We track the number of physicians who prescribe XHANCE in a time period to evaluate the breadth of prescribing. Based on third-party prescription data as well as data from PPN partners, the total estimated number of physicians who had at least one patient fill a prescription for XHANCE in the first quarter of 2023 was 8,545, which represents a 6% decrease when compared to the estimated 8,027 physicians who had at least one patient fill a prescription for XHANCE in the first quarter of 2022. In addition, the total estimated number of physicians who had at least one patient fill a prescription for XHANCE was 8,289 in the second quarter of 2022, 8,056 in the third quarter of 2022, and 8,313 in the fourth quarter of 2022. In first quarter 2023 we updated the methodology used to estimate XHANCE prescriptions and as a consequence updated our estimate for the number of physicians who had at least one patient fill a prescription for XHANCE. For reference, under the prior methodology we estimated the number of physicians who had at least one patient fill a prescription for XHANCE was 7,690 in the first quarter of 2022.

We also track the number of prescriptions filled by a prescribing physician's patients in a time period to evaluate depth of prescribing. Based on third-party prescription data as well as data from PPN partners, the total estimated number of physicians who had more than 15 XHANCE prescriptions filled by their patients in the first quarter of 2023 was 1,391, which represents a 1% decrease when compared to the estimated 1,406 physicians who had more than 15 XHANCE prescriptions filled by their patients in the first quarter of 2022. In addition, the total estimated number of physicians who had more than 15 XHANCE prescriptions filled by their patients was 1,523 in the second quarter of 2022, 1,485 in the third quarter of 2022, and 1,509

in the fourth quarter of 2022. In first quarter 2023 we updated the methodology used to estimate XHANCE prescriptions and as a consequence updated our estimate for the number of physicians who had more than 15 XHANCE prescriptions filled by their patients. For reference, under the prior methodology we estimated the number of physicians who had more than 15 XHANCE prescriptions filled by their patients was 1,468 in the first quarter of 2022.

- **XHANCE Net Product Revenues per Prescription.** We calculate average net product revenues per prescription, one metric that we use to gauge the profitability of XHANCE, by dividing net product revenues for the quarter by the estimated number of XHANCE prescriptions dispensed during the quarter. Average XHANCE net product revenues per prescription were \$140 in the first quarter of 2023 which represents a 21% decrease when compared to the \$177 average XHANCE net product revenues per prescription in the first quarter of 2022. The decrease in average net product revenues per prescription is primarily the result of decreased shipments in the first quarter of 2023 compared to the first quarter of 2022 and an increase in co-pay assistance driven by an increase in the proportion of volumes attributable to patients with commercial insurance that does not cover XHANCE or who have not met the utilization management criteria of their insurer, and an increase in the proportion of volumes attributable to patients with government insurance including Medicare and Medicaid which have a lower average net revenue per prescription than commercial insurance prescriptions because of higher rebates that we are required to pay under such government programs. In first quarter 2023 we updated the methodology used to estimate XHANCE prescriptions. For reference under the prior methodology we estimated net product revenues per prescription of \$183 for the first quarter of 2022.
- **Market Access.** We believe that as of March 31, 2023 approximately 80% of commercially insured lives are currently in a plan that covers XHANCE. Payors generally impose restrictions on access to or usage of XHANCE, such as by requiring prior authorizations or "step-edits". For example, insurers may require that a physician attest that they are treating a patient for an FDA-approved indication prior to becoming eligible for coverage for XHANCE. Further, we believe that approximately half of the commercially covered lives as of March 31, 2023 are in a plan that requires a prior authorization and most of those prior authorizations request information regarding prior use of INS and patient diagnosis for an FDA-approved indication. In some cases, patients do not meet the payors' utilization management criteria. Some providers may not complete the burdensome administrative process required to demonstrate or document that the patients for whom XHANCE has been prescribed meet the payors' utilization management criteria (i.e., prior authorizations or step-edits) and, as a result, patients will not gain access to XHANCE treatment. We believe increasing rates of enforcement of the utilization management criteria had a negative effect on XHANCE prescription volume growth in 2022 and may continue to have a negative effect on prescription volume in the future. These requirements include physician attestation to a diagnosis of nasal polyps which can be a hurdle for some physicians in our target audience because it is not a diagnosis they make commonly.

## Financial Operations Overview

The following discussion sets forth certain components of our consolidated statements of operations as well as factors that impact those items.

### **Net product revenues**

Sales of XHANCE generated \$11.8 million and \$14.8 million in net product revenues for the three months ended March 31, 2023 and 2022, respectively. In accordance with GAAP, we determine net product revenues for XHANCE, with specific assumptions for variable consideration components including but not limited to trade discounts and allowances, co-pay assistance programs and payor rebates.

Based on available XHANCE prescription data purchased from third parties and data from our PPN partners, who collectively dispensed more than 80% of our total prescriptions (TRxs) in the period, our average XHANCE net product revenues per prescription were \$140 in the first quarter of 2023 which represents a 21% decrease when compared to the \$177 average XHANCE net product revenues per prescription in the first quarter of 2022. The decrease in average net product revenues per prescription is the result of decreased shipments in the first quarter of 2023 compared to the first quarter of 2022 and an increase in co-pay assistance driven by an increase in the proportion of volumes attributable to patients with commercial insurance that does not cover XHANCE or who have not met the utilization management criteria of their insurer, and an increase in the proportion of volumes attributable to government programs including Medicare and Medicaid which have a lower average net revenue per prescription than commercial insurance prescriptions because of higher rebates that we are required to pay under such government programs.

We calculate average net product revenues per prescription, one metric that we use to gauge the profitability of XHANCE, by dividing net product revenues for the quarter by the estimated number of XHANCE prescriptions dispensed during the quarter. As a result, average net product revenues per prescription is subject to variability. That variability is impacted by factors that do not necessarily reflect a change in the price that is paid for an individual unit of XHANCE, including but not limited to ordering patterns and inventory levels for our wholesale customers and PPN partners, patient utilization rates of affordability programs and the proportion of patients acquiring XHANCE through an insurance benefit. There is also the potential for variability that results from changes in estimation methodology by the third parties that we rely upon to provide prescription data which may lead to revisions of historical estimates of prescription volumes and our calculated average net product revenues per prescription.

We expect full year 2023 net product revenues will be between \$62.0 to \$68.0 million. In December 2022, we reduced our number of territory managers from approximately 90 to approximately 77 as part of actions intended to reduce total operating expenses for full year 2023 by approximately \$30.0 million compared to 2022, of which approximately half is related to sales and marketing. In addition, our expectation of full year 2023 net product revenues between \$62.0 and \$68.0 million does not assume net product revenues attributable to a launch of XHANCE as a treatment for patients with chronic sinusitis. The year-over-year decrease to net product revenues is attributable to an expected increase in gross-to-net deductions and an expected decrease in units shipped. The expected increase in gross-to-net deductions includes increased rebates, co-pay assistance and changes in business mix. In addition, these factors affect our expectations for full year 2023 average net product revenues per prescription. For the full year 2023, we believe average net product revenues per prescription will be approximately \$200. The expected year-over-year decrease in net product revenues is also a byproduct of our previously communicated intent to prioritize our capital resources for a potential launch of XHANCE for the treatment of chronic rhinosinusitis.

#### **Costs of product sales**

Costs of product sales includes the cost of inventory sold, which includes direct and indirect manufacturing and supply chain costs.

#### **Research and development expense**

Research and development expense consists primarily of expenses incurred to prepare for, initiate and conduct our planned clinical trials, ongoing research efforts of new products and device improvements. We expense research and development costs as incurred. These expenses include:

- personnel expenses, including salaries, benefits and stock-based compensation expense;
- costs of funding clinical development performed by third parties, including pursuant to agreements with contract research organizations (CROs), as well as investigative sites and consultants that conduct or support our nonclinical studies and clinical trials;
- expenses associated with the continued development of our EDS devices;
- expenses related to the continued development of our product sample portfolio;
- expenses incurred under agreements with contract manufacturing organizations (CMOs), including manufacturing scale-up expenses prior to regulatory approval of products for commercial sale and the cost of acquiring and manufacturing preclinical study and clinical trial materials;
- consultant fees and expenses associated with outsourced professional scientific development services;

- expenses for regulatory activities, including filing fees paid to regulatory agencies and costs incurred to compile and respond to filings with the FDA prior to regulatory approval of products for commercial sale; and
- allocated expenses for facility costs, including rent, utilities, depreciation and maintenance.

We typically use our employee, consultant and infrastructure resources across our research and development programs. Although we track certain outsourced development costs by product candidate, we do not allocate personnel costs or other internal costs to specific product candidates.

Assuming we do not need to conduct additional studies to support an FDA approval of XHANCE for the treatment of chronic sinusitis and we do not undertake new development programs, we expect significantly lower research and development expenses beginning in 2023.

#### ***Selling, general and administrative expense***

General and administrative expense consists primarily of personnel expenses, including salaries, benefits and stock-based compensation expense, for employees in executive, finance, accounting, business development, information technology, legal and human resource functions. General and administrative expense also includes corporate facility costs, including rent, utilities, depreciation and maintenance, not otherwise included in research and development expense, as well as regulatory fees and professional fees for legal, patent, accounting and other consulting services.

Sales and marketing expenses include our sales team and supporting promotional materials, digital promotion, peer-to-peer education, congresses / conventions, samples, and marketing activities such as direct-to-patient / direct-to-consumer initiatives. Additionally, sales and marketing-related expenses include fees paid to our PPN partners for services unrelated to traditional distribution functions, such as data fees and benefit claims adjudication.

#### ***Warrant Liability***

In November 2022, the Company issued warrants in connection with a public offering. These warrants are required to be measured at fair value and reported as a liability in the consolidated balance sheet. We recorded the fair value of the warrants upon issuance using a Monte Carlo simulation and are required to revalue the warrants at each reporting date with any changes in fair value recorded on our statement of operations. The valuation of the warrants is considered under Level 3 of the fair value hierarchy due to the need to use assumptions in the valuation that are both significant to the fair value measurement and unobservable. The change in the fair value of the Level 3 warrants liabilities is reflected in the statement of operations for the quarter ended March 31, 2023.

#### ***Interest (income) expense***

Interest (income) expense consists of interest earned on our cash and cash equivalents held with institutional banks and interest expense is primarily related to the Note Purchase Agreement.

#### ***Other (income) expense***

Other (income) expense consists primarily of foreign currency (income) losses due to exchange rate fluctuations on transactions denominated in a currency other than our functional currency.

#### ***Critical accounting policies and use of estimates***

Our consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (GAAP). The preparation of our consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the reported period. We base our estimates on historical experience, known trends and events and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions and conditions.

While our significant accounting policies are described in more detail in the notes to our consolidated financial statements appearing elsewhere in this report, we believe that the following accounting policies are those most critical to the preparation of our consolidated financial statements.

### Warrant Liability

In November 2022, we issued warrants in connection with a public offering. Pursuant to the terms of the warrants, we could be required to settle the warrants in cash in the event of a "fundamental transaction" as defined in the warrant (which includes, among other things, an acquisition of the Company) and, as a result, the warrants are required to be measured at fair value and reported as a liability in the consolidated balance sheet. We recorded the fair value of the warrants upon issuance using a Monte Carlo simulation and are required to revalue the warrants at each reporting date with any changes in fair value recorded on our statement of operations. The valuation of the warrants is considered under Level 3 of the fair value hierarchy due to the need to use assumptions in the valuation that are both significant to the fair value measurement and unobservable. The change in the fair value of the Level 3 warrant liability is reflected in the statement of operations for the year ended March 31, 2023.

### Consolidated Results of Operations

#### Comparison of three months ended March 31, 2023 and 2022

The following table sets forth our selected consolidated statements of operations data for the periods indicated (in thousands):

	Three Months Ended March 31,	
	2023	2022
<b>Revenues:</b>		
Net product revenues	\$ 11,846	\$ 14,760
Licensing revenues	—	—
Total revenues	11,846	14,760
<b>Costs and expenses:</b>		
Cost of product sales	1,706	2,014
Research and development	1,785	4,802
Selling, general and administrative	22,723	29,339
Total operating expenses	26,214	36,155
Loss from operations	(14,368)	(21,395)
<b>Other (income) expense:</b>		
Interest (income) expense	3,967	3,938
Other (income) expense	512	1
Total other (income) expense	4,479	3,939
Net loss	\$ (18,847)	\$ (25,334)

#### Net product revenues

Net product revenues related to sales of XHANCE were \$11.8 million and \$14.8 million for the three months ended March 31, 2023 and 2022, respectively. Revenue decrease is attributable primarily to a decrease in units sold to customers as well as a decrease in our average net revenue per prescription during the three months ended March 31, 2023. The year-over-year decrease in net product revenues is consistent with our previously communicated intent to prioritize our capital resources for a potential launch of XHANCE for the treatment of chronic rhinosinusitis.

#### Cost of product sales

Cost of product sales related to XHANCE were \$1.7 million and \$2.0 million for the three months ended March 31, 2023 and 2022, respectively.

#### Research and development expense

Research and development expense was \$1.8 million and \$4.8 million for the three months ended March 31, 2023 and 2022, respectively. The \$3.0 million decrease is attributable to a decrease in costs related to the conduct of our clinical trials of XHANCE for the treatment of chronic sinusitis, both trials had top-line data readouts in 2022.

#### Selling, general and administrative expense

Selling, general and administrative expense was \$22.7 million and \$29.3 million for the three months ended March 31, 2023 and 2022, respectively. The \$6.6 million decrease was due primarily to a \$3.9 million decrease in sales, marketing and administrative costs as well as a \$2.7 million decrease in payroll and related costs.

*Interest (income) expense, net*

Interest (income) expense, net, was \$4.0 million and \$3.9 million for the three months ended March 31, 2023 and 2022, respectively, which was primarily comprised of interest expense on the Pharmakon Senior Secured Notes during both periods.

**Liquidity and Capital Resources**

Since inception, we have incurred significant net losses and expect to continue to incur net losses for the foreseeable future. We incurred net losses of \$18.8 million and \$25.3 million for the three months ended March 31, 2023 and 2022, respectively. As of March 31, 2023, we had an accumulated deficit of \$703.7 million. We have funded our operations primarily through the sale and issuance of stock and debt, as well as through sales of XHANCE and licensing revenues. As of March 31, 2023, we had \$83.9 million in cash and cash equivalents.

The following table shows a summary of our cash flows for the periods indicated (in thousands):

	Three Months Ended March 31,	
	2023	2022
Net cash used in operating activities	\$ (10,478)	\$ (19,338)
Net cash used in investing activities	—	(48)
Net cash provided by financing activities	162	249
Effects of exchange rates on cash and cash equivalents	—	(3)
Net decrease in cash, cash equivalents and restricted cash	<u>\$ (10,316)</u>	<u>\$ (19,140)</u>

*Operating activities*

Cash used in operating activities decreased by \$8.9 million, from \$19.3 million for the three months ended March 31, 2022 to \$10.5 million for the three months ended March 31, 2023. The decrease in cash used in operating activities was attributable to a decrease in net loss and a decrease in accounts receivable due to increased sales and collections for the three months ended March 31, 2023.

*Investing activities*

Cash used in investing activities decreased from the three months ended March 31, 2022 to the three months ended March 31, 2023 due to a decrease in equipment purchases during the three months ended March 31, 2023.

*Financing activities*

Cash provided by financing activities decreased from the three months ended March 31, 2022 to the three months ended March 31, 2023 due to a decrease in proceeds from the issuance of common stock under our employee stock purchase plan.

*Projected 2023 operating expenses*

We expect that our total GAAP operating expenses, consisting of selling, general & administrative expenses and research & development expenses, for 2023 will be between \$88.0 million and \$93.0 million of which approximately \$6.0 million is expected to be stock-based compensation expense. As a result, our total operating expenses (consisting of selling, general & administrative expenses and research & development expenses) excluding stock-based compensation expense are expected to be between \$82.0 million and \$87.0 million. The \$88.0 million to \$93.0 million range is approximately a \$30.0 million reduction compared to 2022, of which approximately half is related to reductions in sales and marketing. The decrease in selling, general, and administrative expenses from 2022 to 2023 is anticipated as the result of actions taken to reduce near-term employee-related and third party expenses while preserving necessary capabilities to launch XHANCE as a treatment for patients with chronic sinusitis. In addition, the completion in 2022 of our clinical trial program in pursuit of a follow-on indication for XHANCE for the treatment of chronic sinusitis is the primary driver of an expected decrease in research and development expenses. Previously, we expected that our total operating expenses, consisting of selling, general & administrative expenses and research & development expenses, for 2023 would be between \$90.0 million and \$95.0 million of which approximately \$8.0 million was expected to be stock-based compensation expense.

*Future funding requirements*

We expect to continue to incur significant expenses in connection with our ongoing activities, particularly as we:

- continue advertising and other promotional activities to support the commercialization of XHANCE;
- continue to provide co-pay and other patient affordability programs for XHANCE;
- continue clinical development activities for XHANCE, including studies mandated under the Pediatric Research Equity Act, and activities in pursuit of a follow-on indication for the treatment of chronic rhinosinusitis;
- evaluate product candidates;
- continue to contract to manufacture XHANCE;
- maintain and protect our patent portfolio;
- service our debt obligations under the Pharmakon Senior Secured Notes;
- maintain infrastructure necessary to operate as a publicly-traded, commercial-stage company; and
- hire additional staff and add operational, financial and information systems to execute our business plan.

Our future funding requirements, both near and long-term, will depend on many factors, including, but not limited to:

- the success of our commercialization of XHANCE for the treatment of nasal polyps including, among other things, continued patient and physician adoption of XHANCE and our ability to maintain adequate insurance coverage and reimbursement for XHANCE;
- the outcome, timing and cost of the FDA regulatory approval process of XHANCE for chronic sinusitis, including the potential for the FDA to require that we perform additional studies and clinical trials;
- the cost of commercialization activities for XHANCE, including product manufacturing, distribution, marketing and sales;
- net product revenues received from sales of XHANCE;
- the level of co-pay assistance and other patient affordability programs offered for XHANCE;
- our clinical development plans for XHANCE, including the outcome, timing and cost of studies mandated under the Pediatric Research Equity Act, and activities in pursuit of a follow-on indication for the treatment of chronic rhinosinusitis;
- the costs involved in preparing, filing and prosecuting patent applications and annuity fees relating to issued patents;
- the cost of maintaining and enforcing our intellectual property rights, as well as the cost of defending intellectual property disputes, including patent infringement actions brought by third parties against us;
- the initiation, progress, timing, costs and results of clinical trials and other research and development related to additional product candidates,
- the duration and impact of COVID-19 restrictions on our business;
- the extent to which we in-license, acquire or otherwise partner in development or commercialization of other products, product candidates or technologies; and
- our ability to maintain compliance with the financial covenants (including the requirement for us to achieve certain minimum trailing twelve-month consolidated XHANCE net sales and royalties thresholds and the requirement for us to maintain at least \$30.0 million of cash and cash equivalents at all times), and the other provisions under the A&R Note Purchase Agreement, and, if needed and available from the holders of the Pharmakon Senior Secured Notes, the costs and conditions associated with obtaining a waiver or modification of such covenants or other provisions.

As of March 31, 2023, we had \$83.9 million in cash and cash equivalents. We will likely require additional capital in the near term in order to maintain compliance with the financial covenants and other terms under the A&R Note Purchase Agreement and to meet the debt service obligations under our outstanding Pharmakon Senior Secured Notes and to continue to fund our operations.



Our continuation as a going concern is dependent on our ability to maintain compliance with our covenants under the A&R Note Purchase Agreement, including minimum trailing twelve-month consolidated XHANCE net sales and royalties we are required to achieve commencing with the trailing twelve months ending March 31, 2024, and our ability to generate sufficient cash flows from operations to meet our obligations and/or obtain additional capital through equity or debt financings, partnerships, collaborations, or other sources, as may be required. The A&R Note Purchase Agreement includes events of default, in certain cases subject to customary periods to cure, following which Pharmakon may accelerate all amounts outstanding pursuant to the A&R Note Purchase Agreement. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business.

We believe it is probable that we will not achieve the trailing twelve-month minimum consolidated XHANCE net sales and royalties thresholds under the A&R Note Purchase Agreement for the initial period ending March 31, 2024, which will constitute a default under the A&R Note Purchase Agreement if we are unable to obtain a modification or waiver of such minimum consolidated XHANCE net sales and royalties threshold. Further, the A&R Note Purchase Agreement includes a requirement that commencing with the report and opinion on the consolidated financial statements commencing with the year ending December 31, 2023 and that all of our subsequent quarterly and annual financial statements, not be subject to any statement as to "going concern." We have concluded that it is unlikely that we will be able to comply with these provisions in 2024. Failure to comply with these provisions would also constitute an event of default under the A&R Note Purchase Agreement.

The A&R Note Purchase Agreement also requires us to maintain at all times a minimum of \$30.0 million of cash and cash equivalents. We believe that it is probable that our existing cash and cash equivalents will not be adequate to fund our operations and maintain at least \$30.0 million of cash and cash equivalents as required under the A&R Note Purchase Agreement for at least twelve-months following the filing of this Form 10-Q, which will also constitute a default of the liquidity financial covenant under the A&R Note Purchase Agreement if we are unable to obtain additional capital or obtain a waiver or modification to this liquidity covenant prior to falling below such \$30.0 million threshold.

In the event of any of the foregoing defaults, the holders of the Pharmakon Senior Secured Notes may declare an event of default under the A&R Note Purchase Agreement and may elect to accelerate the repayment of all unpaid principal, accrued interest and other amounts due, which may require us to delay or curtail our operations until additional funding is received. These factors raise substantial doubt about our ability to continue as a going concern. The terms of the A&R Note Purchase Agreement and the Pharmakon Senior Secured Notes, including applicable covenants, are described in Note 8. In the event we are able to maintain compliance with the financial and other covenants and terms of the A&R Pharmakon Note Purchase Agreement or obtain a waiver to or modification of such covenants, we believe our existing cash and cash equivalents will be sufficient to fund our operations and debt service obligations for approximately the next 12 months.

We will likely require additional capital in the future secured through equity or debt financings, partnerships, collaborations, or other sources in order to meet our debt service obligations, including repayment, under the Pharmakon Senior Secured Note, and to carry out our planned development and commercial activities. If additional capital is not obtained when required, we may need to delay or curtail our operations until additional funding is received.

Additionally, we may never become profitable, or if we do, may not be able to sustain profitability on a recurring basis.

#### **Critical accounting policies**

The Critical Accounting Policies and Significant Judgments and Estimates included in our annual report on Form 10-K for the year ended December 31, 2022, as filed with the SEC on March 7, 2023, have not materially changed.

#### **Recent accounting pronouncements**

See Note 3 to our unaudited interim consolidated financial statements of this Form 10-Q for a description of recent accounting pronouncements applicable to our consolidated financial statements.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934 and are not required to provide the information under this item.



## **ITEM 4. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (Exchange Act), refers to controls and procedures that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a control system, misstatements due to error or fraud may occur and not be detected.

Our Chief Executive Officer and our Principal Financial Officer evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were effective as of March 31, 2023.

### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during the three months ended March 31, 2023 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II**

### **ITEM 5. OTHER INFORMATION**

On May 9, 2023, we entered into amended and restated employment agreements with our executive officers (Dr. Mahmoud, Mr. Krick, Mr. Marino and Mr. Spence) (collectively, the “Amended Agreements”). The Amended Agreements amend and restate the prior employment agreements to:

- provide that, in the event the executive’s employment is terminated due to death, the executive shall be entitled to receive a pro-rata bonus for the year in which such termination occurs in addition to the Accrued Benefits provided under the prior employment agreements;
- modify the definition of “Disability” contained in the agreements; and
- modify the binding arbitration provisions contained in the agreements.

Except as noted above, all other provisions contained in the prior employment agreements are restated, without substantial change, in the Amended Agreements.

The foregoing is a summary description of certain terms of the Amended Agreements and, by its nature, is not complete. It is qualified in its entirety by reference to the Amended Agreements, copies of which are attached as Exhibits 10.4 to 10.7 to this Form 10-Q, and are incorporated herein by reference.

### **ITEM 6. EXHIBITS**

The following is a list of exhibits filed as part of this Quarterly Report on Form 10-Q. Where so indicated, exhibits that were previously filed are incorporated by reference. For exhibits incorporated by reference, the location of the exhibit in the previous filing is indicated.

## INDEX TO EXHIBITS

Exhibit Number	Exhibit Description
3.1	<a href="#">Fourth Amended and Restated Certificate of Incorporation of OptiNose, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on October 18, 2017).</a>
3.2	<a href="#">Amended and Restated Bylaws of OptiNose, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on October 18, 2017).</a>
4.1 +	<a href="#">Form of Common Stock Warrant issued by OptiNose, Inc. on November 23, 2022 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on November 23, 2022).</a>
10.1	<a href="#">Amended and Restated Employment Agreement, dated January 30, 2023, between OptiNose US, Inc. and Ramy A. Mahmoud (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on January 31, 2023).</a>
10.2	<a href="#">Separation Agreement and Release, dated January 30, 2023, between Peter K. Miller and OptiNose US, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on January 31, 2023).</a>
10.3	<a href="#">Consulting Agreement, dated January 30, 2023, between Peter K. Miller and OptiNose US, Inc. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K (File No. 001-38241), as filed with the SEC on January 31, 2023).</a>
10.4 * †	<a href="#">Amended and Restated Employment Agreement, dated May 9, 2023, between OptiNose US, Inc. and Ramy A. Mahmoud.</a>
10.5 * †	<a href="#">Amended and Restated Employment Agreement, dated May 9, 2023, between OptiNose US, Inc. and Michael F. Marino.</a>
10.6 * †	<a href="#">Amended and Restated Employment Agreement, dated May 9, 2023, between OptiNose US, Inc. and Anthony J. Krick.</a>
10.7 * †	<a href="#">Amended and Restated Employment Agreement, dated May 9, 2023, between OptiNose US, Inc. and Paul Spence.</a>
31.1 *	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or 15a-14(a) under the Exchange Act.</a>
31.2 *	<a href="#">Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or 15a-14(a) under the Exchange Act.</a>
32.1 **	<a href="#">Certification Pursuant to 18 U.S.C. Section 1350 of principal executive officer.</a>
32.2 **	<a href="#">Certification Pursuant to 18 U.S.C. Section 1350 of principal financial officer.</a>
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

\* Filed herewith.

\*\* Furnished herewith.

+ Refiled with no changes

† Indicates management contract or compensatory arrangement

**SIGNATURES**

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

Date: May 11, 2023

**OPTINOSE, INC.**

By: /s/ ANTHONY J. KRICK

Name: Anthony J. Krick

Title: *Chief Accounting Officer*

*(Principal Financial and Accounting Officer)*

## **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “Agreement”) is entered into effective as of May 9, 2023 (the “Effective Date”), by and between OptiNose US, Inc., a Delaware corporation (“OptiNose US”) and wholly-owned subsidiary of OptiNose, Inc. (the “Parent” and, together with OptiNose US, the “Company”), and Ramy A. Mahmoud (“Executive”).

WHEREAS, Executive currently serves as Chief Executive Officer of OptiNose, Inc., pursuant to that certain Employment Agreement entered into by and between Executive and the Company, dated January 30, 2023 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to enter into this Agreement to replace the Existing Agreement in its entirety and to set forth the terms and conditions for the continued employment relationship of Executive with the Company.

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

**1. Term.** Subject to the terms and provisions of this Agreement, this Agreement shall continue until Executive’s employment with the Company is terminated by the Company or by Executive. At all times, Executive’s employment with the Company is “at-will,” which means that Executive’s employment with the Company may be terminated at any time by the Company with or without “Cause” or by Executive with or without “Good Reason” (as each such term is defined below).

**2. Title, Duties and Responsibilities.** While Executive is employed by the Company, Executive will serve as the Chief Executive Officer of OptiNose, Inc. and OptiNose US and will report to the Board of Directors of the Parent (“the Board”). Executive shall be appointed to serve on the Board and, during the term of this Agreement, the Company shall cause Executive to be nominated to stand for election to the Board at any meeting of stockholders of the Company during which any such election is held and Executive’s term as director will expire if Executive is not reelected; provided, however, that (a) the Company shall not be obligated to cause such nomination if any of the events consisting Cause have occurred and not been cured or Executive has issued a notice of termination of employment to the Company and (b) the stockholders’ failure to reelect Executive shall not constitute a termination of Executive’s employment by the Company without Cause and shall not constitute an event giving rise to Good Reason. Executive will have such duties and responsibilities that are commensurate with Executive’s position as Chief Executive Officer of OptiNose, Inc. and such other duties and responsibilities as are from time to time assigned to Executive by the Board. While Executive is employed by the Company, Executive will devote Executive’s full business time, energy and skill to the performance of Executive’s duties and responsibilities hereunder; provided, however, that Executive will be permitted to devote a reasonable amount of time either during or after business hours to Outside Activities (as defined below), so long as such activities (i) do not prohibit or interfere with Executive’s performance of Executive’s duties under this Agreement, (ii) do not conflict with the business of the Company or violate any of the provisions of Section 8 herein and (iii) are approved in advance in writing by the Nominating and Corporate Governance

Committee (which shall not be unreasonably withheld). For purposes of this Agreement, “Outside Activities” shall include the oversight of passive investments and activities involving professional, charitable, religious or other organizations (including membership on boards of for-profit and non-profit organizations). Executive shall, if requested by the Board, also serve as an officer or director of any affiliate of the Company for no additional compensation. Executive’s place of employment will be the Company’s offices in Yardley, Pennsylvania.

**3. Base Salary.** While Executive is employed by the Company, the Company will pay Executive a base annual salary (the “Base Salary”) at the rate of \$660,000.00 per year, paid in accordance with the usual payroll practices of the Company as it is earned. Executive’s Base Salary shall be reviewed periodically for potential increases pursuant to Company policies applicable to senior executives by the Compensation Committee of the Board (the “Compensation Committee”) or the Board.

**4. Incentive Compensation.** Executive shall participate in short-term and long-term incentive programs, including equity compensation programs, established by the Company for its senior level executives generally, at levels determined by the Board or the Compensation Committee. Executive’s incentive compensation shall be subject to the terms of the applicable plans and shall be determined based on Executive’s individual performance and the Company’s performance as determined by the Board or the Compensation Committee. Any annual incentive compensation earned by Executive shall be paid on or after January 1, but not later than March 15 of the fiscal year following the fiscal year for which the annual incentive compensation is earned.

**(a) Discretionary Bonus.** Executive will be eligible to receive an annual target cash bonus of 65% of Executive’s Base Salary (the “Target Annual Bonus”) (pro-rated for any portion of a year during which Executive is not employed by the Company) at the discretion of the Board or the Compensation Committee and contingent upon attainment of certain Company milestones and/or individual objectives as determined by the Board or the Compensation Committee. The actual annual bonus payable for any given year, if any, may be higher or lower than the Target Annual Bonus. To earn and be paid an annual bonus, Executive must be actively employed with the Company at the time that such bonuses are paid to all eligible executives in accordance with such bonus program unless otherwise specified herein or in the terms pursuant to which such bonus eligibility is offered. Executive’s Target Annual Bonus shall be reviewed periodically for potential increases pursuant to Company review policies applicable to senior executives by the Compensation Committee or the Board.

**(b) Equity Incentive Compensation.** Executive shall be eligible to receive annual equity awards based on the Company’s and Executive’s actual performance, as determined by the Board or the Compensation Committee. Each such equity award granted to Executive hereunder shall be subject to the terms and conditions of the incentive plan pursuant to which it is granted and such other terms and conditions as are established by the Board or Compensation Committee and set forth in an award agreement evidencing the grant of such equity award.

**5. Benefits and Fringes.**

**(a) General.** While Executive is employed by the Company, Executive will be

entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its senior level executives, subject to the satisfaction of any eligibility requirements and any other terms and conditions of the applicable plans or policies.

**(b) Vacation.** Executive will also be entitled to 20 business days of annual paid vacation in accordance with the Company's vacation policies in effect from time to time, which may be taken at such times as Executive elects with due regard to the Company's business needs.

**(c) Reimbursement of Business Expenses.** Upon presentation of appropriate documentation, Executive will be reimbursed in accordance with the Company's expense reimbursement policy for all reasonable and necessary business expenses incurred in connection with the performance of Executive's duties and responsibilities hereunder.

## **6. Termination of Employment.**

**(a) Written Notice of Termination and Resignation from Roles.** Any termination of Executive's employment by the Company or Executive (other than because of Executive's death) shall be communicated by a written notice of termination to the other party hereto in accordance with the requirements of this Agreement. Upon termination of Executive's employment with the Company, Executive shall be deemed to have resigned from all positions that Executive holds as an officer or member of the board of directors (or a committee thereof) of the Company or any of its affiliates and all powers of attorney held by Executive arising out of or relating to such Executive's employment with the Company shall be deemed to have been revoked. Regardless of the reason therefore, Executive shall be entitled to receive payment for: (i) any accrued but unpaid portion of Executive's Base Salary earned through the termination date; (ii) any accrued but unused vacation as of the termination date; (iii) any unearned but unpaid bonus for which the performance measurement period has ended prior to the termination date (e.g., if Executive's employment is terminated on February 1 and annual bonuses for the prior year have not been paid as of the termination date, then Executive would be eligible to receive his annual bonus for the prior year but not a bonus for the year in which the termination occurs), provided, that the termination of Executive's employment is not for Cause or due to Executive's voluntary resignation (other than for Good Reason); (iv) any amounts owing to Executive for reimbursements of expenses that Executive properly incurred before the termination date and which are reimbursable in accordance with Section 5(c) above, with all such amounts owed under each of (i), (ii), (iii) and (iv) payable in a lump sum no later than the Company's first regularly scheduled payroll date that is at least ten (10) days after the date of Executive's termination date; and (v) any amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company at or subsequent to the termination date, payable in accordance with such plan, policy, practice or program or contract or agreement (collectively, the "Accrued Benefits").

**(b) Termination upon Death.** If Executive dies, then Executive's employment with the Company shall terminate as of the date of Executive's death, at which time all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive's heirs, personal representatives or estate shall be entitled to the Accrued Benefits and a payment in the amount of Executive's then-current target

annual cash bonus opportunity, prorated based upon the number of days that Executive was employed during the year of Executive's death.

**(c) Termination upon Disability.** "Disability" means any physical or mental incapacity, illness or infirmity that prevents or significantly restricts Executive from performing the normal duties of Executive's position on a full-time basis for a period of at least 180 calendar days, whether or not consecutive, out of any twelve (12) consecutive months, despite the provision, if requested, of a reasonable accommodation as that term is defined in accordance with the American with Disabilities Act and/or any equivalent state or local law and that, in the reasonable opinion of the Company acting on the basis of advice from a duly-qualified medical practitioner is likely to continue to a similar degree. Upon the termination of Executive's employment due to Disability, the Company shall provide written notice to Executive, at which time all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits and a payment in the amount of Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was actively employed during the year of Executive's death.

**(d) Termination by the Company for Cause.** The Company may, upon written notice to Executive, immediately terminate Executive's employment for Cause. "Cause" shall exist upon (i) Executive's breach of any fiduciary duty or material legal or contractual obligation to the Company or any of its affiliates (including, without limitation, pursuant to a Company or affiliate policy or the restrictive covenants set forth in Section 8 of this Agreement or any other applicable restrictive covenants between Executive and the Company or any of its affiliates), (ii) Executive's failure to follow the reasonable instructions of the Chief Executive Officer or the Board (other than as a result of total or partial incapacity due to physical or mental illness), which failure, if curable, is not cured within thirty (30) days after notice to Executive specifying in reasonable detail the nature of such breach, or, if cured, recurs within ninety (90) business days, (iii) Executive's gross negligence, willful misconduct, fraud, insubordination, acts of dishonesty or conflict of interest relating to the Company or any of its affiliates, or (iv) Executive's commission of any misdemeanor which has a material impact on the affairs, business or reputation of the Company or any of its affiliates or Executive's indictment for, or plea of nolo contendere to, a crime constituting a felony under the laws of the United States or any state thereof. Upon a termination of Executive's employment for Cause, all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 of this Agreement or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits.

**(e) Termination by the Company without Cause or by Executive for Good Reason.** Except as provided in Section 6(f) below, upon a termination of Executive's employment by the Company without Cause or by Executive for Good Reason, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive's execution and non-revocation of the release described in Section 6(g) and Executive's compliance with Executive's obligations under Section 8, the following severance payments and benefits (collectively, the "Severance Benefits"):

(i) an amount equal to 100% of the sum of Executive's (x) Base Salary and (y) target annual cash bonus opportunity, in each case at the rate in effect on the date of termination, payable in substantially equivalent installments, over a period of one year, with the



first payment made on the Company's first practical pay date following the Release Effective Date and remaining installments tendered thereafter on consecutive, semi-monthly pay dates in accordance with the Company's regularly-scheduled payroll calendar until paid in full;

(ii) Continuation of coverage under the Company's group health insurance plan under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA") at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of twelve (12) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after Executive's termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the Internal Revenue Code of 1986, as amended, or otherwise violate any healthcare law or regulation, then the Company shall pay to Executive an amount equal to the amount Executive would be required to pay for continuation of group health coverage for Executive and Executive's eligible dependents through an election under COBRA for twelve (12) months, which amount shall be paid in a lump sum at the same time payments under Section 6(e)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election. Following the COBRA Subsidy Period, Executive and Executive's dependents may, subject to statutory eligibility requirements, continue COBRA coverage at standard COBRA rates for the remainder of the applicable COBRA continuation period permitted by law as long as Executive and Executive's dependents pay the full cost of such coverage in accordance with the Company's COBRA continuation health coverage policies; and

(iii) to the extent such termination of Executive's employment by the Company without Cause or by Executive for Good Reason occurs any time following a Change of Control transaction (and without limiting any Change of Control Severance Benefits specified in Section 6(f) below), Executive shall receive twelve (12) months of vesting acceleration with respect to all of Executive's then-outstanding equity awards granted to Executive by the Company or assumed, continued or substituted for by the acquiring entity in such Change of Control transaction.

"Good Reason" shall mean, without Executive's prior written consent: (i) a material diminution in Executive's then position or duties, authority or responsibilities including, without limitation, Executive ceasing to be an "executive officer" (as defined under Rule 3b-7 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of a company with a class of securities registered under Section 12(b) of the Exchange Act, (ii) the assignment to Executive

of any duties materially inconsistent with the duties and responsibilities of Chief Executive Officer, (iii) a reduction by the Company in Executive's then-current Base Salary or Executive's then-current Target Annual Bonus unless the salaries and target annual bonuses for all other senior executive officers are correspondingly and proportionately reduced by not greater than 15% and such reduction continues for no more than twelve (12) months; (iv) Executive's relocation to offices of the Company that are more than fifty (50) miles from the Company's offices in Yardley, Pennsylvania; or (v) any action or inaction that constitutes a material breach of this Agreement by the Company. In order to invoke a termination for Good Reason, Executive must deliver a written notice of the grounds for such termination within thirty (30) days of the initial existence of the event giving rise to Good Reason and the Company shall have thirty (30) days to cure the circumstances. In order to terminate Executive's employment, if at all, for Good Reason, Executive must terminate employment within sixty (60) days following the end of the cure period if the circumstances giving rise to Good Reason have not been cured.

**(f) Termination by the Company without Cause or by Executive for Good Reason Following a Change of Control.** Upon a termination of Executive's employment by the Company without Cause or by Executive for Good Reason, in each case within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive's execution and non-revocation of the release described in Section 6(g) and Executive's compliance with Executive's obligations under Section 8, the following severance payments and benefits (collectively, the "Change of Control Severance Benefits"):

(i) an amount equal to 200% of the sum of Executive's (x) Base Salary and (y) target annual cash bonus opportunity, in each case at the rate in effect on the termination date, payable in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(ii) an amount equal to Executive's annual cash bonus, which shall be equal to the greater of (x) Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was employed during the year in which the employment termination occurs, and (y) an annualized amount of bonus for such year as determined by the Board in good faith based on the achievement of objectives up to the Change of Control, prorated based upon the number of days Executive was employed during that year. The pro rated bonus described in this Section 6(f)(ii) shall be paid in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(iii) Continuation of coverage under the Company's group health insurance plan through COBRA at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of eighteen (18) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after the termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the Code, or otherwise violate any healthcare law or regulation, then, the Company shall pay to Executive the amount Executive would be required to pay for continuation of group health coverage for Executive and

Executive's eligible dependents through an election under COBRA for eighteen (18) months which amount shall be paid in a lump sum at the same time payments under Section 6(f)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election; In addition to providing the COBRA Subsidy and following the expiration of the COBRA Subsidy Period, the Company will pay Executive an additional lump sum, equivalent to the value of the then-in-effect premium for the health insurance coverages and coverage level in which the Executive was enrolled while participating in COBRA for a period of six (6) months, less applicable income and employment taxes and withholdings (the "Additional Benefits Payment"); and

(iv) all of Executive's then-outstanding equity awards granted to Executive by the Company shall become immediately vested.

Notwithstanding anything contained herein to the contrary, in the event that Executive is entitled to the amounts set forth in Section 6(e)(i) as a result of Executive's employment termination prior to a Change of Control and a Change of Control occurs within three (3) months following Executive's termination date, Executive shall receive the amounts set forth in this Section 6(f), less any severance compensation paid to Executive pursuant to Section 6(e), paid in the same form and time as provided in Section 6(f), except that the amounts payable pursuant to Section 6(f)(i) shall be paid to Executive in a lump sum, within ten (10) days after the date of the Change of Control.

(g) Payment to Executive of any Severance Benefits or Change of Control Severance Benefits, as applicable, shall be conditioned on Executive's compliance with the requirements of Section 8 hereof and Executive's execution of a general release in favor of the Company and its affiliates substantially in the form attached hereto as Exhibit A (the "Release") and the lapse of any revocation period specified therein with the Release not having been revoked. The Release shall be provided to Executive within three (3) days of Executive's employment termination. Executive will forfeit all rights to the Severance Benefits and the Change of Control Severance Benefits, as applicable, unless, within sixty (60) days of Executive's employment termination, Executive executes and delivers the Release to the Company and such Release has become irrevocable by virtue of the expiration of the revocation period specified therein without the Release having been revoked (the first such date, the "Release Effective Date"). The Company's obligation to pay the Severance Benefits or the Change of Control Severance Benefits, as applicable, is subject to the occurrence of the Release Effective Date, and if the Release Effective Date does not occur, then the Company shall have no obligation to pay such Severance Benefits or Change of Control Severance Benefits, as applicable. Notwithstanding anything contained herein to the contrary, in the event that the period during which Executive may review and revoke the Release begins in one calendar year and ends in the following calendar year, any

severance payments hereunder that constitute non-qualified deferred compensation subject to Section 409A of the Code shall be paid to Executive no earlier than January 1 of the second calendar year.

## **7. Section 280G.**

(a) Executive shall bear all expense of, and be solely responsible for, any excise tax imposed by Section 4999 of the Code (such excise tax being the “Excise Tax”); provided, however, that any payment or benefit received or to be received by Executive, whether payable under the terms of this Agreement or any other plan, arrangement or agreement with Company or an affiliate of Company (collectively, the “Payments”) that would constitute a “parachute payment” within the meaning of Section 280G of the Code, shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit Executive receives shall exceed the net after-tax benefit that Executive would receive if no such reduction was made.

(b) The “net after-tax benefit” shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute “parachute payments” within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income and employment taxes payable by Executive with respect to the foregoing calculated at the highest marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Tax imposed with respect to the payments and benefits described in (b)(i) above.

(c) All determinations under this Section 7 will be made by an accounting firm or law firm (the “280G Firm”) that is mutually agreed to by Executive and the Company prior to a change in ownership or control of a corporation (within the meaning of Treasury regulations under Section 280G of the Code). The 280G Firm shall be required to evaluate the extent to which payments are exempt from Section 280G of the Code as reasonable compensation for services rendered before or after the Change of Control. All fees and expenses of the 280G Firm shall be paid solely by the Company. The Company will direct the 280G Firm to submit any determination it makes under this Section 7 and detailed supporting calculations to both Executive and the Company as soon as reasonably practicable.

(d) If the 280G Firm determines that one or more reductions are required under this Section 7, such Payments shall be reduced in the order that would provide Executive with the largest amount of after-tax proceeds (with such order, to the extent permitted by Sections 280G and 409A of the Code, designated by Executive, or otherwise determined by the 280G Firm) to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to Executive. Executive shall at any time have the unilateral right to forfeit any equity award in whole or in part.

(e) As a result of the uncertainty in the application of Section 280G of the Code at the time that the 280G Firm makes its determinations under this Section 7, it is possible that amounts will have been paid or distributed to Executive that should not have been paid or distributed (collectively, the “Overpayments”), or that additional amounts should be paid or distributed to Executive (collectively, the “Underpayments”). If the 280G Firm determines, based on either the

assertion of a deficiency by the Internal Revenue Service against Executive or the Company, which assertion the 280G Firm believes has a high probability of success or is otherwise based on controlling precedent or substantial authority, that an Overpayment has been made, Executive must repay the Overpayment to the Company, without interest; provided, however, that no loan will be deemed to have been made and no amount will be payable by Executive to the Company unless, and then only to the extent that, the deemed loan and payment would either reduce the amount on which Executive is subject to tax under Section 4999 of the Code or generate a refund of tax imposed under Section 4999 of the Code. If the 280G Firm determines, based upon controlling precedent or substantial authority, that an Underpayment has occurred, the 280G Firm will notify Executive and the Company of that determination, and the Company will promptly pay the amount of that Underpayment to Executive without interest.

(f) Executive and the Company will provide the 280G Firm access to and copies of any books, records, and documents in their possession as reasonably requested by the 280G Firm, and otherwise cooperate with the 280G Firm in connection with the preparation and issuance of the determinations and calculations contemplated by this Section 7. For purposes of making the calculations required by this Section 7, the 280G Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code.

## **8. Covenants.**

(a) **Non-Competition.** So long as Executive is employed by the Company under this Agreement and for (i) the twenty-four (24) month period following the termination of Executive's employment with the Company in the event Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, in each case, within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control or (ii) the nine (9) month period following the termination of Executive's employment with the Company for any reason not covered by clause (i) (such applicable period, the "Restricted Period"), Executive agrees that Executive will not, directly or indirectly, without the prior written consent of the Company, engage in Competition with OptiNose. "Competition" means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any other capacity whatsoever in any business or venture that competes with any business that OptiNose is engaged in as of the date of Executive's employment termination with the Company or is actively planning to engage in as of the date of Executive's employment termination with the Company. Notwithstanding the foregoing, after Executive's employment termination, employment by or consultation for a publicly traded company that derives less than five percent (5%) of its net revenues from activities that compete with business that OptiNose engages in, shall not constitute Competition so long as Executive does not provide employment or consulting services to the business segment of such publicly traded company that engages in such competitive activities. Executive is entering into this covenant not to compete in consideration of the agreements of the Company in this Agreement, including but not limited to, the agreement of the Company to provide the severance and other benefits to Executive upon a employment termination pursuant to Sections 6(e) and (f) hereof, as applicable.

(b) **Confidentiality.** Executive agrees that Executive will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person or entity, other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose, either

while Executive is employed by the Company hereunder or at any time thereafter, any business and technical information or trade secrets, nonpublic, proprietary or confidential information, knowledge or data relating to OptiNose whether the foregoing will have been obtained by Executive during Executive's employment hereunder or otherwise. The foregoing will not apply to information that (i) was known to the public prior to its disclosure to Executive; (ii) becomes generally known to the public or in OptiNose's industry subsequent to disclosure to Executive through no wrongful act by Executive or any of Executive's representatives; or (iii) Executive is required to disclose by applicable law, regulation or legal process (provided that Executive provides the Company with prior notice of the contemplated disclosure and cooperates at the Company's cost with the Company in seeking a protective order or other appropriate protection of such information). The Company and Executive acknowledge that, notwithstanding anything to the contrary contained in this Agreement, pursuant to 18 USC § 1833(b), an individual may not be held liable under any criminal or civil federal or state trade secret law for disclosure of a trade secret: (aa) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law or (bb) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. The Company and Executive further acknowledge that an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to Executive's attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

(c) **Non-Solicitation of Customers.** Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, customers of OptiNose to purchase goods or services then sold by OptiNose from any other person or entity.

(d) **Non-Solicitation of Suppliers.** Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, the Company's suppliers to provide goods or services then provided to OptiNose to any other person or entity in Competition with OptiNose.

(e) **Non-Solicitation of Employees.** Executive recognizes that Executive will possess confidential information about other employees of OptiNose relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of OptiNose. Executive recognizes that the information Executive possesses and will possess about these other employees is not generally known, is of substantial value to OptiNose in developing its business and in securing and retaining customers, and has been and will be acquired by Executive because of Executive's business position with OptiNose. Executive agrees that, during the Restricted Period, Executive will not, (i) directly or indirectly, individually or on behalf of any other person or entity solicit or recruit any employee of OptiNose to leave such employment for the purpose of being employed by, or rendering services to, Executive or any person or entity unaffiliated with OptiNose, or (ii) convey any such confidential information or trade secrets about other employees of OptiNose to any person or entity other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose. Notwithstanding the foregoing, the Company agrees that hiring any employee of OptiNose who responds to a general advertisement for employment that was not specifically directed at the employees of OptiNose shall not be deemed a violation of this Section 8(e).

(f) **Non-Disparagement.** Executive agrees that Executive will not, nor will Executive induce others to, Disparage OptiNose or any of their past or present officers, directors, employees or products. Similarly, the directors and senior executives of OptiNose will not, nor will they induce others to, Disparage Executive. “Disparage” will mean making comments or statements to the press, OptiNose’s employees or any individual or entity with whom Executive or OptiNose, as applicable, has a business relationship that would adversely affect in any manner, as applicable: (i) the conduct of the business of OptiNose (including, without limitation, any products or business plans or prospects); (ii) the business reputation of OptiNose, or any of their products, or their past or present officers, directors or employees; or (iii) the business reputation of Executive.

(g) **Inventions.**

(i) Executive acknowledges and agrees that all trade secrets, mask works, concepts, drawings, materials, documentation, procedures, diagrams, specifications, models, processes, formulae, source and object codes, data, programs, know-how, designs, techniques, ideas, methods, inventions, discoveries, improvements, work products, developments or other works of authorship (“Inventions”), whether patentable or unpatentable, (aa) that relate to Executive’s work with OptiNose, made, developed or conceived by Executive, solely or jointly with others or with the use of any of OptiNose’s equipment, supplies, facilities or trade secrets or (bb) suggested by any work that Executive performs in connection with OptiNose, either while performing Executive’s duties with OptiNose or on Executive’s own time, but only insofar as the Inventions are related to Executive’s work as an employee of OptiNose (collectively, “Company Inventions”), will belong exclusively to the Company (or its designee), whether or not patent applications are filed thereon. Executive will keep full and complete written records (the “Records”), in the manner prescribed by OptiNose, of all Company Inventions, and will promptly disclose all Company Inventions completely and in writing to the Company. The Records will be the sole and exclusive property of the Company, and Executive will surrender them upon the termination of Executive’s employment, or upon the Company’s request. Executive hereby assigns to the Company (or its designee) the Company Inventions including all rights in and to any related patents and other intellectual property that may issue thereon in any and all countries, whether during or subsequent to Executive’s employment with OptiNose, together with the right to file, in Executive’s name or in the name of the Company (or its designee), applications for patents and equivalent rights (the “Applications”). Executive will, at any time during and subsequent to Executive’s employment with OptiNose, make such applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Company with respect to the Company Inventions and the underlying intellectual property. Executive will also execute assignments to the Company (or its designee) of the Applications, and give the Company and its attorneys all reasonable assistance (including the giving of testimony) to obtain the Company Inventions and the underlying intellectual property for its benefit, all without additional compensation to Executive from the Company, but entirely at the Company’s expense.

(ii) In addition, the Company Inventions will be deemed “work made for hire”, as such term is defined under the copyright law of the United States, on behalf of OptiNose and Executive agrees that the Company (or its designee) will be the sole owner of the Company Inventions, and all underlying rights therein, in all media now known or hereinafter devised, throughout the universe and in perpetuity without any further obligations or compensation to

Executive. If the Company Inventions, or any portion thereof, are deemed not to be work made for hire, Executive hereby irrevocably conveys, transfers, assigns and delivers to the Company (or its designee), all rights, titles and interests, in all media now known or hereinafter devised, throughout the universe and in perpetuity, in and to the Company Inventions, including without limitation: (aa) all of Executive's rights, titles and interests in and to any underlying intellectual property (and all renewals, revivals and extensions thereof) related to the Company Inventions; (bb) all rights of any kind or any nature now or hereafter recognized, including without limitation, the unrestricted right to make modifications, adaptations and revisions to the Company Inventions, to exploit and allow others to exploit the Company Inventions; and (cc) all rights to sue at law or in equity for any infringement, or other unauthorized use or conduct in derogation of the Company Inventions, known or unknown, prior to the date hereof, including without limitation the right to receive all proceeds and damages therefrom. In addition, Executive hereby waives any so-called "moral rights" with respect to the Company Inventions. Executive hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents and other intellectual property rights that may issue thereon, including, without limitation, any rights that would otherwise accrue to Executive's benefit by virtue of Executive being an employee of or other service provider to OptiNose.

(iii) To the extent that Executive is unable to assign any of Executive's right, title or interest in any Company Invention under applicable law, for any such Company Invention and the underlying intellectual property rights, Executive hereby grants to the Company (or its designee) an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid license to such Company Invention and the underlying intellectual property, with the right to sublicense, use, modify, create derivative works and otherwise fully exploit such Company Invention and the underlying intellectual property, to assign this license and to exercise all rights and incidents of ownership of the Company Invention.

(iv) To the extent that any of the Company Inventions are derived by, or require use by OptiNose of, any works, Inventions, or other intellectual property rights that Executive owns, which are not assigned hereby, Executive hereby grants to the Company (or its designee) an irrevocable, perpetual, transferable, worldwide, non-exclusive, royalty free license, with the right to sublicense, use, modify and create derivative works using such works, Inventions or other intellectual property rights, but only to the extent necessary to permit the Company to fully realize their ownership rights in the Company Inventions.

(h) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), Executive agrees that while employed by OptiNose (for no additional compensation) and thereafter (for reasonable compensation for Executive's time), Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive's employment with OptiNose, and will provide reasonable assistance to OptiNose and its representatives in defense of any claims that may be made against OptiNose, and will assist OptiNose in the prosecution of any claims that may be made by OptiNose, to the extent that such claims may relate to the period of Executive's employment with OptiNose (or any predecessor). Executive agrees to promptly inform the Company if Executive becomes aware of any lawsuits involving such claims that may be filed or threatened against OptiNose. Executive also agrees to promptly inform the Company (to the extent Executive is legally permitted to do so) if Executive is asked to assist in any investigation of OptiNose (or their actions), regardless of whether a



lawsuit or other proceeding has then been filed against OptiNose with respect to such investigation, and will not do so unless legally required.

(i) **Return of Property.** On the date of the termination of Executive's employment with the Company for any reason (or at any time prior thereto at the Company's request), Executive will return all property belonging to OptiNose (including, but not limited to, any Employer provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to OptiNose).

(j) **Injunctive Relief.** It is further expressly agreed that OptiNose will or would suffer irreparable injury if Executive were to violate the provisions of this Section 8 and that OptiNose would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and Executive further consents and stipulates to the entry of such injunctive relief in such court prohibiting Executive from violating the provisions of this Section 8.

(k) **Survival of Provisions.** The obligations contained in this Section 8 will survive the termination of Executive's employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this Section 8 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

(l) **Prior Agreements.** Executive represents and warrants to the Company that there are no restrictions, agreements or understandings whatsoever to which Executive is a party that would prevent or make unlawful Executive's execution of this Agreement or Executive's employment hereunder, is or would be inconsistent or in conflict with this Agreement or Executive's employment hereunder, or would prevent, limit or impair in any way the performance by Executive of the obligations hereunder.

**9. Assignment; Third Party Beneficiaries.** Notwithstanding anything else herein, this Agreement is personal to Executive and neither the Agreement nor any rights hereunder may be assigned by Executive. The Company may assign the Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. OptiNose shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of OptiNose to expressly assume and agree to perform this Agreement in the same manner and to the same extent that OptiNose would be required to perform it if no such succession had taken place. This Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties. Executive acknowledges that this Agreement is intended to benefit the Company, its shareholders, and its and their parents, affiliates, subsidiaries, divisions, and related companies or entities, now existing or hereafter created. Both Executive and the Company further acknowledge and agree that the intended beneficiaries of this Agreement are entitled to enforce the provisions of this Agreement by seeking injunctive relief or any other appropriate remedy.

**10. Clawback/Recoupment.** Notwithstanding any other provision in this Agreement to the contrary, any compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company shall be subject to mandatory repayment by Executive to the Company to the extent any such compensation paid to Executive is, or in the future becomes, subject to (i) any “claw-back” or recoupment policy applicable to Executive that is adopted to comply with any applicable law, rule or regulation (including stock exchange rule), or (ii) any law, rule or regulation (including stock exchange rule) which imposes mandatory recoupment, under circumstances set forth in such law, rule or regulation.

**11. Arbitration; Waiver of Rights to Sue; Attorneys’ Fees.**

(a) Except as provided in Section 8(j), the parties agree that they will use binding arbitration to settle all claims and disputes that may arise out of this Agreement or that in any way relate to Executive’s employment with Company. Specifically, both the Company and Executive agree that any claim, dispute and/or controversy that either Executive may have against the Company (or its directors, officers, managers, employees, agents or parties affiliated with its employee benefit and health plans), or that the Company may have against Executive, shall be submitted to binding arbitration conducted before one (1) arbitrator mutually agreed to by the Company and Executive, sitting in Philadelphia, Pennsylvania or such other location mutually agreed to by Executive and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association (“AAA Rules”) then in effect; provided, however, that if the Company and Executive are unable to agree on a single arbitrator within thirty (30) calendar days of the demand by another party for arbitration, an arbitrator will be designated by the Philadelphia Office of the American Arbitration Association.

(b) **Coverage.** Included within the parties’ agreement to submit all disputes to binding arbitration are all employment-related claims and disputes, whether based upon tort, contract, statute (including but not limited to any claims of workplace discrimination, harassment (other than sexual harassment), retaliation, failure to pay proper wages or other compensation (including commissions, bonuses, salary, severance pay or other benefits), or any other unlawful employment practice or wrongful termination, whether based upon the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the National Labor Relations Act, the Labor Management Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Genetic Information Nondiscrimination Act, the Lilly Ledbetter Fair Pay Act of 2009, the Fair Credit Reporting Act, the Family and Medical Leave Act, the Equal Pay Act of 1963, the Consolidated Omnibus Budget Reconciliation Act, the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud and Abuse Act, the Health Insurance Portability & Accountability Act, the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any

policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, embezzlement, conversion, non-payment of debt, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault (other than sexual assault), battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions.

EXECUTIVE UNDERSTANDS AND VOLUNTARILY AND FREELY AGREES TO THIS BINDING ARBITRATION PROVISION, AND BOTH EXECUTIVE AND THE COMPANY EXPRESSLY AND FREELY FOREGO AND WAIVE THEIR RIGHT TO TRIAL BY JURY, IN FAVOR OF BINDING ARBITRATION, WITH RESPECT TO ANY CLAIMS OR CONTROVERSIES COVERED BY THIS AGREEMENT EXCEPT AS EXPRESSLY EXCLUDED HEREIN.

(c) **Exclusions.** Notwithstanding the foregoing:

(i) The parties shall not arbitrate: (aa) claims by Executive for workers' compensation or unemployment compensation insurance benefits; (bb) claims by the Company for injunctive or equitable relief, including without limitation claims related to the misappropriation of trade secrets, theft of confidential and proprietary business information, breach of fiduciary duty and/or violation of other restrictive covenants; and (cc) claims by Executive for sexual assault and/or sexual harassment, unless Executive voluntarily elects for such sexual assault and/or sexual harassment claims to be arbitrated.

(ii) Nothing contained in this Agreement prohibits Executive from filing, a complaint, participating in an investigation, or otherwise communicating with the United States Equal Employment Opportunity Commission and/or any other federal, state, or local agency charged with the processing of complaints and performance of investigation into claims of unlawful employment practices, although if Executive elects to pursue a claim following the exhaustion or completion of any such administrative process, such claim would be subject to the mandatory arbitration provisions set forth in this Section of the Agreement.

(iii) Claims by Executive relating to benefits under any of the Company's employee benefit plans must be raised with the claims administrator of the relevant plan pursuant to the terms of that plan, but if the matter is not resolved under those procedures, Executive may pursue such a claim only through arbitration as provided for in this Section.

(d) **Procedures.** The party seeking arbitration pursuant to this Section of the Agreement shall commence such proceeding in accordance with the applicable AAA rules. All rules of pleading, rules of evidence, and rights to resolution of the dispute by means of summary judgment, judgment on the pleadings, and judgment under Pennsylvania law shall apply and be observed. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to,

notions of "just cause") but shall apply the same law as if brought in a court of law. The arbitrator shall possess the authority to rule on any dispositive motions (including a motion to dismiss and/or summary judgment brought by any party) and to order any appropriate legal and equitable relief consistent with that available to parties in civil actions filed in a court of competent jurisdiction, except that the parties agree neither party shall be entitled to punitive damages on any claim.

(e) **Discovery.** During the arbitration, Executive and the Company shall be entitled to engage in and conduct discovery in accordance with any schedule established by the arbitrator; provided, however, the arbitrator must allow the parties to conduct discovery sufficient to adequately arbitrate their claims and defenses in accordance with applicable federal, state, and local law, even if the AAA Rules are more restrictive.

(f) **Determination.** The determination of the arbitrator will be final and binding on Executive and the Company. Awards shall include the arbitrator's written, reasoned opinion and shall contain the arbitrator's essential findings and conclusions. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction.

(g) **Attorney's Fees; Costs.** Each party will bear their own expenses of such arbitration, except that (i) the prevailing party shall be entitled to be indemnified and reimbursed for their reasonable attorneys' fees and costs incurred in enforcing and/or seeking to enforce the terms of this Agreement should the other party violate or be alleged to have violated any of its terms or (ii) as otherwise required by a fee-shifting statute.

**12. Indemnification.** The Company and Executive acknowledge that they have entered into an Indemnification Agreement, effective as of October 2, 2017 set forth above (the "Indemnification Agreement").

**13. Governing Law.** This Agreement and any other document or instrument delivered pursuant hereto, (other than the Indemnification Agreement) and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

**14. Withholding Taxes.** The Company may withhold from any and all amounts payable to Executive such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

**15. Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or three (3) days after being mailed by registered or certified mail to Executive or the Company, as the case may be, at Executive's address set forth below or the Company's address set forth below, or to such other names or addresses as Executive or the Company, as the case may be, shall designate by notice to each other party entitled to receive notices in the manner specified in this Section (provided that notice of change of address shall be deemed given only when received).

Company notices shall be delivered to:

OptiNose US, Inc.  
Attn: Chief Legal Officer  
1020 Stony Hill Road  
Third Floor, Suite 300  
Yardley, PA 19067

Executive notices shall be delivered to such address as shall most currently appear on the records of the Company.

**16. Entire Agreement; Amendments.** This Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supersede in their entirety any and all prior and/or contemporaneous agreements, understandings or representations relating to the subject matter hereof, whether written or oral, including without limitation the Existing Agreement. No amendments, alterations or modifications of this Agreement will be valid unless made in writing and signed by the parties hereto.

**17. Section Headings.** The section headings used in this Agreement are included solely for convenience and will not affect, or be used in connection with, the interpretation of this Agreement.

**18. Severability.** The provisions of this Agreement will be deemed severable and the invalidity of unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party, and no course of dealing between the parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

**19. Counterparts.** This Agreement may be executed in several counterparts (including via facsimile and/or .pdf), each of which will be deemed to be an original but all of which together will constitute one and the same instruments.

**20. Section 409A.**

(a) The payments and benefits under this Agreement are intended to comply with or be exempt from Section 409A of the Code, and the regulations and guidance promulgated thereunder (collectively, "Section 409A") and this Agreement shall be interpreted and construed in a manner intended to comply therewith. For purposes of this Agreement, Executive will be considered to have experienced a employment termination only if Executive has a "separation from service" with the Company and all of its controlled group members within the meaning of Section 409A. Whether Executive has a separation from service will be determined based on all of the facts and circumstances and in accordance with the guidance issued under Section 409A.

(b) Each payment under this Agreement, including each installment payment, shall be considered a separate and distinct payment. For purposes of this Agreement, each payment is intended to be excepted from Section 409A to the maximum extent provided as follows: (i) each payment made within the applicable 2½ month period specified in Treas. Reg. § 1.409A-1(b)(4) is intended to be excepted under the short-term deferral exception; (ii) post-termination medical

benefits are intended to be excepted under the medical benefits exception as specified in Treas. Reg. §1.409A-1(b)(9)(v)(B); and (iii) to the extent payments are made as a result of an involuntary separation, each payment that is not otherwise excepted under the short-term deferral exception or medical benefits exception is intended to be excepted under the involuntary pay exception as specified in Treas. Reg. § 1.409A-1(b)(9)(iii). With respect to payments subject to Section 409A (and not excepted therefrom), if any, it is intended that each payment is paid on a permissible distribution event and at a specified time consistent with Section 409A. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. Executive shall have no right to designate the date or any payment under this Agreement.

(c) If Executive is a “specified employee” (as that term is used in Section 409A and regulations and other guidance issued thereunder) on the date of Executive’s separation from service, any benefits payable under this Agreement that constitute non-qualified deferred compensation subject to Section 409A shall be delayed until the earlier of (i) the first business day following the six-month anniversary of the date of Executive’s separation from service, or (ii) the date of Executive’s death, but only to the extent necessary to avoid the adverse tax consequences and penalties under Section 409A. On the earlier of (x) the first business day following the six-month anniversary of the date of Executive’s separation from service, or (y) Executive’s death, the Company shall pay Executive (or Executive’s estate or beneficiaries) a lump-sum payment equal to all payments delayed pursuant to the preceding sentence.

(d) If any of the reimbursements or in-kind benefits provided for under this Agreement are subject to Section 409A, the following rules shall apply: (i) in no event shall any such reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred; (ii) the amount of such reimbursable expenses incurred, or the provision of in-kind benefits, in one tax year shall not affect the expenses eligible for reimbursement or the provision of in-kind benefits in any other tax year; and (iii) the right to such reimbursement for expenses or provision of in-kind benefits is not subject to liquidation or exchange for any other benefit.

(e) Notwithstanding anything in Section 6(f) hereof to the contrary, in the event that Executive is entitled to the amount set forth in Section 6(f)(i) as a result of a termination of Executive’s employment within three (3) months prior to or eighteen (18) months after the date of the Change of Control, and such Change of Control does not constitute a change in ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A(a)(2)(A)(v) of the Code and its corresponding regulations, and any portion of the severance benefit payable to Executive pursuant to Section 6(e)(i) is deemed to constitute deferred compensation subject to the requirements of Section 409A of the Code at the time of Executive’s termination, then such portion that constitutes deferred compensation shall reduce the amount that is paid in a lump sum as provided in Section 6(f)(i) and such deferred compensation portion shall instead be paid in substantially equal installments over the installment period as described in Section 6(e)(i).

**21. Construction; Reasonable Time to Review and Consider Agreement.** The parties agree that this Agreement was reached following arms-length negotiations and should not be construed against the drafter. Executive agrees that Executive has been provided reasonable and adequate time to review this Agreement and, if desired, consult with counsel of Executive’s own

choosing, and that Executive has consulted counsel before signing this Agreement or knowingly waived the right to do so.

*[Signature Page Follows]*

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

**OPTINOSE US, INC.**

By: /s/ Joseph Scodari

\_\_\_\_\_  
Joseph Scodari  
Chairman of the Board

**EXECUTIVE**

By: /s/ Ramy Mahmoud

\_\_\_\_\_  
Ramy Mahmoud



## EXHIBIT A

### SAMPLE RELEASE AGREEMENT

This RELEASE AGREEMENT (“**Agreement**”) made this [Date] day of [Month•], [Year•] (the “**Effective Date**”), between OptiNose US, Inc. (a wholly-owned subsidiary of OptiNose, Inc. and, together with OptiNose, Inc. and each of its and their successors and assigns, the “**Company**”), and [Full Name•] (“**Executive**”).

1. Release.

a. In consideration of the amounts to be paid by the Company pursuant to the Employment Agreement entered into on [Date], by and between the Company and Executive (the “**Employment Agreement**”), Executive, on behalf of himself/herself and on behalf of his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns, irrevocably and unconditionally forever waives, releases, gives up and discharges the Company, its parent, affiliated and related companies (including but not limited to OptiNose, Inc.), all of its and their employee benefit plans and trustees, fiduciaries, administrators, sponsors and parties-in-interest of those plans, all of its and their past and present employees, managers, directors, officers, administrators, shareholders, members, investors, agents, attorneys, insurers, re-insurers and contractors acting in any capacity whatsoever (whether individually or in an official capacity on behalf of the Company), and all of its and their respective predecessors, heirs, personal representatives, successors and assigns (collectively, the “**Released Parties**”), from any and all debts, demands, actions, causes of action, accounts, covenants, contracts, agreements, claims, damages, omissions, promises, and any and all claims and liabilities whatsoever, of every name and nature, known or unknown, suspected or unsuspected, accrued or unaccrued, liquidated or contingent, asserted or unasserted, both in law and equity (“**Claims**”), which Executive ever had, now has, or may hereafter claim to have against the Released Parties by reason of any matter or cause whatsoever based on, related to, or arising from any event that occurred before the date Executive signs this Agreement and based upon, related to or arising out of or in any way concerning Executive’s employment with the Company, the terms, conditions or privileges of Executive’s employment with the Company, Executive’s separation from employment with the Company, and any and all violations and/or alleged violations of federal, state or local human rights laws, fair employment practices and/or other laws by any of the Released Parties for any reason and under any legal theory including, but not limited to, those arising or which may be arising under, as applicable, Title VII of the Civil Rights Act of 1964 (“**Title VII**”), the Americans with Disabilities Act (“**ADA**”), the Age Discrimination in Employment Act (“**ADEA**”), the Older Worker Benefit Protection Act (“**OWBPA**”), the Employee Retirement Income Security Act of 1974 (“**ERISA**”), the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act (“**WARN**”), the Family and Medical Leave Act (“**FMLA**”), the Coronavirus Aid, Relief and Economic Security Act (“**CARES**”), the Families First Coronavirus Relief Act (“**FFCRA**”), the American Rescue Plan Act, the Fair Labor Standards Act (“**FLSA**”), the Equal Pay Act of 1963 (“**EPA**”), the Lilly Ledbetter Fair Pay Act of 2010 (“**Fair Pay Act**”), the Genetic Information Nondiscrimination Act of 2008 (“**GINA**”), the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud & Abuse Act, the Health Insurance Portability &

Accountability Act (“**HIPAA**”), the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), the Occupational Safety and Health Act (“**OSHA**”), the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act (“**FCRA**”), the National Labor Relations Act (“**NLRA**”), the Labor Management Relations Act (“**LMRA**”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“**USERRA**”), the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Workers’ Compensation Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault, battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions (the “**General Release**”).

b. For the purpose of implementing a full and complete release, Executive understands and agrees that this Agreement is intended to include all claims, if any, which Executive or his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns may have and which Executive does not now know or suspect to exist in his/her favor against the Released Parties, from the beginning of time until the time he/she signs this Agreement, and this Agreement extinguishes those claims.

c. In consideration of the promises of the Company set forth in the Employment Agreement, Executive hereby releases and discharges the Released Parties from any and all Claims that Executive may have against the Released Parties arising under the Age Discrimination Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder (“**ADEA**”). Executive acknowledges that he/she understands that the ADEA is a federal statute that prohibits discrimination on the basis of age in employment, benefits and benefit plans. Executive also understands that, by signing this Agreement, he/she is waiving all Claims against any and all of the Released Parties.

d. **Executive understands that the laws and actions described above give Executive important remedies that relate to claims that he/she has or may have arising out of or in connection with his/her employment with, or separation from employment from, the Company and agree that he/she is freely and voluntarily giving up those remedies and claims.** By signing this Agreement, Executive agrees that he/she is irrevocably and unconditionally waiving the right to proceed with discovery concerning any released claim in any future litigation with any Released Party, if any. Executive also agrees that he/she is fully releasing all claims for equitable, punitive or other relief, attorney’s fees, and other fees and costs incurred up to the date Executive signs this Agreement for any reason.

e. Executive represents and warrants that: (i) he/she is the lawful owner of all claims released through this Agreement; (ii) he/she has the beneficial interest in the payments and other benefits that he/she will receive under this Agreement; (iii) he/she has not assigned, and will not assign, any interest in any claim released through this Agreement; (iv) he/she has not filed, and is not and has not been subject to a voluntary or involuntary bankruptcy petition in the past three (3) years; (v) he/she is not a debtor in any pending bankruptcy case; (vi) no receiver, bankruptcy trustee or other third party may assert a right to any claim released through this Agreement or the payments and benefits to be tendered or provided under the Employment Agreement. Executive agrees that the foregoing representations and warranties shall survive the execution, performance and consummation or termination of this Agreement. Executive also agrees that he/she will fully indemnify and hold the Released Parties harmless to the extent any of the foregoing representations and warranties is or becomes untrue for any claims or damages, including attorneys' fees, fines, costs, liquidated damages and punitive damages, asserted or awarded against any of the Released Parties and, should it be determined that any bankruptcy trustee or other third party has a right to the payments and benefits provided to Executive under the Employment Agreement, Executive immediately will return to the Company an amount equivalent to the full after-tax value of any such payments or benefits.

f. Executive warrants that he/she does not have any complaint pending before any federal, state or local court or arbitration panel concerning any Released Party. Executive further agrees not to file a lawsuit against any of the Released Parties in any federal, state or local court, or with any arbitration panel, concerning any claim, demand, issue or cause of action released through this Agreement, except to the extent specifically excluded below in Section 2 below and its subparagraphs below. Should Executive file a lawsuit with any court or arbitration panel concerning any claim, demand, issue, or cause of action waived through this Agreement and not specifically excluded as described in Section 2 below and its subparagraphs below, Executive agrees that he/she will be responsible to pay the legal fees and costs that the Released Parties incur defending that lawsuit. Further, Executive agrees that nothing in this Agreement shall limit the right of any court or arbitration panel to determine, in its sole discretion, that the Released Parties are entitled to restitution, recoupment or set off of any monies paid to Executive should the release of any claims under this Agreement subsequently be found to be invalid.

## 2. Exclusions from Release of Claims and Covenant Not to Sue.

a. Executive understands and agrees that nothing in this Agreement limits his/her right to bring an action to enforce the terms of this Agreement.

b. Executive understands and agrees that the General Release contained in Section 1 above and its subparagraphs above does not include a waiver of any claims which cannot be waived by law and does not include a waiver of any vested rights Executive may have in any existing Company 401(k) plan, if any, nor will it preclude Executive from purchasing continuation health benefits coverage for himself/herself and/or his/her dependents under the Company's continuation health benefits policies to the extent he/she and his/her dependents are otherwise eligible and for the period provided by law under COBRA. The General Release also does not release any pending workers' compensation claim or right to any workers' compensation benefits with respect to any occupational illness or injury arising from or sustained due to his/her employment with the Company.

c. Executive understands and agrees that nothing in this Agreement is intended to or shall prevent, impede or interfere with his/her non-waivable right to file a charge or complaint with the Equal Employment Opportunity Commission (“**EEOC**”), the Occupational Safety and Health Review Commission (“**OSH**”), the National Labor Relations Board (“**NLRB**”), the Securities and Exchange Commission (“**SEC**”), any other federal agency, labor board or commission, any state or local fair employment practices agency, or any other state or local agency, labor board or commission (collectively, the “**Government Agencies**”). Executive also understands that nothing in this Agreement in any way limits his/her ability to provide information and/or documents to or otherwise communicate with any Government Agencies, participate in any investigation of any Government Agencies, testify or otherwise participate in any proceeding that may be conducted by any Government Agencies concerning the Company’s past or future conduct, or engage in any activities now or in the future that are protected under the whistleblower statutes administered by OSH or any other Government Agencies without notice to the Company. However, Executive agrees that he/she is completely waiving any right to recover money, share in or participate in any monetary award in connection with or resulting from the prosecution of any charge, investigation or proceeding by any Government Agency, except that this Agreement does not limit the right to receive and fully retain a monetary reward from any government-administered whistleblower award or other incentive program for providing information directly to any Government Agencies (such as those administered by the OSH or the SEC).

d. Executive understands and agrees that nothing in this Agreement prohibits him/her filing a claim to collect any unemployment compensation benefits available to him/her under applicable state Unemployment Insurance Compensation law or from collecting any award of benefits granted to him/her in accordance with that law.

e. Executive understands and agrees that this Agreement does not limit any statutory rights he/she may have to bring an action to challenge the terms of this Agreement or contest the validity of the General Release set forth in Section 1 above under the ADEA or the OWBPA.

### 3. Non-Admission of Liability.

a. Executive agrees that this Agreement shall not in any way be construed as an admission that any of the Released Parties owe him/her any money or have acted wrongfully, unlawfully, or unfairly in any way towards him/her. In fact, Executive understands that the Released Parties specifically deny that they have violated any federal, state or local law or ordinance or any right or obligation that they owe or might have owed to Executive at any time and maintain that they have at all times treated Executive in a fair, lawful, non-discriminatory and non-retaliatory manner.

b. Except as provided in Section 6(e) or Section 6(f), as applicable, of the Employment Agreement or in the Indemnification Agreement, Executive acknowledges and agrees that the Company has fully satisfied any and all obligations owed to him/her arising out of his/her employment with or termination from the Company, and no further sums or benefits are owed to him/her by the Company or by any of the other Released Parties at any time.

c. Executive agrees that the Severance Benefits or Change of Control Severance Benefits, as applicable, as described in the Employment Agreement constitute good and valuable

consideration in exchange for the promises herein and are, individually and together, in addition to anything of value to which Executive is presently entitled by virtue of any understandings, agreements or contracts between Executive and any of the Released Parties, his/her employment with any Released Party and separation from that employment, and any of the Released Parties' policies, practices, plans, agreements or prior understandings with him/her, including but not limited to compensation, vacation, bonus, severance, paid time off, incentive compensation, equity incentives, stock options, offer letters, employment agreements and any other fringe benefit plans, policies or practices.

4. No Right or Guarantee to Re-Employment or Reinstatement. Executive agrees that the termination of his/her employment is permanent and the Released Parties have not in any way guaranteed that he/she will be recalled, rehired, reinstated or in any way retained by the Company.

5. Reference-Related Communications.

a. Executive agrees that, should he/she or any prospective employer for him/her desire that the Company engage in any reference-related communications, such inquiries shall be directed exclusively to the Company's Human Resources Department for confirmation only of Executive's: (i) dates of employment and (ii) employment position. Executive also agrees that, except for the Company's verbal confirmation of dates of employment and position title as expressly set forth above, the Released Parties will have no obligation whatsoever to engage in any reference-related communications with any past, existing or prospective employers unless compelled by a court order or other legal process. Notwithstanding the foregoing, Executive understands and agrees that the Released Parties will remain free to internally communicate to those with a business need to know, any and all information concerning his/her employment history with the Company.

b. Executive acknowledges and agrees that any statements made on social media by any current or former employees or other representatives of the Company are not official statements of reference by the Company. Executive understands and agrees that, should he/she wish for the Company to provide any information related to the salary and/or benefits paid or provided during his/her employment to any third party, Executive will provide the Company's Human Resources Department with a written release expressly authorizing the disclosure of the same.

6. Consultation with Attorney; Voluntary Agreement. The Company advises Executive to consult with an attorney of his/her choosing prior to signing this Agreement. Executive understands and agrees that he/she has the right and has been given the opportunity to review this Agreement and, specifically, the General Release in Section 1 above, with an attorney. Executive also understands and agrees that he/she is under no obligation to consent to the General Release set forth in Section 1 above. Executive acknowledges and agrees that the payments to be made to Executive pursuant to the Employment Agreement are sufficient consideration to require him/her to abide with his/her obligations under this Agreement, including but not limited to the General Release set forth in Section 1. Executive represents that he/she has read this Agreement, including the General Release set forth in Section 1, and understands its terms and that he/she enters into this Agreement freely, voluntarily, and without coercion.

7. Effective Date; Revocation. Executive acknowledges and represents that he/she has been given [Insert minimum required number of days under applicable law] days following the termination of his/her employment during which to review and consider the provisions of this Agreement and, specifically, the General Release set forth in Section 1 above. Executive further acknowledges and represents that he/she has been advised by the Company that he/she has the right to revoke this Agreement for a period of seven (7) days after signing it. Executive acknowledges and agrees that, if he/she wishes to revoke this Agreement, he/she must do so in a writing, signed by him/her and received by the Company no later than 5:00 p.m. Eastern Time on the seventh (7<sup>th</sup>) day of the revocation period. If no such revocation occurs, the General Release and this Agreement shall become effective on the eighth (8<sup>th</sup>) day following his/her execution of this Agreement and shall be final and binding on Executive.

8. Severability. In the event that any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of the Agreement shall not in any way be affected or impaired thereby.

9. Governing Law. This Agreement and any other document or instrument delivered pursuant hereto, and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

10. Entire Agreement. This Agreement, the Employment Agreement and the other agreements referred to in the Employment Agreement (other than the Indemnification Agreement) constitute the entire agreement and understanding of the parties with respect to the subject matter herein and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties. Executive acknowledges and agrees that he/she is not relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement.

11. Amendment. This release shall not be amended, supplemented or otherwise modified in any way except in a writing signed by Executive and the Company.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, intending to be forever legally bound hereby, the parties hereto have executed this Agreement, being seven (7) pages in total length as of the dates set forth below.

OPTINOSE US, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:  
Title:

EXECUTIVE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

## **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “Agreement”) is entered into effective as of May 9, 2023 (the “Effective Date”), by and between OptiNose US, Inc., a Delaware corporation (“OptiNose US”) and wholly-owned subsidiary of OptiNose, Inc. (the “Parent” and, together with OptiNose US, the “Company”), and Michael Marino (“Executive”).

WHEREAS, Executive currently serves as Chief Legal Officer & Corporate Secretary of OptiNose, Inc., pursuant to that certain Employment Agreement entered into by and between Executive and the Company, dated March 2, 2022 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to enter into this Agreement to replace the Existing Agreement in its entirety and to set forth the terms and conditions for the continued employment relationship of Executive with the Company.

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

**1. Term.** Subject to the terms and provisions of this Agreement, this Agreement shall continue until Executive’s employment with the Company is terminated by the Company or by Executive. At all times, Executive’s employment with the Company is “at-will,” which means that Executive’s employment with the Company may be terminated at any time by the Company with or without “Cause” or by Executive with or without “Good Reason” (as each such term is defined below).

**2. Title, Duties and Responsibilities.** While Executive is employed by the Company, Executive will serve as the Chief Legal Officer & Corporate Secretary of OptiNose, Inc. and will report to the Chief Executive Officer of OptiNose, Inc. Executive will have such duties and responsibilities that are commensurate with Executive’s position as Chief Legal Officer & Corporate Secretary of OptiNose, Inc. and such other duties and responsibilities as are from time to time assigned to Executive by the Chief Executive Officer, or the Board of Directors of the Parent (the “Board”). While Executive is employed by the Company, Executive will devote Executive’s full business time, energy and skill to the performance of Executive’s duties and responsibilities hereunder. Executive will not be permitted to engage in other activities that interfere with the performance of Executive’s duties under this Agreement, conflict with the business of the Company or violate any provisions of Section 8 herein. Executive shall, if requested by the Board, also serve as an officer or director of any affiliate of the Company for no additional compensation. Executive’s place of employment will be the Company’s offices in Yardley, Pennsylvania.



3. **Base Salary.** While Executive is employed by the Company, the Company will pay Executive a base annual salary (the “Base Salary”) at the rate of \$453,209.04 per year, paid in accordance with the usual payroll practices of the Company as it is earned. Executive’s Base Salary shall be reviewed periodically for potential increases pursuant to Company policies applicable to senior executives by the Compensation Committee of the Board (the “Compensation Committee”) or the Board.

4. **Incentive Compensation.** Executive shall participate in short-term and long-term incentive programs, including equity compensation programs, established by the Company for its senior level executives generally, at levels determined by the Board or the Compensation Committee. Executive’s incentive compensation shall be subject to the terms of the applicable plans and shall be determined based on Executive’s individual performance and the Company’s performance as determined by the Board or the Compensation Committee. Any annual incentive compensation earned by Executive shall be paid on or after January 1, but not later than March 15 of the fiscal year following the fiscal year for which the annual incentive compensation is earned.

(a) **Discretionary Bonus.** Executive will be eligible to receive an annual target cash bonus of 45% of Executive’s Base Salary (the “Target Annual Bonus”) (pro-rated for any portion of a year during which Executive is not employed by the Company) at the discretion of the Board or the Compensation Committee and contingent upon attainment of certain Company milestones and/or individual objectives as determined by the Board or the Compensation Committee. The actual annual bonus payable for any given year, if any, may be higher or lower than the Target Annual Bonus. To earn and be paid an annual bonus, Executive must be actively employed with the Company at the time that such bonuses are paid to all eligible executives in accordance with such bonus program unless otherwise specified herein or in the terms pursuant to which such bonus eligibility is offered. Executive’s Target Annual Bonus shall be reviewed periodically for potential increases pursuant to Company review policies applicable to senior executives by the Compensation Committee or the Board.

(b) **Equity Incentive Compensation.** Executive shall be eligible to receive annual equity awards based on the Company’s and Executive’s actual performance, as determined by the Board or the Compensation Committee. Each such equity award granted to Executive hereunder shall be subject to the terms and conditions of the incentive plan pursuant to which it is granted and such other terms and conditions as are established by the Board or Compensation Committee and set forth in an award agreement evidencing the grant of such equity award.

5. **Benefits and Fringes.**

(a) **General.** While Executive is employed by the Company, Executive will be entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its senior level executives, subject to the satisfaction of any eligibility requirements and any other terms and conditions of the applicable plans or policies.

(b) **Vacation.** Executive will also be entitled to 20 business days of annual paid vacation in accordance with the Company's vacation policies in effect from time to time, which may be taken at such times as Executive elects with due regard to the Company's business needs.

(c) **Reimbursement of Business Expenses.** Upon presentation of appropriate documentation, Executive will be reimbursed in accordance with the Company's expense reimbursement policy for all reasonable and necessary business expenses incurred in connection with the performance of Executive's duties and responsibilities hereunder.

## **6. Termination of Employment.**

(a) **Written Notice of Termination and Resignation from Roles.** Any termination of Executive's employment by the Company or Executive (other than because of Executive's death) shall be communicated by a written notice of termination to the other party hereto in accordance with the requirements of this Agreement. Upon termination of Executive's employment with the Company, Executive shall be deemed to have resigned from all positions that Executive holds as an officer or member of the board of directors (or a committee thereof) of the Company or any of its affiliates and all powers of attorney held by Executive arising out of or relating to such Executive's employment with the Company shall be deemed to have been revoked. Regardless of the reason therefore, Executive shall be entitled to receive payment for: (i) any accrued but unpaid portion of Executive's Base Salary earned through the termination date; (ii) any accrued but unused vacation as of the termination date; (iii) any unearned but unpaid bonus for which the performance measurement period has ended prior to the termination date (e.g., if Executive's employment is terminated on February 1 and annual bonuses for the prior year have not been paid as of the termination date, then Executive would be eligible to receive his annual bonus for the prior year but not a bonus for the year in which the termination occurs), provided, that the termination of Executive's employment is not for Cause or due to Executive's voluntary resignation (other than for Good Reason); (iv) any amounts owing to Executive for reimbursements of expenses that Executive properly incurred before the termination date and which are reimbursable in accordance with Section 5(c) above, with all such amounts owed under each of (i), (ii), (iii) and (iv) payable in a lump sum no later than the Company's first regularly scheduled payroll date that is at least ten (10) days after the date of Executive's termination date; and (v) any amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company at or subsequent to the termination date, payable in accordance with such plan, policy, practice or program or contract or agreement (collectively, the "Accrued Benefits").

(b) **Termination upon Death.** If Executive dies, then Executive's employment with the Company shall terminate as of the date of Executive's death, at which time all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive's heirs, personal representatives or estate shall be entitled to the Accrued Benefits and a payment in the amount of Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days that Executive was employed during the year of Executive's death.

(c) **Termination upon Disability.** “Disability” means any physical or mental incapacity, illness or infirmity that prevents or significantly restricts Executive from performing the normal duties of Executive’s position on a full-time basis for a period of at least 180 calendar days, whether or not consecutive, out of any twelve (12) consecutive months, despite the provision, if requested, of a reasonable accommodation as that term is defined in accordance with the American with Disabilities Act and/or any equivalent state or local law and that, in the reasonable opinion of the Company acting on the basis of advice from a duly-qualified medical practitioner is likely to continue to a similar degree. Upon the termination of Executive’s employment due to Disability, the Company shall provide written notice to Executive, at which time all of Executive’s rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits and a payment in the amount of Executive’s then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was actively employed during the year of Executive’s death.

(d) **Termination by the Company for Cause.** The Company may, upon written notice to Executive, immediately terminate Executive’s employment for Cause. “Cause” shall exist upon (i) Executive’s breach of any fiduciary duty or material legal or contractual obligation to the Company or any of its affiliates (including, without limitation, pursuant to a Company or affiliate policy or the restrictive covenants set forth in Section 8 of this Agreement or any other applicable restrictive covenants between Executive and the Company or any of its affiliates), (ii) Executive’s failure to follow the reasonable instructions of the Chief Executive Officer or the Board (other than as a result of total or partial incapacity due to physical or mental illness), which failure, if curable, is not cured within thirty (30) days after notice to Executive specifying in reasonable detail the nature of such breach, or, if cured, recurs within ninety (90) business days, (iii) Executive’s gross negligence, willful misconduct, fraud, insubordination, acts of dishonesty or conflict of interest relating to the Company or any of its affiliates, or (iv) Executive’s commission of any misdemeanor which has a material impact on the affairs, business or reputation of the Company or any of its affiliates or Executive’s indictment for, or plea of nolo contendere to, a crime constituting a felony under the laws of the United States or any state thereof. Upon a termination of Executive’s employment for Cause, all of Executive’s rights to compensation and benefits under Sections 3, 4 and 5 of this Agreement or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits.

(e) **Termination by the Company without Cause or by Executive for Good Reason.** Except as provided in Section 6(f) below, upon a termination of Executive’s employment by the Company without Cause or by Executive for Good Reason, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive’s execution and non-revocation of the release described in Section 6(g) and Executive’s compliance with Executive’s obligations under Section 8, the following severance payments and benefits (collectively, the “Severance Benefits”):

(i) An amount equal to twelve (12) months of Executive's Base Salary at the rate in effect on the termination date, payable in substantially equivalent installments, with the first payment made on the Company's first practical pay date following the Release Effective Date (as defined in Section 6(g) below) and remaining installments tendered thereafter on consecutive, semi-monthly pay dates in accordance with the Company's regularly-scheduled payroll calendar until paid in full;

(ii) Continuation of coverage under the Company's group health insurance plan under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA") at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of twelve (12) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after Executive's termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the Internal Revenue Code of 1986, as amended, or otherwise violate any healthcare law or regulation, then the Company shall pay to Executive an amount equal to the amount Executive would be required to pay for continuation of group health coverage for Executive and Executive's eligible dependents through an election under COBRA for twelve (12) months, which amount shall be paid in a lump sum at the same time payments under Section 6(e)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election. Following the COBRA Subsidy Period, Executive and Executive's dependents may, subject to statutory eligibility requirements, continue COBRA coverage at standard COBRA rates for the remainder of the applicable COBRA continuation period permitted by law as long as Executive and Executive's dependents pay the full cost of such coverage in accordance with the Company's COBRA continuation health coverage policies; and

(iii) to the extent such termination of Executive's employment by the Company without Cause or by Executive for Good Reason occurs any time following a Change of Control transaction (and without limiting any Change of Control Severance Benefits specified in Section 6(f) below), Executive shall receive twelve (12) months of vesting acceleration with respect to all of Executive's then-outstanding equity awards granted to Executive by the Company or assumed, continued or substituted for by the acquiring entity in such Change of Control transaction.

“Good Reason” shall mean, without Executive’s prior written consent: (i) a material diminution in Executive’s then position or duties, authority or responsibilities including, without limitation, Executive ceasing to be an “executive officer” (as defined under Rule 3b-7 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) of a company with a class of securities registered under Section 12(b) of the Exchange Act, (ii) the assignment to Executive of any duties materially inconsistent with the duties and responsibilities of Chief Legal Officer & Corporate Secretary, (iii) a reduction by the Company in Executive’s then-current Base Salary or Executive’s then-current Target Annual Bonus unless the salaries and target annual bonuses for all other senior executive officers are correspondingly and proportionately reduced by not greater than 15% and such reduction continues for no more than twelve (12) months; (iv) Executive’s relocation to offices of the Company that are more than fifty (50) miles from the Company’s offices in Yardley, Pennsylvania; or (v) any action or inaction that constitutes a material breach of this Agreement by the Company. In order to invoke a termination for Good Reason, Executive must deliver a written notice of the grounds for such termination within thirty (30) days of the initial existence of the event giving rise to Good Reason and the Company shall have thirty (30) days to cure the circumstances. In order to terminate Executive’s employment, if at all, for Good Reason, Executive must terminate employment within sixty (60) days following the end of the cure period if the circumstances giving rise to Good Reason have not been cured.

(f) **Termination by the Company without Cause or by Executive for Good Reason Following a Change of Control.** Upon a termination of Executive’s employment by the Company without Cause or by Executive for Good Reason, in each case within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive’s execution and non-revocation of the release described in Section 6(g) and Executive’s compliance with Executive’s obligations under Section 8, the following severance payments and benefits (collectively, the “Change of Control Severance Benefits”):

(i) an amount equal to 150% of the sum of Executive’s (x) Base Salary and (y) target annual cash bonus opportunity, in each case at the rate in effect on the termination date, payable in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(ii) an amount equal to Executive’s annual cash bonus, which shall be equal to the greater of (x) Executive’s then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was employed during the year in which the employment termination occurs, and (y) an annualized amount of bonus for such year as determined by the Board in good faith based on the achievement of objectives up to the Change of Control, prorated based upon the number of days Executive was employed during that year. The pro rated bonus described in this Section 6(f)(ii) shall be paid in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(iii) Continuation of coverage under the Company's group health insurance plan through COBRA at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of eighteen (18) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after the termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the Code, or otherwise violate any healthcare law or regulation, then, the Company shall pay to Executive the amount Executive would be required to pay for continuation of group health coverage for Executive and Executive's eligible dependents through an election under COBRA for eighteen (18) months which amount shall be paid in a lump sum at the same time payments under Section 6(f)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election; and

(iv) all of Executive's then-outstanding equity awards granted to Executive by the Company shall become immediately vested.

Notwithstanding anything contained herein to the contrary, in the event that Executive is entitled to the amounts set forth in Section 6(e)(i) as a result of Executive's employment termination prior to a Change of Control and a Change of Control occurs within three (3) months following Executive's termination date, Executive shall receive the amounts set forth in this Section 6(f), less any severance compensation paid to Executive pursuant to Section 6(e), paid in the same form and time as provided in Section 6(f), except that the amounts payable pursuant to Section 6(f)(i) shall be paid to Executive in a lump sum, within ten (10) days after the date of the Change of Control.

(g) Payment to Executive of any Severance Benefits or Change of Control Severance Benefits, as applicable, shall be conditioned on Executive's compliance with the requirements of Section 8 hereof and Executive's execution of a general release in favor of the Company and its affiliates substantially in the form attached hereto as Exhibit A (the "Release") and the lapse of any revocation period specified therein with the Release not having been revoked. The Release shall be provided to Executive within three (3) days of Executive's employment termination. Executive will forfeit all rights to the Severance Benefits and the Change of Control Severance Benefits, as applicable, unless, within sixty (60) days of Executive's employment termination, Executive executes and delivers the Release to the Company and such Release has become irrevocable by virtue of the expiration of the revocation period specified therein without the Release having been revoked (the first such date, the "Release Effective Date"). The Company's obligation to pay the Severance Benefits or the Change of Control Severance Benefits, as applicable, is subject to the occurrence of the Release Effective Date, and if the Release Effective Date does not occur, then the Company shall have no obligation to pay such Severance Benefits or Change of Control Severance Benefits, as applicable. Notwithstanding anything contained herein to the contrary, in the event that the period during which Executive may review and revoke the Release begins in one calendar year and ends in the following calendar year, any severance payments hereunder that constitute non-qualified deferred compensation subject to Section 409A of the Code shall be paid to Executive no earlier than January 1 of the second calendar year.

#### **7. Section 280G.**

(a) Executive shall bear all expense of, and be solely responsible for, any excise tax imposed by Section 4999 of the Code (such excise tax being the "Excise Tax"); provided, however, that any payment or benefit received or to be received by Executive, whether payable under the terms of this Agreement or any other plan, arrangement or agreement with Company or an affiliate of Company (collectively, the "Payments") that would constitute a "parachute payment" within the meaning of Section 280G of the Code, shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit Executive receives shall exceed the net after-tax benefit that Executive would receive if no such reduction was made.

(b) The "net after-tax benefit" shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income and employment taxes payable by Executive with respect to the foregoing calculated at the highest marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Tax imposed with respect to the payments and benefits described in (b)(i) above.

(c) All determinations under this Section 7 will be made by an accounting firm or law firm (the “280G Firm”) that is mutually agreed to by Executive and the Company prior to a change in ownership or control of a corporation (within the meaning of Treasury regulations under Section 280G of the Code). The 280G Firm shall be required to evaluate the extent to which payments are exempt from Section 280G of the Code as reasonable compensation for services rendered before or after the Change of Control. All fees and expenses of the 280G Firm shall be paid solely by the Company. The Company will direct the 280G Firm to submit any determination it makes under this Section 7 and detailed supporting calculations to both Executive and the Company as soon as reasonably practicable.

(d) If the 280G Firm determines that one or more reductions are required under this Section 7, such Payments shall be reduced in the order that would provide Executive with the largest amount of after-tax proceeds (with such order, to the extent permitted by Sections 280G and 409A of the Code, designated by Executive, or otherwise determined by the 280G Firm) to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to Executive. Executive shall at any time have the unilateral right to forfeit any equity award in whole or in part.

(e) As a result of the uncertainty in the application of Section 280G of the Code at the time that the 280G Firm makes its determinations under this Section 7, it is possible that amounts will have been paid or distributed to Executive that should not have been paid or distributed (collectively, the “Overpayments”), or that additional amounts should be paid or distributed to Executive (collectively, the “Underpayments”). If the 280G Firm determines, based on either the assertion of a deficiency by the Internal Revenue Service against Executive or the Company, which assertion the 280G Firm believes has a high probability of success or is otherwise based on controlling precedent or substantial authority, that an Overpayment has been made, Executive must repay the Overpayment to the Company, without interest; provided, however, that no loan will be deemed to have been made and no amount will be payable by Executive to the Company unless, and then only to the extent that, the deemed loan and payment would either reduce the amount on which Executive is subject to tax under Section 4999 of the Code or generate a refund of tax imposed under Section 4999 of the Code. If the 280G Firm determines, based upon controlling precedent or substantial authority, that an Underpayment has occurred, the 280G Firm will notify Executive and the Company of that determination, and the Company will promptly pay the amount of that Underpayment to Executive without interest.

(f) Executive and the Company will provide the 280G Firm access to and copies of any books, records, and documents in their possession as reasonably requested by the 280G Firm, and otherwise cooperate with the 280G Firm in connection with the preparation and issuance of the determinations and calculations contemplated by this Section 7. For purposes of making the calculations required by this Section 7, the 280G Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code.

## **8. Covenants.**



(a) **Non-Competition.** So long as Executive is employed by the Company under this Agreement and for (i) the eighteen (18) month period following the termination of Executive's employment with the Company in the event Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, in each case, within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control or (ii) the nine (9) month period following the termination of Executive's employment with the Company for any reason not covered by clause (i) (such applicable period, the "Restricted Period"), Executive agrees that Executive will not, directly or indirectly, without the prior written consent of the Company, engage in Competition with OptiNose. "Competition" means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any other capacity whatsoever in any business or venture that competes with any business that OptiNose is engaged in as of the date of Executive's employment termination with the Company or is actively planning to engage in as of the date of Executive's employment termination with the Company. Notwithstanding the foregoing, after Executive's employment termination, employment by or consultation for a publicly traded company that derives less than five percent (5%) of its net revenues from activities that compete with business that OptiNose engages in, shall not constitute Competition so long as Executive does not provide employment or consulting services to the business segment of such publicly traded company that engages in such competitive activities. Executive is entering into this covenant not to compete in consideration of the agreements of the Company in this Agreement, including but not limited to, the agreement of the Company to provide the severance and other benefits to Executive upon a employment termination pursuant to Sections 6(e) and (f) hereof, as applicable.

(b) **Confidentiality.** Executive agrees that Executive will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person or entity, other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose, either while Executive is employed by the Company hereunder or at any time thereafter, any business and technical information or trade secrets, nonpublic, proprietary or confidential information, knowledge or data relating to OptiNose whether the foregoing will have been obtained by Executive during Executive's employment hereunder or otherwise. The foregoing will not apply to information that (i) was known to the public prior to its disclosure to Executive; (ii) becomes generally known to the public or in OptiNose's industry subsequent to disclosure to Executive through no wrongful act by Executive or any of Executive's representatives; or (iii) Executive is required to disclose by applicable law, regulation or legal process (provided that Executive provides the Company with prior notice of the contemplated disclosure and cooperates at the Company's cost with the Company in seeking a protective order or other appropriate protection of such information). The Company and Executive acknowledge that, notwithstanding anything to the contrary contained in this Agreement, pursuant to 18 USC § 1833(b), an individual may not be held liable under any criminal or civil federal or state trade secret law for disclosure of a trade secret: (aa) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law or (bb) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. The Company and Executive further acknowledge that an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to Executive's attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

(c) **Non-Solicitation of Customers.** Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, customers of OptiNose to purchase goods or services then sold by OptiNose from any other person or entity.

(d) **Non-Solicitation of Suppliers.** Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, the Company's suppliers to provide goods or services then provided to OptiNose to any other person or entity in Competition with OptiNose.

(e) **Non-Solicitation of Employees.** Executive recognizes that Executive will possess confidential information about other employees of OptiNose relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of OptiNose. Executive recognizes that the information Executive possesses and will possess about these other employees is not generally known, is of substantial value to OptiNose in developing its business and in securing and retaining customers, and has been and will be acquired by Executive because of Executive's business position with OptiNose. Executive agrees that, during the Restricted Period, Executive will not, (i) directly or indirectly, individually or on behalf of any other person or entity solicit or recruit any employee of OptiNose to leave such employment for the purpose of being employed by, or rendering services to, Executive or any person or entity unaffiliated with OptiNose, or (ii) convey any such confidential information or trade secrets about other employees of OptiNose to any person or entity other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose. Notwithstanding the foregoing, the Company agrees that hiring any employee of OptiNose who responds to a general advertisement for employment that was not specifically directed at the employees of OptiNose shall not be deemed a violation of this Section 8(e).

(f) **Non-Disparagement.** Executive agrees that Executive will not, nor will Executive induce others to, Disparage OptiNose or any of their past or present officers, directors, employees or products. Similarly, the directors and senior executives of OptiNose will not, nor will they induce others to, Disparage Executive. "Disparage" will mean making comments or statements to the press, OptiNose's employees or any individual or entity with whom Executive or OptiNose, as applicable, has a business relationship that would adversely affect in any manner, as applicable: (i) the conduct of the business of OptiNose (including, without limitation, any products or business plans or prospects); (ii) the business reputation of OptiNose, or any of their products, or their past or present officers, directors or employees; or (iii) the business reputation of Executive.

(g) **Inventions.**

(i) Executive acknowledges and agrees that all trade secrets, mask works, concepts, drawings, materials, documentation, procedures, diagrams, specifications, models, processes, formulae, source and object codes, data, programs, know-how, designs, techniques, ideas, methods, inventions, discoveries, improvements, work products, developments or other works of authorship (“Inventions”), whether patentable or unpatentable, (aa) that relate to Executive’s work with OptiNose, made, developed or conceived by Executive, solely or jointly with others or with the use of any of OptiNose’s equipment, supplies, facilities or trade secrets or (bb) suggested by any work that Executive performs in connection with OptiNose, either while performing Executive’s duties with OptiNose or on Executive’s own time, but only insofar as the Inventions are related to Executive’s work as an employee of OptiNose (collectively, “Company Inventions”), will belong exclusively to the Company (or its designee), whether or not patent applications are filed thereon. Executive will keep full and complete written records (the “Records”), in the manner prescribed by OptiNose, of all Company Inventions, and will promptly disclose all Company Inventions completely and in writing to the Company. The Records will be the sole and exclusive property of the Company, and Executive will surrender them upon the termination of Executive’s employment, or upon the Company’s request. Executive hereby assigns to the Company (or its designee) the Company Inventions including all rights in and to any related patents and other intellectual property that may issue thereon in any and all countries, whether during or subsequent to Executive’s employment with OptiNose, together with the right to file, in Executive’s name or in the name of the Company (or its designee), applications for patents and equivalent rights (the “Applications”). Executive will, at any time during and subsequent to Executive’s employment with OptiNose, make such applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Company with respect to the Company Inventions and the underlying intellectual property. Executive will also execute assignments to the Company (or its designee) of the Applications, and give the Company and its attorneys all reasonable assistance (including the giving of testimony) to obtain the Company Inventions and the underlying intellectual property for its benefit, all without additional compensation to Executive from the Company, but entirely at the Company’s expense.

(ii) In addition, the Company Inventions will be deemed “work made for hire”, as such term is defined under the copyright law of the United States, on behalf of OptiNose and Executive agrees that the Company (or its designee) will be the sole owner of the Company Inventions, and all underlying rights therein, in all media now known or hereinafter devised, throughout the universe and in perpetuity without any further obligations or compensation to Executive. If the Company Inventions, or any portion thereof, are deemed not to be work made for hire, Executive hereby irrevocably conveys, transfers, assigns and delivers to the Company (or its designee), all rights, titles and interests, in all media now known or hereinafter devised, throughout the universe and in perpetuity, in and to the Company Inventions, including without limitation: (aa) all of Executive’s rights, titles and interests in and to any underlying intellectual property (and all renewals, revivals and extensions thereof) related to the Company Inventions; (bb) all rights of any kind or any nature now or hereafter recognized, including without limitation, the unrestricted right to make modifications, adaptations and revisions to the Company Inventions, to exploit and allow others to exploit the Company Inventions; and (cc) all rights to sue at law or in equity for any infringement, or other unauthorized use or conduct in derogation of the Company Inventions, known or unknown, prior to the date hereof, including without limitation the right to receive all proceeds and damages therefrom. In addition, Executive hereby waives any so-called “moral rights” with respect to the Company Inventions. Executive hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents and other intellectual property rights that may issue thereon, including, without limitation, any rights that would otherwise accrue to Executive’s benefit by virtue of Executive being an employee of or other service provider to OptiNose.

(iii) To the extent that Executive is unable to assign any of Executive’s right, title or interest in any Company Invention under applicable law, for any such Company Invention and the underlying intellectual property rights, Executive hereby grants to the Company (or its designee) an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid license to such Company Invention and the underlying intellectual property, with the right to sublicense, use, modify, create derivative works and otherwise fully exploit such Company Invention and the underlying intellectual property, to assign this license and to exercise all rights and incidents of ownership of the Company Invention.

(iv) To the extent that any of the Company Inventions are derived by, or require use by OptiNose of, any works, Inventions, or other intellectual property rights that Executive owns, which are not assigned hereby, Executive hereby grants to the Company (or its designee) an irrevocable, perpetual, transferable, worldwide, non-exclusive, royalty free license, with the right to sublicense, use, modify and create derivative works using such works, Inventions or other intellectual property rights, but only to the extent necessary to permit the Company to fully realize their ownership rights in the Company Inventions.

(h) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), Executive agrees that while employed by OptiNose (for no additional compensation) and thereafter (for reasonable compensation for Executive's time), Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive's employment with OptiNose, and will provide reasonable assistance to OptiNose and its representatives in defense of any claims that may be made against OptiNose, and will assist OptiNose in the prosecution of any claims that may be made by OptiNose, to the extent that such claims may relate to the period of Executive's employment with OptiNose (or any predecessor). Executive agrees to promptly inform the Company if Executive becomes aware of any lawsuits involving such claims that may be filed or threatened against OptiNose. Executive also agrees to promptly inform the Company (to the extent Executive is legally permitted to do so) if Executive is asked to assist in any investigation of OptiNose (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against OptiNose with respect to such investigation, and will not do so unless legally required.

(i) **Return of Property.** On the date of the termination of Executive's employment with the Company for any reason (or at any time prior thereto at the Company's request), Executive will return all property belonging to OptiNose (including, but not limited to, any Employer provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to OptiNose).

(j) **Injunctive Relief.** It is further expressly agreed that OptiNose will or would suffer irreparable injury if Executive were to violate the provisions of this Section 8 and that OptiNose would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and Executive further consents and stipulates to the entry of such injunctive relief in such court prohibiting Executive from violating the provisions of this Section 8.

(k) **Survival of Provisions.** The obligations contained in this Section 8 will survive the termination of Executive's employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this Section 8 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

(l) **Prior Agreements.** Executive represents and warrants to the Company that there are no restrictions, agreements or understandings whatsoever to which Executive is a party that would prevent or make unlawful Executive's execution of this Agreement or Executive's employment hereunder, is or would be inconsistent or in conflict with this Agreement or Executive's employment hereunder, or would prevent, limit or impair in any way the performance by Executive of the obligations hereunder.

9. **Assignment; Third Party Beneficiaries.** Notwithstanding anything else herein, this Agreement is personal to Executive and neither the Agreement nor any rights hereunder may be assigned by Executive. The Company may assign the Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. OptiNose shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of OptiNose to expressly assume and agree to perform this Agreement in the same manner and to the same extent that OptiNose would be required to perform it if no such succession had taken place. This Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties. Executive acknowledges that this Agreement is intended to benefit the Company, its shareholders, and its and their parents, affiliates, subsidiaries, divisions, and related companies or entities, now existing or hereafter created. Both Executive and the Company further acknowledge and agree that the intended beneficiaries of this Agreement are entitled to enforce the provisions of this Agreement by seeking injunctive relief or any other appropriate remedy.

10. **Clawback/Recoupment.** Notwithstanding any other provision in this Agreement to the contrary, any compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company shall be subject to mandatory repayment by Executive to the Company to the extent any such compensation paid to Executive is, or in the future becomes, subject to (i) any “claw-back” or recoupment policy applicable to Executive that is adopted to comply with any applicable law, rule or regulation (including stock exchange rule), or (ii) any law, rule or regulation (including stock exchange rule) which imposes mandatory recoupment, under circumstances set forth in such law, rule or regulation.

**11. Arbitration; Waiver of Rights to Sue; Attorneys' Fees.**

(a) Except as provided in Section 8(j), the parties agree that they will use binding arbitration to settle all claims and disputes that may arise out of this Agreement or that in any way relate to Executive's employment with Company. Specifically, both the Company and Executive agree that any claim, dispute and/or controversy that either Executive may have against the Company (or its directors, officers, managers, employees, agents or parties affiliated with its employee benefit and health plans), or that the Company may have against Executive, shall be submitted to binding arbitration conducted before one (1) arbitrator mutually agreed to by the Company and Executive, sitting in Philadelphia, Pennsylvania or such other location mutually agreed to by Executive and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") then in effect; provided, however, that if the Company and Executive are unable to agree on a single arbitrator within thirty (30) calendar days of the demand by another party for arbitration, an arbitrator will be designated by the Philadelphia Office of the American Arbitration Association.



(b) **Coverage.** Included within the parties' agreement to submit all disputes to binding arbitration are all employment-related claims and disputes, whether based upon tort, contract, statute (including but not limited to any claims of workplace discrimination, harassment (other than sexual harassment), retaliation, failure to pay proper wages or other compensation (including commissions, bonuses, salary, severance pay or other benefits), or any other unlawful employment practice or wrongful termination, whether based upon the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the National Labor Relations Act, the Labor Management Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Genetic Information Nondiscrimination Act, the Lilly Ledbetter Fair Pay Act of 2009, the Fair Credit Reporting Act, the Family and Medical Leave Act, the Equal Pay Act of 1963, the Consolidated Omnibus Budget Reconciliation Act, the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud and Abuse Act, the Health Insurance Portability & Accountability Act, the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, embezzlement, conversion, non-payment of debt, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault (other than sexual assault), battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions.

EXECUTIVE UNDERSTANDS AND VOLUNTARILY AND FREELY AGREES TO THIS BINDING ARBITRATION PROVISION, AND BOTH EXECUTIVE AND THE COMPANY EXPRESSLY AND FREELY FOREGO AND WAIVE THEIR RIGHT TO TRIAL BY JURY, IN FAVOR OF BINDING ARBITRATION, WITH RESPECT TO ANY CLAIMS OR CONTROVERSIES COVERED BY THIS AGREEMENT EXCEPT AS EXPRESSLY EXCLUDED HEREIN.

(c) **Exclusions.** Notwithstanding the foregoing:

(i) The parties shall not arbitrate: (aa) claims by Executive for workers' compensation or unemployment compensation insurance benefits; (bb) claims by the Company for injunctive or equitable relief, including without limitation claims related to the misappropriation of trade secrets, theft of confidential and proprietary business information, breach of fiduciary duty and/or violation of other restrictive covenants; and (cc) claims by Executive for sexual assault and/or sexual harassment, unless Executive voluntarily elects for such sexual assault and/or sexual harassment claims to be arbitrated.

(ii) Nothing contained in this Agreement prohibits Executive from filing, a complaint, participating in an investigation, or otherwise communicating with the United States Equal Employment Opportunity Commission and/or any other federal, state, or local agency charged with the processing of complaints and performance of investigation into claims of unlawful employment practices, although if Executive elects to pursue a claim following the exhaustion or completion of any such administrative process, such claim would be subject to the mandatory arbitration provisions set forth in this Section of the Agreement.

(iii) Claims by Executive relating to benefits under any of the Company's employee benefit plans must be raised with the claims administrator of the relevant plan pursuant to the terms of that plan, but if the matter is not resolved under those procedures, Executive may pursue such a claim only through arbitration as provided for in this Section.

(d) **Procedures.** The party seeking arbitration pursuant to this Section of the Agreement shall commence such proceeding in accordance with the applicable AAA rules. All rules of pleading, rules of evidence, and rights to resolution of the dispute by means of summary judgment, judgment on the pleadings, and judgment under Pennsylvania law shall apply and be observed. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") but shall apply the same law as if brought in a court of law. The arbitrator shall possess the authority to rule on any dispositive motions (including a motion to dismiss and/or summary judgment brought by any party) and to order any appropriate legal and equitable relief consistent with that available to parties in civil actions filed in a court of competent jurisdiction, except that the parties agree neither party shall be entitled to punitive damages on any claim.

(e) **Discovery.** During the arbitration, Executive and the Company shall be entitled to engage in and conduct discovery in accordance with any schedule established by the arbitrator; provided, however, the arbitrator must allow the parties to conduct discovery sufficient to adequately arbitrate their claims and defenses in accordance with applicable federal, state, and local law, even if the AAA Rules are more restrictive.

(f) **Determination.** The determination of the arbitrator will be final and binding on Executive and the Company. Awards shall include the arbitrator's written, reasoned opinion and shall contain the arbitrator's essential findings and conclusions. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction.

(g) **Attorney's Fees; Costs.** Each party will bear their own expenses of such arbitration, except that (i) the prevailing party shall be entitled to be indemnified and reimbursed for their reasonable attorneys' fees and costs incurred in enforcing and/or seeking to enforce the terms of this Agreement should the other party violate or be alleged to have violated any of its terms or (ii) as otherwise required by a fee-shifting statute.

**12. Indemnification.** The Company and Executive acknowledge that they have entered into an Indemnification Agreement, effective as of October 2, 2017 set forth above (the "Indemnification Agreement").

**13. Governing Law.** This Agreement and any other document or instrument delivered pursuant hereto, (other than the Indemnification Agreement) and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

**14. Withholding Taxes.** The Company may withhold from any and all amounts payable to Executive such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

**15. Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or three (3) days after being mailed by registered or certified mail to Executive or the Company, as the case may be, at Executive's address set forth below or the Company's address set forth below, or to such other names or addresses as Executive or the Company, as the case may be, shall designate by notice to each other party entitled to receive notices in the manner specified in this Section (provided that notice of change of address shall be deemed given only when received).

Company notices shall be delivered to:

OptiNose US, Inc.  
Attn: Chief Legal Officer  
1020 Stony Hill Road  
Third Floor, Suite 300  
Yardley, PA 19067

Executive notices shall be delivered to such address as shall most currently appear on the records of the Company.

**16. Entire Agreement; Amendments.** This Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supersede in their entirety any and all prior and/or contemporaneous agreements, understandings or representations relating to the subject matter hereof, whether written or oral, including without limitation the Existing Agreement. No amendments, alterations or modifications of this Agreement will be valid unless made in writing and signed by the parties hereto.

**17. Section Headings.** The section headings used in this Agreement are included solely for convenience and will not affect, or be used in connection with, the interpretation of this Agreement.

**18. Severability.** The provisions of this Agreement will be deemed severable and the invalidity of unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party, and no course of dealing between the parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

**19. Counterparts.** This Agreement may be executed in several counterparts (including via facsimile and/or .pdf), each of which will be deemed to be an original but all of which together will constitute one and the same instruments.

**20. Section 409A.**

(a) The payments and benefits under this Agreement are intended to comply with or be exempt from Section 409A of the Code, and the regulations and guidance promulgated thereunder (collectively, "Section 409A") and this Agreement shall be interpreted and construed in a manner intended to comply therewith. For purposes of this Agreement, Executive will be considered to have experienced a employment termination only if Executive has a "separation from service" with the Company and all of its controlled group members within the meaning of Section 409A. Whether Executive has a separation from service will be determined based on all of the facts and circumstances and in accordance with the guidance issued under Section 409A.

(b) Each payment under this Agreement, including each installment payment, shall be considered a separate and distinct payment. For purposes of this Agreement, each payment is intended to be excepted from Section 409A to the maximum extent provided as follows: (i) each payment made within the applicable 2½ month period specified in Treas. Reg. § 1.409A-1(b)(4) is intended to be excepted under the short-term deferral exception; (ii) post-termination medical benefits are intended to be excepted under the medical benefits exception as specified in Treas. Reg. § 1.409A-1(b)(9)(v)(B); and (iii) to the extent payments are made as a result of an involuntary separation, each payment that is not otherwise excepted under the short-term deferral exception or medical benefits exception is intended to be excepted under the involuntary pay exception as specified in Treas. Reg. § 1.409A-1(b)(9)(iii). With respect to payments subject to Section 409A (and not excepted therefrom), if any, it is intended that each payment is paid on a permissible distribution event and at a specified time consistent with Section 409A. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. Executive shall have no right to designate the date or any payment under this Agreement.

(c) If Executive is a “specified employee” (as that term is used in Section 409A and regulations and other guidance issued thereunder) on the date of Executive’s separation from service, any benefits payable under this Agreement that constitute non-qualified deferred compensation subject to Section 409A shall be delayed until the earlier of (i) the first business day following the six-month anniversary of the date of Executive’s separation from service, or (ii) the date of Executive’s death, but only to the extent necessary to avoid the adverse tax consequences and penalties under Section 409A. On the earlier of (x) the first business day following the six-month anniversary of the date of Executive’s separation from service, or (y) Executive’s death, the Company shall pay Executive (or Executive’s estate or beneficiaries) a lump-sum payment equal to all payments delayed pursuant to the preceding sentence.

(d) If any of the reimbursements or in-kind benefits provided for under this Agreement are subject to Section 409A, the following rules shall apply: (i) in no event shall any such reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred; (ii) the amount of such reimbursable expenses incurred, or the provision of in-kind benefits, in one tax year shall not affect the expenses eligible for reimbursement or the provision of in-kind benefits in any other tax year; and (iii) the right to such reimbursement for expenses or provision of in-kind benefits is not subject to liquidation or exchange for any other benefit.

(e) Notwithstanding anything in Section 6(f) hereof to the contrary, in the event that Executive is entitled to the amount set forth in Section 6(f)(i) as a result of a termination of Executive's employment within three (3) months prior to or eighteen (18) months after the date of the Change of Control, and such Change of Control does not constitute a change in ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A(a)(2)(A)(v) of the Code and its corresponding regulations, and any portion of the severance benefit payable to Executive pursuant to Section 6(e)(i) is deemed to constitute deferred compensation subject to the requirements of Section 409A of the Code at the time of Executive's termination, then such portion that constitutes deferred compensation shall reduce the amount that is paid in a lump sum as provided in Section 6(f)(i) and such deferred compensation portion shall instead be paid in substantially equal installments over the installment period as described in Section 6(e)(i).

**21. Construction; Reasonable Time to Review and Consider Agreement.** The parties agree that this Agreement was reached following arms-length negotiations and should not be construed against the drafter. Executive agrees that Executive has been provided reasonable and adequate time to review this Agreement and, if desired, consult with counsel of Executive's own choosing, and that Executive has consulted counsel before signing this Agreement or knowingly waived the right to do so.

*[Signature Page Follows]*

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

**OPTINOSE US, INC.**

By: /s/ Ramy Mahmoud

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Ramy Mahmoud

Chief Executive Officer

**EXECUTIVE**

By: /s/ Michael Marino

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Michael Marino

## **EXHIBIT A**

### **SAMPLE RELEASE AGREEMENT**

This RELEASE AGREEMENT (“**Agreement**”) made this [Date] day of [Month•], [Year•] (the “**Effective Date**”), between OptiNose US, Inc. (a wholly-owned subsidiary of OptiNose, Inc. and, together with OptiNose, Inc. and each of its and their successors and assigns, the “**Company**”), and [Full Name•] (“**Executive**”).

1. Release.

a. In consideration of the amounts to be paid by the Company pursuant to the Employment Agreement entered into on [Date], by and between the Company and Executive (the “**Employment Agreement**”), Executive, on behalf of himself/herself and on behalf of his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns, irrevocably and unconditionally forever waives, releases, gives up and discharges the Company, its parent, affiliated and related companies (including but not limited to OptiNose, Inc.), all of its and their employee benefit plans and trustees, fiduciaries, administrators, sponsors and parties-in-interest of those plans, all of its and their past and present employees, managers, directors, officers, administrators, shareholders, members, investors, agents, attorneys, insurers, re-insurers and contractors acting in any capacity whatsoever (whether individually or in an official capacity on behalf of the Company), and all of its and their respective predecessors, heirs, personal representatives, successors and assigns (collectively, the “**Released Parties**”), from any and all debts, demands, actions, causes of action, accounts, covenants, contracts, agreements, claims, damages, omissions, promises, and any and all claims and liabilities whatsoever, of every name and nature, known or unknown, suspected or unsuspected, accrued or unaccrued, liquidated or contingent, asserted or unasserted, both in law and equity (“**Claims**”), which Executive ever had, now has, or may hereafter claim to have against the Released Parties by reason of any matter or cause whatsoever based on, related to, or arising from any event that occurred before the date Executive signs this Agreement and based upon, related to or arising out of or in any way concerning Executive’s employment with the Company, the terms, conditions or privileges of Executive’s employment with the Company, Executive’s separation from employment with the Company, and any and all violations and/or alleged violations of federal, state or local human rights laws, fair employment practices and/or other laws by any of the Released Parties for any reason and under any legal theory including, but not limited to, those arising or which may be arising under, as applicable, Title VII of the Civil Rights Act of 1964 (“**Title VII**”), the Americans with Disabilities Act (“**ADA**”), the Age Discrimination in Employment Act (“**ADEA**”), the Older Worker Benefit Protection Act (“**OWBPA**”), the Employee Retirement Income Security Act of 1974 (“**ERISA**”), the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act (“**WARN**”), the Family and Medical Leave Act (“**FMLA**”), the Coronavirus Aid, Relief and Economic Security Act (“**CARES**”), the Families First Coronavirus Relief Act (“**FFCRA**”), the American Rescue Plan Act, the Fair Labor Standards Act (“**FLSA**”), the Equal Pay Act of 1963 (“**EPA**”), the Lilly Ledbetter Fair Pay Act of 2010 (“**Fair Pay Act**”), the Genetic Information Nondiscrimination Act of 2008 (“**GINA**”),



the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud & Abuse Act, the Health Insurance Portability & Accountability Act (“**HIPAA**”), the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), the Occupational Safety and Health Act (“**OSHA**”), the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act (“**FCRA**”), the National Labor Relations Act (“**NLRA**”), the Labor Management Relations Act (“**LMRA**”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“**USERRA**”), the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Workers’ Compensation Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault, battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions (the “**General Release**”).

b. For the purpose of implementing a full and complete release, Executive understands and agrees that this Agreement is intended to include all claims, if any, which Executive or his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns may have and which Executive does not now know or suspect to exist in his/her favor against the Released Parties, from the beginning of time until the time he/she signs this Agreement, and this Agreement extinguishes those claims.

c. In consideration of the promises of the Company set forth in the Employment Agreement, Executive hereby releases and discharges the Released Parties from any and all Claims that Executive may have against the Released Parties arising under the Age Discrimination Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder (“**ADEA**”). Executive acknowledges that he/she understands that the ADEA is a federal statute that prohibits discrimination on the basis of age in employment, benefits and benefit plans. Executive also understands that, by signing this Agreement, he/she is waiving all Claims against any and all of the Released Parties.

d. **Executive understands that the laws and actions described above give Executive important remedies that relate to claims that he/she has or may have arising out of or in connection with his/her employment with, or separation from employment from, the Company and agree that he/she is freely and voluntarily giving up those remedies and claims.** By signing this Agreement, Executive agrees that he/she is irrevocably and unconditionally waiving the right to proceed with discovery concerning any released claim in any future litigation with any Released Party, if any. Executive also agrees that he/she is fully releasing all claims for equitable, punitive or other relief, attorney's fees, and other fees and costs incurred up to the date Executive signs this Agreement for any reason.

e. Executive represents and warrants that: (i) he/she is the lawful owner of all claims released through this Agreement; (ii) he/she has the beneficial interest in the payments and other benefits that he/she will receive under this Agreement; (iii) he/she has not assigned, and will not assign, any interest in any claim released through this Agreement; (iv) he/she has not filed, and is not and has not been subject to a voluntary or involuntary bankruptcy petition in the past three (3) years; (v) he/she is not a debtor in any pending bankruptcy case; (vi) no receiver, bankruptcy trustee or other third party may assert a right to any claim released through this Agreement or the payments and benefits to be tendered or provided under the Employment Agreement. Executive agrees that the foregoing representations and warranties shall survive the execution, performance and consummation or termination of this Agreement. Executive also agrees that he/she will fully indemnify and hold the Released Parties harmless to the extent any of the foregoing representations and warranties is or becomes untrue for any claims or damages, including attorneys' fees, fines, costs, liquidated damages and punitive damages, asserted or awarded against any of the Released Parties and, should it be determined that any bankruptcy trustee or other third party has a right to the payments and benefits provided to Executive under the Employment Agreement, Executive immediately will return to the Company an amount equivalent to the full after-tax value of any such payments or benefits.

f. Executive warrants that he/she does not have any complaint pending before any federal, state or local court or arbitration panel concerning any Released Party. Executive further agrees not to file a lawsuit against any of the Released Parties in any federal, state or local court, or with any arbitration panel, concerning any claim, demand, issue or cause of action released through this Agreement, except to the extent specifically excluded below in Section 2 below and its subparagraphs below. Should Executive file a lawsuit with any court or arbitration panel concerning any claim, demand, issue, or cause of action waived through this Agreement and not specifically excluded as described in Section 2 below and its subparagraphs below, Executive agrees that he/she will be responsible to pay the legal fees and costs that the Released Parties incur defending that lawsuit. Further, Executive agrees that nothing in this Agreement shall limit the right of any court or arbitration panel to determine, in its sole discretion, that the Released Parties are entitled to restitution, recoupment or set off of any monies paid to Executive should the release of any claims under this Agreement subsequently be found to be invalid.

## 2. Exclusions from Release of Claims and Covenant Not to Sue.

a. Executive understands and agrees that nothing in this Agreement limits his/her right to bring an action to enforce the terms of this Agreement.

b. Executive understands and agrees that the General Release contained in Section 1 above and its subparagraphs above does not include a waiver of any claims which cannot be waived by law and does not include a waiver of any vested rights Executive may have in any existing Company 401(k) plan, if any, nor will it preclude Executive from purchasing continuation health benefits coverage for himself/herself and/or his/her dependents under the Company's continuation health benefits policies to the extent he/she and his/her dependents are otherwise eligible and for the period provided by law under COBRA. The General Release also does not release any pending workers' compensation claim or right to any workers' compensation benefits with respect to any occupational illness or injury arising from or sustained due to his/her employment with the Company.

c. Executive understands and agrees that nothing in this Agreement is intended to or shall prevent, impede or interfere with his/her non-waivable right to file a charge or complaint with the Equal Employment Opportunity Commission ("EEOC"), the Occupational Safety and Health Review Commission ("OSH"), the National Labor Relations Board ("NLRB"), the Securities and Exchange Commission ("SEC"), any other federal agency, labor board or commission, any state or local fair employment practices agency, or any other state or local agency, labor board or commission (collectively, the "**Government Agencies**"). Executive also understands that nothing in this Agreement in any way limits his/her ability to provide information and/or documents to or otherwise communicate with any Government Agencies, participate in any investigation of any Government Agencies, testify or otherwise participate in any proceeding that may be conducted by any Government Agencies concerning the Company's past or future conduct, or engage in any activities now or in the future that are protected under the whistleblower statutes administered by OSH or any other Government Agencies without notice to the Company. However, Executive agrees that he/she is completely waiving any right to recover money, share in or participate in any monetary award in connection with or resulting from the prosecution of any charge, investigation or proceeding by any Government Agency, except that this Agreement does not limit the right to receive and fully retain a monetary reward from any government-administered whistleblower award or other incentive program for providing information directly to any Government Agencies (such as those administered by the OSH or the SEC).

d. Executive understands and agrees that nothing in this Agreement prohibits him/her filing a claim to collect any unemployment compensation benefits available to him/her under applicable state Unemployment Insurance Compensation law or from collecting any award of benefits granted to him/her in accordance with that law.

e. Executive understands and agrees that this Agreement does not limit any statutory rights he/she may have to bring an action to challenge the terms of this Agreement or contest the validity of the General Release set forth in Section 1 above under the ADEA or the OWBPA.

3. Non-Admission of Liability.

a. Executive agrees that this Agreement shall not in any way be construed as an admission that any of the Released Parties owe him/her any money or have acted wrongfully, unlawfully, or unfairly in any way towards him/her. In fact, Executive understands that the Released Parties specifically deny that they have violated any federal, state or local law or ordinance or any right or obligation that they owe or might have owed to Executive at any time and maintain that they have at all times treated Executive in a fair, lawful, non-discriminatory and non-retaliatory manner.

b. Except as provided in Section 6(e) or Section 6(f), as applicable, of the Employment Agreement or in the Indemnification Agreement, Executive acknowledges and agrees that the Company has fully satisfied any and all obligations owed to him/her arising out of his/her employment with or termination from the Company, and no further sums or benefits are owed to him/her by the Company or by any of the other Released Parties at any time.

c. Executive agrees that the Severance Benefits or Change of Control Severance Benefits, as applicable, as described in the Employment Agreement constitute good and valuable consideration in exchange for the promises herein and are, individually and together, in addition to anything of value to which Executive is presently entitled by virtue of any understandings, agreements or contracts between Executive and any of the Released Parties, his/her employment with any Released Party and separation from that employment, and any of the Released Parties' policies, practices, plans, agreements or prior understandings with him/her, including but not limited to compensation, vacation, bonus, severance, paid time off, incentive compensation, equity incentives, stock options, offer letters, employment agreements and any other fringe benefit plans, policies or practices.

4. No Right or Guarantee to Re-Employment or Reinstatement. Executive agrees that the termination of his/her employment is permanent and the Released Parties have not in any way guaranteed that he/she will be recalled, rehired, reinstated or in any way retained by the Company.

5. Reference-Related Communications.

a. Executive agrees that, should he/she or any prospective employer for him/her desire that the Company engage in any reference-related communications, such inquiries shall be directed exclusively to the Company's Human Resources Department for confirmation only of Executive's: (i) dates of employment and (ii) employment position. Executive also agrees that, except for the Company's verbal confirmation of dates of employment and position title as expressly set forth above, the Released Parties will have no obligation whatsoever to engage in any reference-related communications with any past, existing or prospective employers unless compelled by a court order or other legal process. Notwithstanding the foregoing, Executive understands and agrees that the Released Parties will remain free to internally communicate to those with a business need to know, any and all information concerning his/her employment history with the Company.

b. Executive acknowledges and agrees that any statements made on social media by any current or former employees or other representatives of the Company are not official statements of reference by the Company. Executive understands and agrees that, should he/she wish for the Company to provide any information related to the salary and/or benefits paid or provided during his/her employment to any third party, Executive will provide the Company's Human Resources Department with a written release expressly authorizing the disclosure of the same.

6. Consultation with Attorney; Voluntary Agreement. The Company advises Executive to consult with an attorney of his/her choosing prior to signing this Agreement. Executive understands and agrees that he/she has the right and has been given the opportunity to review this Agreement and, specifically, the General Release in Section 1 above, with an attorney. Executive also understands and agrees that he/she is under no obligation to consent to the General Release set forth in Section 1 above. Executive acknowledges and agrees that the payments to be made to Executive pursuant to the Employment Agreement are sufficient consideration to require him/her to abide with his/her obligations under this Agreement, including but not limited to the General Release set forth in Section 1. Executive represents that he/she has read this Agreement, including the General Release set forth in Section 1, and understands its terms and that he/she enters into this Agreement freely, voluntarily, and without coercion.

7. Effective Date; Revocation. Executive acknowledges and represents that he/she has been given [Insert minimum required number of days under applicable law] days following the termination of his/her employment during which to review and consider the provisions of this Agreement and, specifically, the General Release set forth in Section 1 above. Executive further acknowledges and represents that he/she has been advised by the Company that he/she has the right to revoke this Agreement for a period of seven (7) days after signing it. Executive acknowledges and agrees that, if he/she wishes to revoke this Agreement, he/she must do so in a writing, signed by him/her and received by the Company no later than 5:00 p.m. Eastern Time on the seventh (7<sup>th</sup>) day of the revocation period. If no such revocation occurs, the General Release and this Agreement shall become effective on the eighth (8<sup>th</sup>) day following his/her execution of this Agreement and shall be final and binding on Executive.

8. Severability. In the event that any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of the Agreement shall not in any way be affected or impaired thereby.

9. Governing Law. This Agreement and any other document or instrument delivered pursuant hereto, and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

10. Entire Agreement. This Agreement, the Employment Agreement and the other agreements referred to in the Employment Agreement (other than the Indemnification Agreement) constitute the entire agreement and understanding of the parties with respect to the subject matter herein and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties. Executive acknowledges and agrees that he/she is not relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement.

11. Amendment. This release shall not be amended, supplemented or otherwise modified in any way except in a writing signed by Executive and the Company.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, intending to be forever legally bound hereby, the parties hereto have executed this Agreement, being seven (7) pages in total length as of the dates set forth below.

OPTINOSE US, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

EXECUTIVE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

## **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “Agreement”) is entered into effective as of May 9, 2023 (the “Effective Date”), by and between OptiNose US, Inc., a Delaware corporation (“OptiNose US” and the “Company”) and Anthony Krick (“Officer”).

WHEREAS, Officer currently serves as VP, Chief Accounting Officer of OptiNose US, pursuant to that certain Employment Agreement entered into by and between Officer and the Company, dated September 23, 2022 (the “Existing Agreement”); and

WHEREAS, the Company and Officer desire to enter into this Agreement to replace the Existing Agreement in its entirety and to set forth the terms and conditions for the continued employment relationship of Officer with the Company.

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

1. **Term.** Subject to the terms and provisions of this Agreement, this Agreement shall continue until Officer’s employment with the Company is terminated by the Company or by Officer. At all times, Officer’s employment with the Company is “at-will,” which means that Officer’s employment with the Company may be terminated at any time by the Company with or without “Cause” or by Officer with or without “Good Reason” (as each such term is defined below).

2. **Title, Duties and Responsibilities.** While Officer is employed by the Company, Officer will serve as the VP, Chief Accounting Officer of OptiNose US and will report to the Chief Executive Officer of OptiNose, Inc. (but may in the future report to the Chief Financial Officer). Officer will have such duties and responsibilities that are commensurate with Officer’s position as VP, Chief Accounting Officer of OptiNose, Inc. and such other duties and responsibilities as are from time to time assigned to Officer by the Chief Executive Officer or Chief Financial Officer. While Officer is employed by the Company, Officer will devote Officer’s full business time, energy and skill to the performance of Officer’s duties and responsibilities hereunder. Officer will not be permitted to engage in other activities that interfere with the performance of Officer’s duties under this Agreement, conflict with the business of the Company or violate any provisions of Section 8 herein. Officer shall, if requested by the Board, also serve as an officer or director of any affiliate of the Company for no additional compensation. Officer’s place of employment will be the Company’s offices in Yardley, Pennsylvania.

3. **Base Salary.** While Officer is employed by the Company, the Company will pay Officer a base annual salary (the “Base Salary”) at the rate of \$317,200.32 per year, paid in accordance with the usual payroll practices of the Company as it is earned. Officer’s Base Salary shall be reviewed periodically for potential increases pursuant to Company policies applicable to



senior Officers by the Compensation Committee of the Board (the “Compensation Committee”) or the Board.

4. **Incentive Compensation.** Officer shall participate in short-term and long-term incentive programs, including equity compensation programs, established by the Company for its senior level Officers generally, at levels determined by the Board or the Compensation Committee. Officer’s incentive compensation shall be subject to the terms of the applicable plans and shall be determined based on Officer’s individual performance and the Company’s performance as determined by the Board or the Compensation Committee. Any annual incentive compensation earned by Officer shall be paid on or after January 1, but not later than March 15 of the fiscal year following the fiscal year for which the annual incentive compensation is earned.

(a) **Discretionary Bonus.** Officer will be eligible to receive an annual target cash bonus of 35% of Officer’s Base Salary (the “Target Annual Bonus”) (pro-rated for any portion of a year during which Officer is not employed by the Company) at the discretion of the Board or the Compensation Committee and contingent upon attainment of certain Company milestones and/or individual objectives as determined by the Board or the Compensation Committee. The actual annual bonus payable for any given year, if any, may be higher or lower than the Target Annual Bonus. To earn and be paid an annual bonus, Officer must be actively employed with the Company at the time that such bonuses are paid to all eligible Officers in accordance with such bonus program unless otherwise specified herein or in the terms pursuant to which such bonus eligibility is offered. Officer’s Target Annual Bonus shall be reviewed periodically for potential increases pursuant to Company review policies applicable to senior Officers by the Compensation Committee or the Board.

(b) **Equity Incentive Compensation.** Officer shall be eligible to receive annual equity awards based on the Company’s and Officer’s actual performance, as determined by the Board or the Compensation Committee. Each such equity award granted to Officer hereunder shall be subject to the terms and conditions of the incentive plan pursuant to which it is granted and such other terms and conditions as are established by the Board or Compensation Committee and set forth in an award agreement evidencing the grant of such equity award.

5. **Benefits and Fringes.**

(a) **General.** While Officer is employed by the Company, Officer will be entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its senior level Officers, subject to the satisfaction of any eligibility requirements and any other terms and conditions of the applicable plans or policies.

(b) **Vacation.** Officer will also be entitled to 20 business days of annual paid vacation in accordance with the Company’s vacation policies in effect from time to time, which may be taken at such times as Officer elects with due regard to the Company’s business needs.

(c) **Reimbursement of Business Expenses.** Upon presentation of appropriate documentation, Officer will be reimbursed in accordance with the Company’s expense

reimbursement policy for all reasonable and necessary business expenses incurred in connection with the performance of Officer's duties and responsibilities hereunder.

## **6. Termination of Employment.**

(a) **Written Notice of Termination and Resignation from Roles.** Any termination of Officer's employment by the Company or Officer (other than because of Officer's death) shall be communicated by a written notice of termination to the other party hereto in accordance with the requirements of this Agreement. Upon termination of Officer's employment with the Company, Officer shall be deemed to have resigned from all positions that Officer holds as an officer or member of the board of directors (or a committee thereof) of the Company or any of its affiliates and all powers of attorney held by Officer arising out of or relating to such Officer's employment with the Company shall be deemed to have been revoked. Regardless of the reason therefore, Officer shall be entitled to receive payment for: (i) any accrued but unpaid portion of Officer's Base Salary earned through the termination date; (ii) any accrued but unused vacation as of the termination date; (iii) any unearned but unpaid bonus for which the performance measurement period has ended prior to the termination date (e.g., if Officer's employment is terminated on February 1 and annual bonuses for the prior year have not been paid as of the termination date, then Officer would be eligible to receive his annual bonus for the prior year but not a bonus for the year in which the termination occurs), provided, that the termination of Officer's employment is not for Cause or due to Officer's voluntary resignation (other than for Good Reason); (iv) any amounts owing to Officer for reimbursements of expenses that Officer properly incurred before the termination date and which are reimbursable in accordance with Section 5(c) above, with all such amounts owed under each of (i), (ii), (iii) and (iv) payable in a lump sum no later than the Company's first regularly scheduled payroll date that is at least ten (10) days after the date of Officer's termination date; and (v) any amounts that are vested benefits or that Officer is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company at or subsequent to the termination date, payable in accordance with such plan, policy, practice or program or contract or agreement (collectively, the "Accrued Benefits").

(b) **Termination upon Death.** If Officer dies, then Officer's employment with the Company shall terminate as of the date of Officer's death, at which time all of Officer's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Officer's heirs, personal representatives or estate shall be entitled to the Accrued Benefits and a payment in the amount of Officer's then-current target annual cash bonus opportunity, prorated based upon the number of days that Officer was employed during the year of Officer's death.

(c) **Termination upon Disability.** "Disability" means any physical or mental incapacity, illness or infirmity that prevents or significantly restricts Officer from performing the normal duties of Officer's position on a full-time basis for a period of at least 180 calendar days, whether or not consecutive, out of any twelve (12) consecutive months, despite the provision, if requested, of a reasonable accommodation as that term is defined in accordance with the American with Disabilities Act and/or any equivalent state or local law and that, in the

reasonable opinion of the Company acting on the basis of advice from a duly-qualified medical practitioner is likely to continue to a similar degree. Upon the termination of Officer's employment due to Disability, the Company shall provide written notice to Officer, at which time all of Officer's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Officer shall be entitled to the Accrued Benefits and a payment in the amount of Officer's then-current target annual cash bonus opportunity, prorated based upon the number of days Officer was actively employed during the year of Officer's death.

(d) **Termination by the Company for Cause.** The Company may, upon written notice to Officer, immediately terminate Officer's employment for Cause. "Cause" shall exist upon (i) Officer's breach of any fiduciary duty or material legal or contractual obligation to the Company or any of its affiliates (including, without limitation, pursuant to a Company or affiliate policy or the restrictive covenants set forth in Section 8 of this Agreement or any other applicable restrictive covenants between Officer and the Company or any of its affiliates), (ii) Officer's failure to follow the reasonable instructions of the Chief Executive Officer or the Board (other than as a result of total or partial incapacity due to physical or mental illness), which failure, if curable, is not cured within thirty (30) days after notice to Officer specifying in reasonable detail the nature of such breach, or, if cured, recurs within ninety (90) business days, (iii) Officer's gross negligence, willful misconduct, fraud, insubordination, acts of dishonesty or conflict of interest relating to the Company or any of its affiliates, or (iv) Officer's commission of any misdemeanor which has a material impact on the affairs, business or reputation of the Company or any of its affiliates or Officer's indictment for, or plea of nolo contendere to, a crime constituting a felony under the laws of the United States or any state thereof. Upon a termination of Officer's employment for Cause, all of Officer's rights to compensation and benefits under Sections 3, 4 and 5 of this Agreement or otherwise shall immediately terminate, except that Officer shall be entitled to the Accrued Benefits.

(e) **Termination by the Company without Cause or by Officer for Good Reason.** Except as provided in Section 6(f) below, upon a termination of Officer's employment by the Company without Cause or by Officer for Good Reason, Officer shall be entitled to receive the Accrued Benefits and, subject to Officer's execution and non-revocation of the release described in Section 6(g) and Officer's compliance with Officer's obligations under Section 8, the following severance payments and benefits (collectively, the "Severance Benefits"):

(i) An amount equal to six (6) months of Officer's Base Salary at the rate in effect on the termination date, payable in substantially equivalent installments, with the first payment made on the Company's first practical pay date following the Release Effective Date (as defined in Section 6(g) below) and remaining installments tendered thereafter on consecutive, semi-monthly pay dates in accordance with the Company's regularly-scheduled payroll calendar until paid in full;

(ii) Continuation of coverage under the Company's group health insurance plan under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA") at

active employee rates beginning on the first day of the month following Officer's termination date and continuing for a period of six (6) months at the same level of coverage Officer elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Officer and Officer's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after Officer's termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Officer to taxation under Section 105(h) of the Internal Revenue Code of 1986, as amended, or otherwise violate any healthcare law or regulation, then the Company shall pay to Officer an amount equal to the amount Officer would be required to pay for continuation of group health coverage for Officer and Officer's eligible dependents through an election under COBRA for six (6) months, which amount shall be paid in a lump sum at the same time payments under Section 6(e)(i) commence and is intended to assist Officer with costs of health coverage, which Officer may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Officer understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Officer's or Officer's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Officer also understands that if Officer or Officer's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Officer will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Officer's COBRA election. Following the COBRA Subsidy Period, Officer and Officer's dependents may, subject to statutory eligibility requirements, continue COBRA coverage at standard COBRA rates for the remainder of the applicable COBRA continuation period permitted by law as long as Officer and Officer's dependents pay the full cost of such coverage in accordance with the Company's COBRA continuation health coverage policies; and

(iii) to the extent such termination of Officer's employment by the Company without Cause or by Officer for Good Reason occurs any time following a Change of Control transaction (and without limiting any Change of Control Severance Benefits specified in Section 6(f) below), Officer shall receive six (6) months of vesting acceleration with respect to all of Officer's then-outstanding equity awards granted to Officer by the Company or assumed, continued or substituted for by the acquiring entity in such Change of Control transaction.

"Good Reason" shall mean, without Officer's prior written consent: (i) a material diminution in Officer's then position or duties, authority or responsibilities, (ii) the assignment to Officer of any duties materially inconsistent with the duties and responsibilities of VP, Chief Accounting Officer, (iii) a reduction by the Company in Officer's then-current Base Salary or Officer's then-current Target Annual Bonus unless the salaries and target annual bonuses for all other senior Officer officers are correspondingly and proportionately reduced by not greater than 15% and such reduction continues for no more than twelve (12) months; (iv) Officer's relocation to offices of the Company that are more than fifty (50) miles from the Company's offices in Yardley, Pennsylvania; or (v) any action or inaction that constitutes a material breach of this Agreement by the Company. In order to invoke a termination for Good Reason, Officer must

deliver a written notice of the grounds for such termination within thirty (30) days of the initial existence of the event giving rise to Good Reason and the Company shall have thirty (30) days to cure the circumstances. In order to terminate Officer's employment, if at all, for Good Reason, Officer must terminate employment within sixty (60) days following the end of the cure period if the circumstances giving rise to Good Reason have not been cured.

(f) **Termination by the Company without Cause or by Officer for Good Reason Following a Change of Control.**

Upon a termination of Officer's employment by the Company without Cause or by Officer for Good Reason, in each case within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control, Officer shall be entitled to receive the Accrued Benefits and, subject to Officer's execution and non-revocation of the release described in Section 6(g) and Officer's compliance with Officer's obligations under Section 8, the following severance payments and benefits (collectively, the "Change of Control Severance Benefits"):

(i) an amount equal to 75% of the sum of Officer's (x) Base Salary and (y) target annual cash bonus opportunity, in each case at the rate in effect on the termination date, payable in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(ii) an amount equal to Officer's annual cash bonus, which shall be equal to the greater of (x) Officer's then-current target annual cash bonus opportunity, prorated based upon the number of days Officer was employed during the year in which the employment termination occurs, and (y) an annualized amount of bonus for such year as determined by the Board in good faith based on the achievement of objectives up to the Change of Control, prorated based upon the number of days Officer was employed during that year. The pro rated bonus described in this Section 6(f)(ii) shall be paid in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(iii) Continuation of coverage under the Company's group health insurance plan through COBRA at active employee rates beginning on the first day of the month following Officer's termination date and continuing for a period of nine (9) months at the same level of coverage Officer elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Officer and Officer's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after the termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Officer to taxation under Section 105(h) of the Code, or otherwise violate any healthcare law or regulation, then, the Company shall pay to Officer the amount Officer would be required to pay for continuation of group health coverage for Officer and Officer's eligible dependents through an election under COBRA for nine (9) months which amount shall be paid in a lump sum at the same time payments under Section 6(f)(i) commence and is intended to assist Officer with costs of health coverage, which Officer may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Officer understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not

extend Officer's or Officer's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Officer also understands that if Officer or Officer's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Officer will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Officer's COBRA election; and

(iv) all of Officer's then-outstanding equity awards granted to Officer by the Company shall become immediately vested.

Notwithstanding anything contained herein to the contrary, in the event that Officer is entitled to the amounts set forth in Section 6(e)(i) as a result of Officer's employment termination prior to a Change of Control and a Change of Control occurs within three (3) months following Officer's termination date, Officer shall receive the amounts set forth in this Section 6(f), less any severance compensation paid to Officer pursuant to Section 6(e), paid in the same form and time as provided in Section 6(f), except that the amounts payable pursuant to Section 6(f)(i) shall be paid to Officer in a lump sum, within ten (10) days after the date of the Change of Control.

(g) Payment to Officer of any Severance Benefits or Change of Control Severance Benefits, as applicable, shall be conditioned on Officer's compliance with the requirements of Section 8 hereof and Officer's execution of a general release in favor of the Company and its affiliates substantially in the form attached hereto as Exhibit A (the "Release") and the lapse of any revocation period specified therein with the Release not having been revoked. The Release shall be provided to Officer within three (3) days of Officer's employment termination. Officer will forfeit all rights to the Severance Benefits and the Change of Control Severance Benefits, as applicable, unless, within sixty (60) days of Officer's employment termination, Officer executes and delivers the Release to the Company and such Release has become irrevocable by virtue of the expiration of the revocation period specified therein without the Release having been revoked (the first such date, the "Release Effective Date"). The Company's obligation to pay the Severance Benefits or the Change of Control Severance Benefits, as applicable, is subject to the occurrence of the Release Effective Date, and if the Release Effective Date does not occur, then the Company shall have no obligation to pay such Severance Benefits or Change of Control Severance Benefits, as applicable. Notwithstanding anything contained herein to the contrary, in the event that the period during which Officer may review and revoke the Release begins in one calendar year and ends in the following calendar year, any severance payments hereunder that constitute non-qualified deferred compensation subject to Section 409A of the Code shall be paid to Officer no earlier than January 1 of the second calendar year.

#### **7. Section 280G.**

(a) Officer shall bear all expense of, and be solely responsible for, any excise tax imposed by Section 4999 of the Code (such excise tax being the "Excise Tax"); provided, however, that any payment or benefit received or to be received by Officer, whether payable

under the terms of this Agreement or any other plan, arrangement or agreement with Company or an affiliate of Company (collectively, the “Payments”) that would constitute a “parachute payment” within the meaning of Section 280G of the Code, shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit Officer receives shall exceed the net after-tax benefit that Officer would receive if no such reduction was made.

(b) The “net after-tax benefit” shall mean (i) the Payments which Officer receives or is then entitled to receive from the Company that would constitute “parachute payments” within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income and employment taxes payable by Officer with respect to the foregoing calculated at the highest marginal income tax rate for each year in which the foregoing shall be paid to Officer (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Tax imposed with respect to the payments and benefits described in (b)(i) above.

(c) All determinations under this Section 7 will be made by an accounting firm or law firm (the “280G Firm”) that is mutually agreed to by Officer and the Company prior to a change in ownership or control of a corporation (within the meaning of Treasury regulations under Section 280G of the Code). The 280G Firm shall be required to evaluate the extent to which payments are exempt from Section 280G of the Code as reasonable compensation for services rendered before or after the Change of Control. All fees and expenses of the 280G Firm shall be paid solely by the Company. The Company will direct the 280G Firm to submit any determination it makes under this Section 7 and detailed supporting calculations to both Officer and the Company as soon as reasonably practicable.

(d) If the 280G Firm determines that one or more reductions are required under this Section 7, such Payments shall be reduced in the order that would provide Officer with the largest amount of after-tax proceeds (with such order, to the extent permitted by Sections 280G and 409A of the Code, designated by Officer, or otherwise determined by the 280G Firm) to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to Officer. Officer shall at any time have the unilateral right to forfeit any equity award in whole or in part.

(e) As a result of the uncertainty in the application of Section 280G of the Code at the time that the 280G Firm makes its determinations under this Section 7, it is possible that amounts will have been paid or distributed to Officer that should not have been paid or distributed (collectively, the “Overpayments”), or that additional amounts should be paid or distributed to Officer (collectively, the “Underpayments”). If the 280G Firm determines, based on either the assertion of a deficiency by the Internal Revenue Service against Officer or the Company, which assertion the 280G Firm believes has a high probability of success or is otherwise based on controlling precedent or substantial authority, that an Overpayment has been made, Officer must repay the Overpayment to the Company, without interest; provided, however, that no loan will be deemed to have been made and no amount will be payable by Officer to the Company unless, and then only to the extent that, the deemed loan and payment

would either reduce the amount on which Officer is subject to tax under Section 4999 of the Code or generate a refund of tax imposed under Section 4999 of the Code. If the 280G Firm determines, based upon controlling precedent or substantial authority, that an Underpayment has occurred, the 280G Firm will notify Officer and the Company of that determination, and the Company will promptly pay the amount of that Underpayment to Officer without interest.

(f) Officer and the Company will provide the 280G Firm access to and copies of any books, records, and documents in their possession as reasonably requested by the 280G Firm, and otherwise cooperate with the 280G Firm in connection with the preparation and issuance of the determinations and calculations contemplated by this Section 7. For purposes of making the calculations required by this Section 7, the 280G Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code.

## **8. Covenants.**

(a) **Non-Competition.** So long as Officer is employed by the Company under this Agreement and for (i) the nine (9) month period following the termination of Officer's employment with the Company in the event Officer's employment is terminated by the Company without Cause or by Officer for Good Reason, in each case, within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control or (ii) the six (6) month period following the termination of Officer's employment with the Company for any reason not covered by clause (i) (such applicable period, the "Restricted Period"), Officer agrees that Officer will not, directly or indirectly, without the prior written consent of the Company, engage in Competition with OptiNose. "Competition" means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any other capacity whatsoever in any business or venture that competes with any business that OptiNose is engaged in as of the date of Officer's employment termination with the Company or is actively planning to engage in as of the date of Officer's employment termination with the Company. Notwithstanding the foregoing, after Officer's employment termination, employment by or consultation for a publicly traded company that derives less than five percent (5%) of its net revenues from activities that compete with business that OptiNose engages in, shall not constitute Competition so long as Officer does not provide employment or consulting services to the business segment of such publicly traded company that engages in such competitive activities. Officer is entering into this covenant not to compete in consideration of the agreements of the Company in this Agreement, including but not limited to, the agreement of the Company to provide the severance and other benefits to Officer upon a employment termination pursuant to Sections 6(e) and (f) hereof, as applicable.

(b) **Confidentiality(c)** . Officer agrees that Officer will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person or entity, other than in the course of Officer's assigned duties hereunder and for the benefit of OptiNose, either while Officer is employed by the Company hereunder or at any time thereafter, any business and technical information or trade secrets, nonpublic, proprietary or confidential information, knowledge or data relating to OptiNose whether the foregoing will have been obtained by Officer during Officer's employment hereunder or otherwise. The foregoing will not



apply to information that (i) was known to the public prior to its disclosure to Officer; (ii) becomes generally known to the public or in OptiNose's industry subsequent to disclosure to Officer through no wrongful act by Officer or any of Officer's representatives; or (iii) Officer is required to disclose by applicable law, regulation or legal process (provided that Officer provides the Company with prior notice of the contemplated disclosure and cooperates at the Company's cost with the Company in seeking a protective order or other appropriate protection of such information). The Company and Officer acknowledge that, notwithstanding anything to the contrary contained in this Agreement, pursuant to 18 USC § 1833(b), an individual may not be held liable under any criminal or civil federal or state trade secret law for disclosure of a trade secret: (aa) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law or (bb) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. The Company and Officer further acknowledge that an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to Officer's attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

(c) **Non-Solicitation of Customers.** Officer agrees that during the Restricted Period, Officer will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, customers of OptiNose to purchase goods or services then sold by OptiNose from any other person or entity.

(d) **Non-Solicitation of Suppliers.** Officer agrees that during the Restricted Period, Officer will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, the Company's suppliers to provide goods or services then provided to OptiNose to any other person or entity in Competition with OptiNose.

(e) **Non-Solicitation of Employees.** Officer recognizes that Officer will possess confidential information about other employees of OptiNose relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of OptiNose. Officer recognizes that the information Officer possesses and will possess about these other employees is not generally known, is of substantial value to OptiNose in developing its business and in securing and retaining customers, and has been and will be acquired by Officer because of Officer's business position with OptiNose. Officer agrees that, during the Restricted Period, Officer will not, (i) directly or indirectly, individually or on behalf of any other person or entity solicit or recruit any employee of OptiNose to leave such employment for the purpose of being employed by, or rendering services to, Officer or any person or entity unaffiliated with OptiNose, or (ii) convey any such confidential information or trade secrets about other employees of OptiNose to any person or entity other than in the course of Officer's assigned duties hereunder and for the benefit of OptiNose. Notwithstanding the foregoing, the Company agrees that hiring any employee of OptiNose who responds to a general advertisement for employment that was not specifically directed at the employees of OptiNose shall not be deemed a violation of this Section 8(e).

(f) **Non-Disparagement.** Officer agrees that Officer will not, nor will Officer induce others to, Disparage OptiNose or any of their past or present officers, directors, employees or products. Similarly, the directors and senior Officers of OptiNose will not, nor will they induce others to, Disparage Officer. “Disparage” will mean making comments or statements to the press, OptiNose’s employees or any individual or entity with whom Officer or OptiNose, as applicable, has a business relationship that would adversely affect in any manner, as applicable: (i) the conduct of the business of OptiNose (including, without limitation, any products or business plans or prospects); (ii) the business reputation of OptiNose, or any of their products, or their past or present officers, directors or employees; or (iii) the business reputation of Officer.

(g) **Inventions.**

(i) Officer acknowledges and agrees that all trade secrets, mask works, concepts, drawings, materials, documentation, procedures, diagrams, specifications, models, processes, formulae, source and object codes, data, programs, know-how, designs, techniques, ideas, methods, inventions, discoveries, improvements, work products, developments or other works of authorship (“Inventions”), whether patentable or unpatentable, (aa) that relate to Officer’s work with OptiNose, made, developed or conceived by Officer, solely or jointly with others or with the use of any of OptiNose’s equipment, supplies, facilities or trade secrets or (bb) suggested by any work that Officer performs in connection with OptiNose, either while performing Officer’s duties with OptiNose or on Officer’s own time, but only insofar as the Inventions are related to Officer’s work as an employee of OptiNose (collectively, “Company Inventions”), will belong exclusively to the Company (or its designee), whether or not patent applications are filed thereon. Officer will keep full and complete written records (the “Records”), in the manner prescribed by OptiNose, of all Company Inventions, and will promptly disclose all Company Inventions completely and in writing to the Company. The Records will be the sole and exclusive property of the Company, and Officer will surrender them upon the termination of Officer’s employment, or upon the Company’s request. Officer hereby assigns to the Company (or its designee) the Company Inventions including all rights in and to any related patents and other intellectual property that may issue thereon in any and all countries, whether during or subsequent to Officer’s employment with OptiNose, together with the right to file, in Officer’s name or in the name of the Company (or its designee), applications for patents and equivalent rights (the “Applications”). Officer will, at any time during and subsequent to Officer’s employment with OptiNose, make such applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Company with respect to the Company Inventions and the underlying intellectual property. Officer will also execute assignments to the Company (or its designee) of the Applications, and give the Company and its attorneys all reasonable assistance (including the giving of testimony) to obtain the Company Inventions and the underlying intellectual property for its benefit, all without additional compensation to Officer from the Company, but entirely at the Company’s expense.

(ii) In addition, the Company Inventions will be deemed “work made for hire”, as such term is defined under the copyright law of the United States, on behalf of OptiNose and Officer agrees that the Company (or its designee) will be the sole owner of the

Company Inventions, and all underlying rights therein, in all media now known or hereinafter devised, throughout the universe and in perpetuity without any further obligations or compensation to Officer. If the Company Inventions, or any portion thereof, are deemed not to be work made for hire, Officer hereby irrevocably conveys, transfers, assigns and delivers to the Company (or its designee), all rights, titles and interests, in all media now known or hereinafter devised, throughout the universe and in perpetuity, in and to the Company Inventions, including without limitation: (aa) all of Officer's rights, titles and interests in and to any underlying intellectual property (and all renewals, revivals and extensions thereof) related to the Company Inventions; (bb) all rights of any kind or any nature now or hereafter recognized, including without limitation, the unrestricted right to make modifications, adaptations and revisions to the Company Inventions, to exploit and allow others to exploit the Company Inventions; and (cc) all rights to sue at law or in equity for any infringement, or other unauthorized use or conduct in derogation of the Company Inventions, known or unknown, prior to the date hereof, including without limitation the right to receive all proceeds and damages therefrom. In addition, Officer hereby waives any so-called "moral rights" with respect to the Company Inventions. Officer hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents and other intellectual property rights that may issue thereon, including, without limitation, any rights that would otherwise accrue to Officer's benefit by virtue of Officer being an employee of or other service provider to OptiNose.

(iii) To the extent that Officer is unable to assign any of Officer's right, title or interest in any Company Invention under applicable law, for any such Company Invention and the underlying intellectual property rights, Officer hereby grants to the Company (or its designee) an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid license to such Company Invention and the underlying intellectual property, with the right to sublicense, use, modify, create derivative works and otherwise fully exploit such Company Invention and the underlying intellectual property, to assign this license and to exercise all rights and incidents of ownership of the Company Invention.

(iv) To the extent that any of the Company Inventions are derived by, or require use by OptiNose of, any works, Inventions, or other intellectual property rights that Officer owns, which are not assigned hereby, Officer hereby grants to the Company (or its designee) an irrevocable, perpetual, transferable, worldwide, non-exclusive, royalty free license, with the right to sublicense, use, modify and create derivative works using such works, Inventions or other intellectual property rights, but only to the extent necessary to permit the Company to fully realize their ownership rights in the Company Inventions.

(h) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), Officer agrees that while employed by OptiNose (for no additional compensation) and thereafter (for reasonable compensation for Officer's time), Officer will respond and provide information with regard to matters in which Officer has knowledge as a result of Officer's employment with OptiNose, and will provide reasonable assistance to OptiNose and its representatives in defense of any claims that may be made against OptiNose, and will assist OptiNose in the prosecution of any claims that may be made by OptiNose, to the extent that such claims may relate to the period of Officer's employment with OptiNose (or any

predecessor). Officer agrees to promptly inform the Company if Officer becomes aware of any lawsuits involving such claims that may be filed or threatened against OptiNose. Officer also agrees to promptly inform the Company (to the extent Officer is legally permitted to do so) if Officer is asked to assist in any investigation of OptiNose (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against OptiNose with respect to such investigation, and will not do so unless legally required.

(i) **Return of Property.** On the date of the termination of Officer's employment with the Company for any reason (or at any time prior thereto at the Company's request), Officer will return all property belonging to OptiNose (including, but not limited to, any Employer provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to OptiNose).

(j) **Injunctive Relief.** It is further expressly agreed that OptiNose will or would suffer irreparable injury if Officer were to violate the provisions of this Section 8 and that OptiNose would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and Officer further consents and stipulates to the entry of such injunctive relief in such court prohibiting Officer from violating the provisions of this Section 8.

(k) **Survival of Provisions.** The obligations contained in this Section 8 will survive the termination of Officer's employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this Section 8 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

(l) **Prior Agreements.** Officer represents and warrants to the Company that there are no restrictions, agreements or understandings whatsoever to which Officer is a party that would prevent or make unlawful Officer's execution of this Agreement or Officer's employment hereunder, is or would be inconsistent or in conflict with this Agreement or Officer's employment hereunder, or would prevent, limit or impair in any way the performance by Officer of the obligations hereunder.

**9. Assignment; Third Party Beneficiaries.** Notwithstanding anything else herein, this Agreement is personal to Officer and neither the Agreement nor any rights hereunder may be assigned by Officer. The Company may assign the Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. OptiNose shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of OptiNose to expressly assume and agree to perform this Agreement in the same manner and to the same extent that OptiNose would be required to perform it if no such succession had taken place. This Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties. Officer acknowledges that this Agreement is intended to benefit the Company, its shareholders, and its

and their parents, affiliates, subsidiaries, divisions, and related companies or entities, now existing or hereafter created. Both Officer and the Company further acknowledge and agree that the intended beneficiaries of this Agreement are entitled to enforce the provisions of this Agreement by seeking injunctive relief or any other appropriate remedy.

**10. Clawback/Recoupment.** Notwithstanding any other provision in this Agreement to the contrary, any compensation paid to Officer pursuant to this Agreement or any other agreement or arrangement with the Company shall be subject to mandatory repayment by Officer to the Company to the extent any such compensation paid to Officer is, or in the future becomes, subject to (i) any “claw-back” or recoupment policy applicable to Officer that is adopted to comply with any applicable law, rule or regulation (including stock exchange rule), or (ii) any law, rule or regulation (including stock exchange rule) which imposes mandatory recoupment, under circumstances set forth in such law, rule or regulation.

**11. Arbitration; Waiver of Rights to Sue; Attorneys’ Fees.**

(a) Except as provided in Section 8(j), the parties agree that they will use binding arbitration to settle all claims and disputes that may arise out of this Agreement or that in any way relate to Officer’s employment with Company. Specifically, both the Company and Officer agree that any claim, dispute and/or controversy that either Officer may have against the Company (or its directors, officers, managers, employees, agents or parties affiliated with its employee benefit and health plans), or that the Company may have against Officer, shall be submitted to binding arbitration conducted before one (1) arbitrator mutually agreed to by the Company and Officer, sitting in Philadelphia, Pennsylvania or such other location mutually agreed to by Officer and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association (“AAA Rules”) then in effect; provided, however, that if the Company and Officer are unable to agree on a single arbitrator within thirty (30) calendar days of the demand by another party for arbitration, an arbitrator will be designated by the Philadelphia Office of the American Arbitration Association.

(b) **Coverage.** Included within the parties’ agreement to submit all disputes to binding arbitration are all employment-related claims and disputes, whether based upon tort, contract, statute (including but not limited to any claims of workplace discrimination, harassment (other than sexual harassment), retaliation, failure to pay proper wages or other compensation (including commissions, bonuses, salary, severance pay or other benefits), or any other unlawful employment practice or wrongful termination, whether based upon the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the National Labor Relations Act, the Labor Management Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Genetic Information Nondiscrimination Act, the Lilly Ledbetter Fair Pay Act of 2009, the Fair Credit Reporting Act, the Family and Medical Leave Act, the Equal Pay Act of 1963, the Consolidated Omnibus Budget Reconciliation Act, the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud and Abuse Act, the Health Insurance Portability &

Accountability Act, the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Officer and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, embezzlement, conversion, non-payment of debt, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault (other than sexual assault), battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions.

OFFICER UNDERSTANDS AND VOLUNTARILY AND FREELY AGREES TO THIS BINDING ARBITRATION PROVISION, AND BOTH OFFICER AND THE COMPANY EXPRESSLY AND FREELY FOREGO AND WAIVE THEIR RIGHT TO TRIAL BY JURY, IN FAVOR OF BINDING ARBITRATION, WITH RESPECT TO ANY CLAIMS OR CONTROVERSIES COVERED BY THIS AGREEMENT EXCEPT AS EXPRESSLY EXCLUDED HEREIN.

(c) **Exclusions.** Notwithstanding the foregoing:

(i) The parties shall not arbitrate: (aa) claims by Officer for workers' compensation or unemployment compensation insurance benefits; (bb) claims by the Company for injunctive or equitable relief, including without limitation claims related to the misappropriation of trade secrets, theft of confidential and proprietary business information, breach of fiduciary duty and/or violation of other restrictive covenants; and (cc) claims by Officer for sexual assault and/or sexual harassment, unless Officer voluntarily elects for such sexual assault and/or sexual harassment claims to be arbitrated.

(ii) Nothing contained in this Agreement prohibits Officer from filing, a complaint, participating in an investigation, or otherwise communicating with the United States Equal Employment Opportunity Commission and/or any other federal, state, or local agency charged with the processing of complaints and performance of investigation into claims of unlawful employment practices, although if Officer elects to pursue a claim following the exhaustion or completion of any such administrative process, such claim would be subject to the mandatory arbitration provisions set forth in this Section of the Agreement.

(iii) Claims by Officer relating to benefits under any of the Company's employee benefit plans must be raised with the claims administrator of the relevant plan pursuant

to the terms of that plan, but if the matter is not resolved under those procedures, Officer may pursue such a claim only through arbitration as provided for in this Section.

(d) **Procedures.** The party seeking arbitration pursuant to this Section of the Agreement shall commence such proceeding in accordance with the applicable AAA rules. All rules of pleading, rules of evidence, and rights to resolution of the dispute by means of summary judgment, judgment on the pleadings, and judgment under Pennsylvania law shall apply and be observed. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") but shall apply the same law as if brought in a court of law. The arbitrator shall possess the authority to rule on any dispositive motions (including a motion to dismiss and/or summary judgment brought by any party) and to order any appropriate legal and equitable relief consistent with that available to parties in civil actions filed in a court of competent jurisdiction, except that the parties agree neither party shall be entitled to punitive damages on any claim.

(e) **Discovery.** During the arbitration, Officer and the Company shall be entitled to engage in and conduct discovery in accordance with any schedule established by the arbitrator; provided, however, the arbitrator must allow the parties to conduct discovery sufficient to adequately arbitrate their claims and defenses in accordance with applicable federal, state, and local law, even if the AAA Rules are more restrictive.

(f) **Determination.** The determination of the arbitrator will be final and binding on Officer and the Company. Awards shall include the arbitrator's written, reasoned opinion and shall contain the arbitrator's essential findings and conclusions. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction.

(g) **Attorney's Fees; Costs.** Each party will bear their own expenses of such arbitration, except that (i) the prevailing party shall be entitled to be indemnified and reimbursed for their reasonable attorneys' fees and costs incurred in enforcing and/or seeking to enforce the terms of this Agreement should the other party violate or be alleged to have violated any of its terms or (ii) as otherwise required by a fee-shifting statute.

**12. Indemnification.** The Company and Executive acknowledge that they have entered into an Indemnification Agreement, effective as of August 8, 2022 set forth above (the "Indemnification Agreement").

**13. Governing Law.** This Agreement and any other document or instrument delivered pursuant hereto, (other than the Indemnification Agreement) and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

**14. Withholding Taxes.** The Company may withhold from any and all amounts payable to Officer such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

**15. Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or three (3) days after being mailed by registered or certified mail to Officer or the Company, as the case may be, at Officer's address set forth below or the Company's address set forth below, or to such other names or addresses as Officer or the Company, as the case may be, shall designate by notice to each other party entitled to receive notices in the manner specified in this Section (provided that notice of change of address shall be deemed given only when received).

Company notices shall be delivered to:

OptiNose US, Inc.  
Attn: Chief Legal Officer  
1020 Stony Hill Road  
Third Floor, Suite 300  
Yardley, PA 19067

Officer notices shall be delivered to such address as shall most currently appear on the records of the Company.

**16. Entire Agreement; Amendments.** This Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supersede in their entirety any and all prior and/or contemporaneous agreements, understandings or representations relating to the subject matter hereof, whether written or oral, including without limitation the Existing Agreement. No amendments, alterations or modifications of this Agreement will be valid unless made in writing and signed by the parties hereto.

**17. Section Headings.** The section headings used in this Agreement are included solely for convenience and will not affect, or be used in connection with, the interpretation of this Agreement.

**18. Severability.** The provisions of this Agreement will be deemed severable and the invalidity of unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party, and no course of dealing between the parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

**19. Counterparts.** This Agreement may be executed in several counterparts (including via facsimile and/or .pdf), each of which will be deemed to be an original but all of which together will constitute one and the same instruments.



## 20. Section 409A.

(a) The payments and benefits under this Agreement are intended to comply with or be exempt from Section 409A of the Code, and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and this Agreement shall be interpreted and construed in a manner intended to comply therewith. For purposes of this Agreement, Officer will be considered to have experienced a employment termination only if Officer has a “separation from service” with the Company and all of its controlled group members within the meaning of Section 409A. Whether Officer has a separation from service will be determined based on all of the facts and circumstances and in accordance with the guidance issued under Section 409A.

(b) Each payment under this Agreement, including each installment payment, shall be considered a separate and distinct payment. For purposes of this Agreement, each payment is intended to be excepted from Section 409A to the maximum extent provided as follows: (i) each payment made within the applicable 2½ month period specified in Treas. Reg. § 1.409A-1(b)(4) is intended to be excepted under the short-term deferral exception; (ii) post-termination medical benefits are intended to be excepted under the medical benefits exception as specified in Treas. Reg. § 1.409A-1(b)(9)(v)(B); and (iii) to the extent payments are made as a result of an involuntary separation, each payment that is not otherwise excepted under the short-term deferral exception or medical benefits exception is intended to be excepted under the involuntary pay exception as specified in Treas. Reg. § 1.409A-1(b)(9)(iii). With respect to payments subject to Section 409A (and not excepted therefrom), if any, it is intended that each payment is paid on a permissible distribution event and at a specified time consistent with Section 409A. Neither the Company nor Officer shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. Officer shall have no right to designate the date or any payment under this Agreement.

(c) If Officer is a “specified employee” (as that term is used in Section 409A and regulations and other guidance issued thereunder) on the date of Officer’s separation from service, any benefits payable under this Agreement that constitute non-qualified deferred compensation subject to Section 409A shall be delayed until the earlier of (i) the first business day following the six-month anniversary of the date of Officer’s separation from service, or (ii) the date of Officer’s death, but only to the extent necessary to avoid the adverse tax consequences and penalties under Section 409A. On the earlier of (x) the first business day following the six-month anniversary of the date of Officer’s separation from service, or (y) Officer’s death, the Company shall pay Officer (or Officer’s estate or beneficiaries) a lump-sum payment equal to all payments delayed pursuant to the preceding sentence.

(d) If any of the reimbursements or in-kind benefits provided for under this Agreement are subject to Section 409A, the following rules shall apply: (i) in no event shall any such reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred; (ii) the amount of such reimbursable expenses incurred, or the provision of in-kind benefits, in one tax year shall not affect the expenses eligible for

reimbursement or the provision of in-kind benefits in any other tax year; and (iii) the right to such reimbursement for expenses or provision of in-kind benefits is not subject to liquidation or exchange for any other benefit.

(e) Notwithstanding anything in Section 6(f) hereof to the contrary, in the event that Officer is entitled to the amount set forth in Section 6(f)(i) as a result of a termination of Officer's employment within three (3) months prior to or eighteen (18) months after the date of the Change of Control, and such Change of Control does not constitute a change in ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A(a)(2)(A)(v) of the Code and its corresponding regulations, and any portion of the severance benefit payable to Officer pursuant to Section 6(e)(i) is deemed to constitute deferred compensation subject to the requirements of Section 409A of the Code at the time of Officer's termination, then such portion that constitutes deferred compensation shall reduce the amount that is paid in a lump sum as provided in Section 6(f)(i) and such deferred compensation portion shall instead be paid in substantially equal installments over the installment period as described in Section 6(e)(i).

**21. Construction; Reasonable Time to Review and Consider Agreement.** The parties agree that this Agreement was reached following arms-length negotiations and should not be construed against the drafter. Officer agrees that Officer has been provided reasonable and adequate time to review this Agreement and, if desired, consult with counsel of Officer's own choosing, and that Officer has consulted counsel before signing this Agreement or knowingly waived the right to do so.

*[Signature Page Follows]*

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

**OPTINOSE US, INC.**

By: /s/ Ramy Mahmoud

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Ramy Mahmoud

Chief Executive Officer

**EXECUTIVE**

By: /s/ Anthony Krick

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Anthony Krick

## EXHIBIT A

### SAMPLE RELEASE AGREEMENT

This RELEASE AGREEMENT (“**Agreement**”) made this [Date] day of [Month•], [Year•] (the “**Effective Date**”), between OptiNose US, Inc. (a wholly-owned subsidiary of OptiNose, Inc. and, together with OptiNose, Inc. and each of its and their successors and assigns, the “**Company**”), and [Full Name•] (“**Officer**”).

1. Release.

a. In consideration of the amounts to be paid by the Company pursuant to the Employment Agreement entered into on [Date], by and between the Company and Officer (the “**Employment Agreement**”), Officer, on behalf of himself/herself and on behalf of his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns, irrevocably and unconditionally forever waives, releases, gives up and discharges the Company, its parent, affiliated and related companies (including but not limited to OptiNose, Inc.), all of its and their employee benefit plans and trustees, fiduciaries, administrators, sponsors and parties-in-interest of those plans, all of its and their past and present employees, managers, directors, officers, administrators, shareholders, members, investors, agents, attorneys, insurers, re-insurers and contractors acting in any capacity whatsoever (whether individually or in an official capacity on behalf of the Company), and all of its and their respective predecessors, heirs, personal representatives, successors and assigns (collectively, the “**Released Parties**”), from any and all debts, demands, actions, causes of action, accounts, covenants, contracts, agreements, claims, damages, omissions, promises, and any and all claims and liabilities whatsoever, of every name and nature, known or unknown, suspected or unsuspected, accrued or unaccrued, liquidated or contingent, asserted or unasserted, both in law and equity (“**Claims**”), which Officer ever had, now has, or may hereafter claim to have against the Released Parties by reason of any matter or cause whatsoever based on, related to, or arising from any event that occurred before the date Officer signs this Agreement and based upon, related to or arising out of or in any way concerning Officer’s employment with the Company, the terms, conditions or privileges of Officer’s employment with the Company, Officer’s separation from employment with the Company, and any and all violations and/or alleged violations of federal, state or local human rights laws, fair employment practices and/or other laws by any of the Released Parties for any reason and under any legal theory including, but not limited to, those arising or which may be arising under, as applicable, Title VII of the Civil Rights Act of 1964 (“**Title VII**”), the Americans with Disabilities Act (“**ADA**”), the Age Discrimination in Employment Act (“**ADEA**”), the Older Worker Benefit Protection Act (“**OWBPA**”), the Employee Retirement Income Security Act of 1974 (“**ERISA**”), the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act (“**WARN**”), the Family and Medical Leave Act (“**FMLA**”), the Coronavirus Aid, Relief and Economic Security Act (“**CARES**”), the Families First Coronavirus Relief Act (“**FFCRA**”), the American Rescue Plan Act, the Fair Labor Standards Act (“**FLSA**”), the Equal Pay Act of 1963 (“**EPA**”), the Lilly Ledbetter Fair Pay Act of 2010 (“**Fair Pay Act**”), the Genetic Information Nondiscrimination Act of 2008 (“**GINA**”), the Rehabilitation Act, the

Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud & Abuse Act, the Health Insurance Portability & Accountability Act (“**HIPAA**”), the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), the Occupational Safety and Health Act (“**OSHA**”), the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act (“**FCRA**”), the National Labor Relations Act (“**NLRA**”), the Labor Management Relations Act (“**LMRA**”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“**USERRA**”), the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Workers’ Compensation Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Officer and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault, battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions (the “**General Release**”).

b. For the purpose of implementing a full and complete release, Officer understands and agrees that this Agreement is intended to include all claims, if any, which Officer or his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns may have and which Officer does not now know or suspect to exist in his/her favor against the Released Parties, from the beginning of time until the time he/she signs this Agreement, and this Agreement extinguishes those claims.

c. In consideration of the promises of the Company set forth in the Employment Agreement, Officer hereby releases and discharges the Released Parties from any and all Claims that Officer may have against the Released Parties arising under the Age Discrimination Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder (“**ADEA**”). Officer acknowledges that he/she understands that the ADEA is a federal statute that prohibits discrimination on the basis of age in employment, benefits and benefit plans. Officer also understands that, by signing this Agreement, he/she is waiving all Claims against any and all of the Released Parties.

d. **Officer understands that the laws and actions described above give Officer important remedies that relate to claims that he/she has or may have arising out of or in connection with his/her employment with, or separation from employment from, the Company and agree that he/she is freely and voluntarily giving up those remedies and claims.** By signing this Agreement, Officer agrees that he/she is irrevocably and unconditionally waiving the right to proceed with discovery concerning any released claim in any future

litigation with any Released Party, if any. Officer also agrees that he/she is fully releasing all claims for equitable, punitive or other relief, attorney's fees, and other fees and costs incurred up to the date Officer signs this Agreement for any reason.

e. Officer represents and warrants that: (i) he/she is the lawful owner of all claims released through this Agreement; (ii) he/she has the beneficial interest in the payments and other benefits that he/she will receive under this Agreement; (iii) he/she has not assigned, and will not assign, any interest in any claim released through this Agreement; (iv) he/she has not filed, and is not and has not been subject to a voluntary or involuntary bankruptcy petition in the past three (3) years; (v) he/she is not a debtor in any pending bankruptcy case; (vi) no receiver, bankruptcy trustee or other third party may assert a right to any claim released through this Agreement or the payments and benefits to be tendered or provided under the Employment Agreement. Officer agrees that the foregoing representations and warranties shall survive the execution, performance and consummation or termination of this Agreement. Officer also agrees that he/she will fully indemnify and hold the Released Parties harmless to the extent any of the foregoing representations and warranties is or becomes untrue for any claims or damages, including attorneys' fees, fines, costs, liquidated damages and punitive damages, asserted or awarded against any of the Released Parties and, should it be determined that any bankruptcy trustee or other third party has a right to the payments and benefits provided to Officer under the Employment Agreement, Officer immediately will return to the Company an amount equivalent to the full after-tax value of any such payments or benefits.

f. Officer warrants that he/she does not have any complaint pending before any federal, state or local court or arbitration panel concerning any Released Party. Officer further agrees not to file a lawsuit against any of the Released Parties in any federal, state or local court, or with any arbitration panel, concerning any claim, demand, issue or cause of action released through this Agreement, except to the extent specifically excluded below in Section 2 below and its subparagraphs below. Should Officer file a lawsuit with any court or arbitration panel concerning any claim, demand, issue, or cause of action waived through this Agreement and not specifically excluded as described in Section 2 below and its subparagraphs below, Officer agrees that he/she will be responsible to pay the legal fees and costs that the Released Parties incur defending that lawsuit. Further, Officer agrees that nothing in this Agreement shall limit the right of any court or arbitration panel to determine, in its sole discretion, that the Released Parties are entitled to restitution, recoupment or set off of any monies paid to Officer should the release of any claims under this Agreement subsequently be found to be invalid.

## 2. Exclusions from Release of Claims and Covenant Not to Sue.

a. Officer understands and agrees that nothing in this Agreement limits his/her right to bring an action to enforce the terms of this Agreement.

b. Officer understands and agrees that the General Release contained in Section 1 above and its subparagraphs above does not include a waiver of any claims which cannot be waived by law and does not include a waiver of any vested rights Officer may have in any existing Company 401(k) plan, if any, nor will it preclude Officer from purchasing

continuation health benefits coverage for himself/herself and/or his/her dependents under the Company's continuation health benefits policies to the extent he/she and his/her dependents are otherwise eligible and for the period provided by law under COBRA. The General Release also does not release any pending workers' compensation claim or right to any workers' compensation benefits with respect to any occupational illness or injury arising from or sustained due to his/her employment with the Company.

c. Officer understands and agrees that nothing in this Agreement is intended to or shall prevent, impede or interfere with his/her non-waivable right to file a charge or complaint with the Equal Employment Opportunity Commission ("EEOC"), the Occupational Safety and Health Review Commission ("OSH"), the National Labor Relations Board ("NLRB"), the Securities and Exchange Commission ("SEC"), any other federal agency, labor board or commission, any state or local fair employment practices agency, or any other state or local agency, labor board or commission (collectively, the "Government Agencies"). Officer also understands that nothing in this Agreement in any way limits his/her ability to provide information and/or documents to or otherwise communicate with any Government Agencies, participate in any investigation of any Government Agencies, testify or otherwise participate in any proceeding that may be conducted by any Government Agencies concerning the Company's past or future conduct, or engage in any activities now or in the future that are protected under the whistleblower statutes administered by OSH or any other Government Agencies without notice to the Company. However, Officer agrees that he/she is completely waiving any right to recover money, share in or participate in any monetary award in connection with or resulting from the prosecution of any charge, investigation or proceeding by any Government Agency, except that this Agreement does not limit the right to receive and fully retain a monetary reward from any government-administered whistleblower award or other incentive program for providing information directly to any Government Agencies (such as those administered by the OSH or the SEC).

d. Officer understands and agrees that nothing in this Agreement prohibits him/her filing a claim to collect any unemployment compensation benefits available to him/her under applicable state Unemployment Insurance Compensation law or from collecting any award of benefits granted to him/her in accordance with that law.

e. Officer understands and agrees that this Agreement does not limit any statutory rights he/she may have to bring an action to challenge the terms of this Agreement or contest the validity of the General Release set forth in Section 1 above under the ADEA or the OWBPA.

### 3. Non-Admission of Liability.

a. Officer agrees that this Agreement shall not in any way be construed as an admission that any of the Released Parties owe him/her any money or have acted wrongfully, unlawfully, or unfairly in any way towards him/her. In fact, Officer understands that the Released Parties specifically deny that they have violated any federal, state or local law or ordinance or any right or obligation that they owe or might have owed to Officer at any time and

maintain that they have at all times treated Officer in a fair, lawful, non-discriminatory and non-retaliatory manner.

b. Except as provided in Section 6(e) or Section 6(f), as applicable, of the Employment Agreement or in the Indemnification Agreement, Officer acknowledges and agrees that the Company has fully satisfied any and all obligations owed to him/her arising out of his/her employment with or termination from the Company, and no further sums or benefits are owed to him/her by the Company or by any of the other Released Parties at any time.

c. Officer agrees that the Severance Benefits or Change of Control Severance Benefits, as applicable, as described in the Employment Agreement constitute good and valuable consideration in exchange for the promises herein and are, individually and together, in addition to anything of value to which Officer is presently entitled by virtue of any understandings, agreements or contracts between Officer and any of the Released Parties, his/her employment with any Released Party and separation from that employment, and any of the Released Parties' policies, practices, plans, agreements or prior understandings with him/her, including but not limited to compensation, vacation, bonus, severance, paid time off, incentive compensation, equity incentives, stock options, offer letters, employment agreements and any other fringe benefit plans, policies or practices.

4. No Right or Guarantee to Re-Employment or Reinstatement. Officer agrees that the termination of his/her employment is permanent and the Released Parties have not in any way guaranteed that he/she will be recalled, rehired, reinstated or in any way retained by the Company.

5. Reference-Related Communications.

a. Officer agrees that, should he/she or any prospective employer for him/her desire that the Company engage in any reference-related communications, such inquiries shall be directed exclusively to the Company's Human Resources Department for confirmation only of Officer's: (i) dates of employment and (ii) employment position. Officer also agrees that, except for the Company's verbal confirmation of dates of employment and position title as expressly set forth above, the Released Parties will have no obligation whatsoever to engage in any reference-related communications with any past, existing or prospective employers unless compelled by a court order or other legal process. Notwithstanding the foregoing, Officer understands and agrees that the Released Parties will remain free to internally communicate to those with a business need to know, any and all information concerning his/her employment history with the Company.

b. Officer acknowledges and agrees that any statements made on social media by any current or former employees or other representatives of the Company are not official statements of reference by the Company. Officer understands and agrees that, should he/she wish for the Company to provide any information related to the salary and/or benefits paid or provided during his/her employment to any third party, Officer will provide the Company's



Human Resources Department with a written release expressly authorizing the disclosure of the same.

6. Consultation with Attorney; Voluntary Agreement. The Company advises Officer to consult with an attorney of his/her choosing prior to signing this Agreement. Officer understands and agrees that he/she has the right and has been given the opportunity to review this Agreement and, specifically, the General Release in Section 1 above, with an attorney. Officer also understands and agrees that he/she is under no obligation to consent to the General Release set forth in Section 1 above. Officer acknowledges and agrees that the payments to be made to Officer pursuant to the Employment Agreement are sufficient consideration to require him/her to abide with his/her obligations under this Agreement, including but not limited to the General Release set forth in Section 1. Officer represents that he/she has read this Agreement, including the General Release set forth in Section 1, and understands its terms and that he/she enters into this Agreement freely, voluntarily, and without coercion.

7. Effective Date; Revocation. Officer acknowledges and represents that he/she has been given [Insert minimum required number of days under applicable law] days following the termination of his/her employment during which to review and consider the provisions of this Agreement and, specifically, the General Release set forth in Section 1 above. Officer further acknowledges and represents that he/she has been advised by the Company that he/she has the right to revoke this Agreement for a period of seven (7) days after signing it. Officer acknowledges and agrees that, if he/she wishes to revoke this Agreement, he/she must do so in a writing, signed by him/her and received by the Company no later than 5:00 p.m. Eastern Time on the seventh (7<sup>th</sup>) day of the revocation period. If no such revocation occurs, the General Release and this Agreement shall become effective on the eighth (8<sup>th</sup>) day following his/her execution of this Agreement and shall be final and binding on Officer.

8. Severability. In the event that any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of the Agreement shall not in any way be affected or impaired thereby.

9. Governing Law. This Agreement and any other document or instrument delivered pursuant hereto, and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

10. Entire Agreement. This Agreement, the Employment Agreement and the other agreements referred to in the Employment Agreement (other than the Indemnification Agreement) constitute the entire agreement and understanding of the parties with respect to the subject matter herein and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties. Officer acknowledges and agrees that he/she is not relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement.

11. Amendment. This release shall not be amended, supplemented or otherwise modified in any way except in a writing signed by Officer and the Company.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, intending to be forever legally bound hereby, the parties hereto have executed this Agreement, being seven (7) pages in total length as of the dates set forth below.

OPTINOSE US, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

## **AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “Agreement”) is entered into effective as of May 9, 2023 (the “Effective Date”), by and between OptiNose US, Inc., a Delaware corporation (“OptiNose US”) and wholly-owned subsidiary of OptiNose, Inc. (the “Parent” and, together with OptiNose US, the “Company”), and Paul Spence (“Executive”).

WHEREAS, Executive currently serves as Chief Commercial Officer of OptiNose, Inc., pursuant to that certain Employment Agreement entered into by and between Executive and the Company, dated December 15, 2022 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to enter into this Agreement to replace the Existing Agreement in its entirety and to set forth the terms and conditions for the continued employment relationship of Executive with the Company.

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

1. **Term.** Subject to the terms and provisions of this Agreement, this Agreement shall continue until Executive’s employment with the Company is terminated by the Company or by Executive. At all times, Executive’s employment with the Company is “at-will,” which means that Executive’s employment with the Company may be terminated at any time by the Company with or without “Cause” or by Executive with or without “Good Reason” (as each such term is defined below).

2. **Title, Duties and Responsibilities.** While Executive is employed by the Company, Executive will serve as the Chief Commercial Officer of OptiNose, Inc. and will report to the Chief Executive Officer of OptiNose, Inc. Executive will have such duties and responsibilities that are commensurate with Executive’s position as Chief Commercial Officer of OptiNose, Inc. and such other duties and responsibilities as are from time to time assigned to Executive by the Chief Executive Officer, or the Board of Directors of the Parent (the “Board”). While Executive is employed by the Company, Executive will devote Executive’s full business time, energy and skill to the performance of Executive’s duties and responsibilities hereunder. Executive will not be permitted to engage in other activities that interfere with the performance of Executive’s duties under this Agreement, conflict with the business of the Company or violate any provisions of Section 8 herein. Executive shall, if requested by the Board, also serve as an officer or director of any affiliate of the Company for no additional compensation. Executive’s place of employment will be the Company’s offices in Yardley, Pennsylvania.

3. **Base Salary.** While Executive is employed by the Company, the Company will pay Executive a base annual salary (the “Base Salary”) at the rate of \$435,000.00 per year, paid in accordance with the usual payroll practices of the Company as it is earned. Executive’s Base Salary shall be reviewed periodically for potential increases pursuant to Company policies

applicable to senior executives by the Compensation Committee of the Board (the “Compensation Committee”) or the Board.

4. **Incentive Compensation.** Executive shall participate in short-term and long-term incentive programs, including equity compensation programs, established by the Company for its senior level executives generally, at levels determined by the Board or the Compensation Committee. Executive’s incentive compensation shall be subject to the terms of the applicable plans and shall be determined based on Executive’s individual performance and the Company’s performance as determined by the Board or the Compensation Committee. Any annual incentive compensation earned by Executive shall be paid on or after January 1, but not later than March 15 of the fiscal year following the fiscal year for which the annual incentive compensation is earned.

(a) **Discretionary Bonus.** Executive will be eligible to receive an annual target cash bonus of 45% of Executive’s Base Salary (the “Target Annual Bonus”) (pro-rated for any portion of a year during which Executive is not employed by the Company) at the discretion of the Board or the Compensation Committee and contingent upon attainment of certain Company milestones and/or individual objectives as determined by the Board or the Compensation Committee. The actual annual bonus payable for any given year, if any, may be higher or lower than the Target Annual Bonus. To earn and be paid an annual bonus, Executive must be actively employed with the Company at the time that such bonuses are paid to all eligible executives in accordance with such bonus program unless otherwise specified herein or in the terms pursuant to which such bonus eligibility is offered. Executive’s Target Annual Bonus shall be reviewed periodically for potential increases pursuant to Company review policies applicable to senior executives by the Compensation Committee or the Board.

(b) **Equity Incentive Compensation.** Executive shall be eligible to receive annual equity awards based on the Company’s and Executive’s actual performance, as determined by the Board or the Compensation Committee. Each such equity award granted to Executive hereunder shall be subject to the terms and conditions of the incentive plan pursuant to which it is granted and such other terms and conditions as are established by the Board or Compensation Committee and set forth in an award agreement evidencing the grant of such equity award.

5. **Benefits and Fringes.**

(a) **General.** While Executive is employed by the Company, Executive will be entitled to such benefits and fringes, if any, as are generally provided from time to time by the Company to its senior level executives, subject to the satisfaction of any eligibility requirements and any other terms and conditions of the applicable plans or policies.

(b) **Vacation.** Executive will also be entitled to 20 business days of annual paid vacation in accordance with the Company’s vacation policies in effect from time to time, which may be taken at such times as Executive elects with due regard to the Company’s business needs.

(c) **Reimbursement of Business Expenses.** Upon presentation of appropriate documentation, Executive will be reimbursed in accordance with the Company's expense reimbursement policy for all reasonable and necessary business expenses incurred in connection with the performance of Executive's duties and responsibilities hereunder.

## **6. Termination of Employment.**

(a) **Written Notice of Termination and Resignation from Roles.** Any termination of Executive's employment by the Company or Executive (other than because of Executive's death) shall be communicated by a written notice of termination to the other party hereto in accordance with the requirements of this Agreement. Upon termination of Executive's employment with the Company, Executive shall be deemed to have resigned from all positions that Executive holds as an officer or member of the board of directors (or a committee thereof) of the Company or any of its affiliates and all powers of attorney held by Executive arising out of or relating to such Executive's employment with the Company shall be deemed to have been revoked. Regardless of the reason therefore, Executive shall be entitled to receive payment for: (i) any accrued but unpaid portion of Executive's Base Salary earned through the termination date; (ii) any accrued but unused vacation as of the termination date; (iii) any unearned but unpaid bonus for which the performance measurement period has ended prior to the termination date (e.g., if Executive's employment is terminated on February 1 and annual bonuses for the prior year have not been paid as of the termination date, then Executive would be eligible to receive his annual bonus for the prior year but not a bonus for the year in which the termination occurs), provided, that the termination of Executive's employment is not for Cause or due to Executive's voluntary resignation (other than for Good Reason); (iv) any amounts owing to Executive for reimbursements of expenses that Executive properly incurred before the termination date and which are reimbursable in accordance with Section 5(c) above, with all such amounts owed under each of (i), (ii), (iii) and (iv) payable in a lump sum no later than the Company's first regularly scheduled payroll date that is at least ten (10) days after the date of Executive's termination date; and (v) any amounts that are vested benefits or that Executive is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company at or subsequent to the termination date, payable in accordance with such plan, policy, practice or program or contract or agreement (collectively, the "Accrued Benefits").

(b) **Termination upon Death.** If Executive dies, then Executive's employment with the Company shall terminate as of the date of Executive's death, at which time all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive's heirs, personal representatives or estate shall be entitled to the Accrued Benefits and a payment in the amount of Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days that Executive was employed during the year of Executive's death.

(c) **Termination upon Disability.** "Disability" means any physical or mental incapacity, illness or infirmity that prevents or significantly restricts Executive from performing the normal duties of Executive's position on a full-time basis for a period of at least 180 calendar

days, whether or not consecutive, out of any twelve (12) consecutive months, despite the provision, if requested, of a reasonable accommodation as that term is defined in accordance with the American with Disabilities Act and/or any equivalent state or local law and that, in the reasonable opinion of the Company acting on the basis of advice from a duly-qualified medical practitioner is likely to continue to a similar degree. Upon the termination of Executive's employment due to Disability, the Company shall provide written notice to Executive, at which time all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 herein or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits and a payment in the amount of Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was actively employed during the year of Executive's death.

(d) **Termination by the Company for Cause.** The Company may, upon written notice to Executive, immediately terminate Executive's employment for Cause. "Cause" shall exist upon (i) Executive's breach of any fiduciary duty or material legal or contractual obligation to the Company or any of its affiliates (including, without limitation, pursuant to a Company or affiliate policy or the restrictive covenants set forth in Section 8 of this Agreement or any other applicable restrictive covenants between Executive and the Company or any of its affiliates), (ii) Executive's failure to follow the reasonable instructions of the Chief Executive Officer or the Board (other than as a result of total or partial incapacity due to physical or mental illness), which failure, if curable, is not cured within thirty (30) days after notice to Executive specifying in reasonable detail the nature of such breach, or, if cured, recurs within ninety (90) business days, (iii) Executive's gross negligence, willful misconduct, fraud, insubordination, acts of dishonesty or conflict of interest relating to the Company or any of its affiliates, or (iv) Executive's commission of any misdemeanor which has a material impact on the affairs, business or reputation of the Company or any of its affiliates or Executive's indictment for, or plea of nolo contendere to, a crime constituting a felony under the laws of the United States or any state thereof. Upon a termination of Executive's employment for Cause, all of Executive's rights to compensation and benefits under Sections 3, 4 and 5 of this Agreement or otherwise shall immediately terminate, except that Executive shall be entitled to the Accrued Benefits.

(e) **Termination by the Company without Cause or by Executive for Good Reason.** Except as provided in Section 6(f) below, upon a termination of Executive's employment by the Company without Cause or by Executive for Good Reason, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive's execution and non-revocation of the release described in Section 6(g) and Executive's compliance with Executive's obligations under Section 8, the following severance payments and benefits (collectively, the "Severance Benefits"):

(i) An amount equal to twelve (12) months of Executive's Base Salary at the rate in effect on the termination date, payable in substantially equivalent installments, with the first payment made on the Company's first practical pay date following the Release Effective Date (as defined in Section 6(g) below) and remaining installments tendered thereafter on consecutive, semi-monthly pay dates in accordance with the Company's regularly-scheduled payroll calendar until paid in full;

(ii) Continuation of coverage under the Company's group health insurance plan under the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA") at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of twelve (12) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after Executive's termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the Internal Revenue Code of 1986, as amended, or otherwise violate any healthcare law or regulation, then the Company shall pay to Executive an amount equal to the amount Executive would be required to pay for continuation of group health coverage for Executive and Executive's eligible dependents through an election under COBRA for twelve (12) months, which amount shall be paid in a lump sum at the same time payments under Section 6(e)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election. Following the COBRA Subsidy Period, Executive and Executive's dependents may, subject to statutory eligibility requirements, continue COBRA coverage at standard COBRA rates for the remainder of the applicable COBRA continuation period permitted by law as long as Executive and Executive's dependents pay the full cost of such coverage in accordance with the Company's COBRA continuation health coverage policies; and

(iii) to the extent such termination of Executive's employment by the Company without Cause or by Executive for Good Reason occurs any time following a Change of Control transaction (and without limiting any Change of Control Severance Benefits specified in Section 6(f) below), Executive shall receive twelve (12) months of vesting acceleration with respect to all of Executive's then-outstanding equity awards granted to Executive by the Company or assumed, continued or substituted for by the acquiring entity in such Change of Control transaction.

"Good Reason" shall mean, without Executive's prior written consent: (i) a material diminution in Executive's then position or duties, authority or responsibilities including, without limitation, Executive ceasing to be an "executive officer" (as defined under Rule 3b-7 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of a company with a class of securities registered under Section 12(b) of the Exchange Act, (ii) the assignment to Executive of any duties materially inconsistent with the duties and responsibilities of Chief Commercial



Officer, (iii) a reduction by the Company in Executive's then-current Base Salary or Executive's then-current Target Annual Bonus unless the salaries and target annual bonuses for all other senior executive officers are correspondingly and proportionately reduced by not greater than 15% and such reduction continues for no more than twelve (12) months; (iv) Executive's relocation to offices of the Company that are more than fifty (50) miles from the Company's offices in Yardley, Pennsylvania; or (v) any action or inaction that constitutes a material breach of this Agreement by the Company. In order to invoke a termination for Good Reason, Executive must deliver a written notice of the grounds for such termination within thirty (30) days of the initial existence of the event giving rise to Good Reason and the Company shall have thirty (30) days to cure the circumstances. In order to terminate Executive's employment, if at all, for Good Reason, Executive must terminate employment within sixty (60) days following the end of the cure period if the circumstances giving rise to Good Reason have not been cured.

(f) **Termination by the Company without Cause or by Executive for Good Reason Following a Change of Control.** Upon a termination of Executive's employment by the Company without Cause or by Executive for Good Reason, in each case within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control, Executive shall be entitled to receive the Accrued Benefits and, subject to Executive's execution and non-revocation of the release described in Section 6(g) and Executive's compliance with Executive's obligations under Section 8, the following severance payments and benefits (collectively, the "Change of Control Severance Benefits"):

(i) an amount equal to 150% of the sum of Executive's (x) Base Salary and (y) target annual cash bonus opportunity, in each case at the rate in effect on the termination date, payable in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(ii) an amount equal to Executive's annual cash bonus, which shall be equal to the greater of (x) Executive's then-current target annual cash bonus opportunity, prorated based upon the number of days Executive was employed during the year in which the employment termination occurs, and (y) an annualized amount of bonus for such year as determined by the Board in good faith based on the achievement of objectives up to the Change of Control, prorated based upon the number of days Executive was employed during that year. The pro rated bonus described in this Section 6(f)(ii) shall be paid in a single-lump sum cash payment on the first practical payroll date that occurs on or after the Release Effective Date;

(iii) Continuation of coverage under the Company's group health insurance plan through COBRA at active employee rates beginning on the first day of the month following Executive's termination date and continuing for a period of eighteen (18) months at the same level of coverage Executive elected during employment and on the same terms and conditions generally afforded to the Company's active employees, provided Executive and Executive's eligible dependents enroll with the Company's COBRA administrator within sixty (60) days after the termination date (as used in this paragraph, the "COBRA Subsidy" during the "COBRA Subsidy Period"); provided, however, in the event the Company determines that such provisions would subject Executive to taxation under Section 105(h) of the

Code, or otherwise violate any healthcare law or regulation, then, the Company shall pay to Executive the amount Executive would be required to pay for continuation of group health coverage for Executive and Executive's eligible dependents through an election under COBRA for eighteen (18) months which amount shall be paid in a lump sum at the same time payments under Section 6(f)(i) commence and is intended to assist Executive with costs of health coverage, which Executive may (but is not required to) obtain through an election to continue health care coverage under COBRA. Notwithstanding the foregoing, Executive understands that the Company's COBRA Subsidy during the COBRA Subsidy Period will not extend Executive's or Executive's dependents' eligibility for continuation health coverage under COBRA and agrees to hold harmless the Released Parties from any and all claims arising directly or indirectly from the COBRA Subsidy referenced above. Executive also understands that if Executive or Executive's eligible dependents do not elect COBRA healthcare continuation coverage or choose to reduce coverage level under COBRA, Executive will not be entitled to receive any additional monetary payment for the cash equivalent of such COBRA Subsidy or any difference in premiums based upon Executive's COBRA election; and

(iv) all of Executive's then-outstanding equity awards granted to Executive by the Company shall become immediately vested.

Notwithstanding anything contained herein to the contrary, in the event that Executive is entitled to the amounts set forth in Section 6(e)(i) as a result of Executive's employment termination prior to a Change of Control and a Change of Control occurs within three (3) months following Executive's termination date, Executive shall receive the amounts set forth in this Section 6(f), less any severance compensation paid to Executive pursuant to Section 6(e), paid in the same form and time as provided in Section 6(f), except that the amounts payable pursuant to Section 6(f)(i) shall be paid to Executive in a lump sum, within ten (10) days after the date of the Change of Control.

(g) Payment to Executive of any Severance Benefits or Change of Control Severance Benefits, as applicable, shall be conditioned on Executive's compliance with the requirements of Section 8 hereof and Executive's execution of a general release in favor of the Company and its affiliates substantially in the form attached hereto as Exhibit A (the "Release") and the lapse of any revocation period specified therein with the Release not having been revoked. The Release shall be provided to Executive within three (3) days of Executive's employment termination. Executive will forfeit all rights to the Severance Benefits and the Change of Control Severance Benefits, as applicable, unless, within sixty (60) days of Executive's employment termination, Executive executes and delivers the Release to the Company and such Release has become irrevocable by virtue of the expiration of the revocation period specified therein without the Release having been revoked (the first such date, the "Release Effective Date"). The Company's obligation to pay the Severance Benefits or the Change of Control Severance Benefits, as applicable, is subject to the occurrence of the Release Effective Date, and if the Release Effective Date does not occur, then the Company shall have no obligation to pay such Severance Benefits or Change of Control Severance Benefits, as applicable. Notwithstanding anything contained herein to the contrary, in the event that the period during which Executive may review and revoke the Release begins in one calendar year

and ends in the following calendar year, any severance payments hereunder that constitute non-qualified deferred compensation subject to Section 409A of the Code shall be paid to Executive no earlier than January 1 of the second calendar year.

**7. Section 280G.**

(a) Executive shall bear all expense of, and be solely responsible for, any excise tax imposed by Section 4999 of the Code (such excise tax being the “Excise Tax”); provided, however, that any payment or benefit received or to be received by Executive, whether payable under the terms of this Agreement or any other plan, arrangement or agreement with Company or an affiliate of Company (collectively, the “Payments”) that would constitute a “parachute payment” within the meaning of Section 280G of the Code, shall be reduced to the extent necessary so that no portion thereof shall be subject to the Excise Tax, but only if, by reason of such reduction, the net after-tax benefit Executive receives shall exceed the net after-tax benefit that Executive would receive if no such reduction was made.

(b) The “net after-tax benefit” shall mean (i) the Payments which Executive receives or is then entitled to receive from the Company that would constitute “parachute payments” within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income and employment taxes payable by Executive with respect to the foregoing calculated at the highest marginal income tax rate for each year in which the foregoing shall be paid to Executive (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Tax imposed with respect to the payments and benefits described in (b)(i) above.

(c) All determinations under this Section 7 will be made by an accounting firm or law firm (the “280G Firm”) that is mutually agreed to by Executive and the Company prior to a change in ownership or control of a corporation (within the meaning of Treasury regulations under Section 280G of the Code). The 280G Firm shall be required to evaluate the extent to which payments are exempt from Section 280G of the Code as reasonable compensation for services rendered before or after the Change of Control. All fees and expenses of the 280G Firm shall be paid solely by the Company. The Company will direct the 280G Firm to submit any determination it makes under this Section 7 and detailed supporting calculations to both Executive and the Company as soon as reasonably practicable.

(d) If the 280G Firm determines that one or more reductions are required under this Section 7, such Payments shall be reduced in the order that would provide Executive with the largest amount of after-tax proceeds (with such order, to the extent permitted by Sections 280G and 409A of the Code, designated by Executive, or otherwise determined by the 280G Firm) to the extent necessary so that no portion thereof shall be subject to the Excise Tax, and the Company shall pay such reduced amount to Executive. Executive shall at any time have the unilateral right to forfeit any equity award in whole or in part.

(e) As a result of the uncertainty in the application of Section 280G of the Code at the time that the 280G Firm makes its determinations under this Section 7, it is possible that amounts will have been paid or distributed to Executive that should not have been paid or

distributed (collectively, the “Overpayments”), or that additional amounts should be paid or distributed to Executive (collectively, the “Underpayments”). If the 280G Firm determines, based on either the assertion of a deficiency by the Internal Revenue Service against Executive or the Company, which assertion the 280G Firm believes has a high probability of success or is otherwise based on controlling precedent or substantial authority, that an Overpayment has been made, Executive must repay the Overpayment to the Company, without interest; provided, however, that no loan will be deemed to have been made and no amount will be payable by Executive to the Company unless, and then only to the extent that, the deemed loan and payment would either reduce the amount on which Executive is subject to tax under Section 4999 of the Code or generate a refund of tax imposed under Section 4999 of the Code. If the 280G Firm determines, based upon controlling precedent or substantial authority, that an Underpayment has occurred, the 280G Firm will notify Executive and the Company of that determination, and the Company will promptly pay the amount of that Underpayment to Executive without interest.

(f) Executive and the Company will provide the 280G Firm access to and copies of any books, records, and documents in their possession as reasonably requested by the 280G Firm, and otherwise cooperate with the 280G Firm in connection with the preparation and issuance of the determinations and calculations contemplated by this Section 7. For purposes of making the calculations required by this Section 7, the 280G Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code.

## **8. Covenants.**

(a) **Non-Competition.** So long as Executive is employed by the Company under this Agreement and for (i) the eighteen (18) month period following the termination of Executive’s employment with the Company in the event Executive’s employment is terminated by the Company without Cause or by Executive for Good Reason, in each case, within three (3) months prior to a Change of Control or eighteen (18) months after a Change of Control or (ii) the nine (9) month period following the termination of Executive’s employment with the Company for any reason not covered by clause (i) (such applicable period, the “Restricted Period”), Executive agrees that Executive will not, directly or indirectly, without the prior written consent of the Company, engage in Competition with OptiNose. “Competition” means participating, directly or indirectly, as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, consultant or in any other capacity whatsoever in any business or venture that competes with any business that OptiNose is engaged in as of the date of Executive’s employment termination with the Company or is actively planning to engage in as of the date of Executive’s employment termination with the Company. Notwithstanding the foregoing, after Executive’s employment termination, employment by or consultation for a publicly traded company that derives less than five percent (5%) of its net revenues from activities that compete with business that OptiNose engages in, shall not constitute Competition so long as Executive does not provide employment or consulting services to the business segment of such publicly traded company that engages in such competitive activities. Executive is entering into this covenant not to compete in consideration of the agreements of the Company in this Agreement, including but not limited to, the agreement of the Company to provide the

severance and other benefits to Executive upon a employment termination pursuant to Sections 6(e) and (f) hereof, as applicable.

(b) **Confidentiality**. Executive agrees that Executive will not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any person or entity, other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose, either while Executive is employed by the Company hereunder or at any time thereafter, any business and technical information or trade secrets, nonpublic, proprietary or confidential information, knowledge or data relating to OptiNose whether the foregoing will have been obtained by Executive during Executive's employment hereunder or otherwise. The foregoing will not apply to information that (i) was known to the public prior to its disclosure to Executive; (ii) becomes generally known to the public or in OptiNose's industry subsequent to disclosure to Executive through no wrongful act by Executive or any of Executive's representatives; or (iii) Executive is required to disclose by applicable law, regulation or legal process (provided that Executive provides the Company with prior notice of the contemplated disclosure and cooperates at the Company's cost with the Company in seeking a protective order or other appropriate protection of such information). The Company and Executive acknowledge that, notwithstanding anything to the contrary contained in this Agreement, pursuant to 18 USC § 1833(b), an individual may not be held liable under any criminal or civil federal or state trade secret law for disclosure of a trade secret: (aa) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law or (bb) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. The Company and Executive further acknowledge that an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to Executive's attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

(c) **Non-Solicitation of Customers**. Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, customers of OptiNose to purchase goods or services then sold by OptiNose from any other person or entity.

(d) **Non-Solicitation of Suppliers**. Executive agrees that during the Restricted Period, Executive will not, directly or indirectly, solicit or influence, or attempt to solicit or influence, the Company's suppliers to provide goods or services then provided to OptiNose to any other person or entity in Competition with OptiNose.

(e) **Non-Solicitation of Employees**. Executive recognizes that Executive will possess confidential information about other employees of OptiNose relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with customers of OptiNose. Executive recognizes that the information Executive possesses and will possess about these other employees is not generally known, is of substantial value to OptiNose in developing its business and in securing and retaining customers, and has been and will be acquired by Executive because of Executive's business position with OptiNose. Executive agrees

that, during the Restricted Period, Executive will not, (i) directly or indirectly, individually or on behalf of any other person or entity solicit or recruit any employee of OptiNose to leave such employment for the purpose of being employed by, or rendering services to, Executive or any person or entity unaffiliated with OptiNose, or (ii) convey any such confidential information or trade secrets about other employees of OptiNose to any person or entity other than in the course of Executive's assigned duties hereunder and for the benefit of OptiNose. Notwithstanding the foregoing, the Company agrees that hiring any employee of OptiNose who responds to a general advertisement for employment that was not specifically directed at the employees of OptiNose shall not be deemed a violation of this Section 8(e).

(f) **Non-Disparagement.** Executive agrees that Executive will not, nor will Executive induce others to, Disparage OptiNose or any of their past or present officers, directors, employees or products. Similarly, the directors and senior executives of OptiNose will not, nor will they induce others to, Disparage Executive. "Disparage" will mean making comments or statements to the press, OptiNose's employees or any individual or entity with whom Executive or OptiNose, as applicable, has a business relationship that would adversely affect in any manner, as applicable: (i) the conduct of the business of OptiNose (including, without limitation, any products or business plans or prospects); (ii) the business reputation of OptiNose, or any of their products, or their past or present officers, directors or employees; or (iii) the business reputation of Executive.

(g) **Inventions.**

(i) Executive acknowledges and agrees that all trade secrets, mask works, concepts, drawings, materials, documentation, procedures, diagrams, specifications, models, processes, formulae, source and object codes, data, programs, know-how, designs, techniques, ideas, methods, inventions, discoveries, improvements, work products, developments or other works of authorship ("Inventions"), whether patentable or unpatentable, (aa) that relate to Executive's work with OptiNose, made, developed or conceived by Executive, solely or jointly with others or with the use of any of OptiNose's equipment, supplies, facilities or trade secrets or (bb) suggested by any work that Executive performs in connection with OptiNose, either while performing Executive's duties with OptiNose or on Executive's own time, but only insofar as the Inventions are related to Executive's work as an employee of OptiNose (collectively, "Company Inventions"), will belong exclusively to the Company (or its designee), whether or not patent applications are filed thereon. Executive will keep full and complete written records (the "Records"), in the manner prescribed by OptiNose, of all Company Inventions, and will promptly disclose all Company Inventions completely and in writing to the Company. The Records will be the sole and exclusive property of the Company, and Executive will surrender them upon the termination of Executive's employment, or upon the Company's request. Executive hereby assigns to the Company (or its designee) the Company Inventions including all rights in and to any related patents and other intellectual property that may issue thereon in any and all countries, whether during or subsequent to Executive's employment with OptiNose, together with the right to file, in Executive's name or in the name of the Company (or its designee), applications for patents and equivalent rights (the "Applications"). Executive will, at any time during and subsequent to Executive's employment with OptiNose, make such

applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Company with respect to the Company Inventions and the underlying intellectual property. Executive will also execute assignments to the Company (or its designee) of the Applications, and give the Company and its attorneys all reasonable assistance (including the giving of testimony) to obtain the Company Inventions and the underlying intellectual property for its benefit, all without additional compensation to Executive from the Company, but entirely at the Company's expense.

(ii) In addition, the Company Inventions will be deemed "work made for hire", as such term is defined under the copyright law of the United States, on behalf of OptiNose and Executive agrees that the Company (or its designee) will be the sole owner of the Company Inventions, and all underlying rights therein, in all media now known or hereinafter devised, throughout the universe and in perpetuity without any further obligations or compensation to Executive. If the Company Inventions, or any portion thereof, are deemed not to be work made for hire, Executive hereby irrevocably conveys, transfers, assigns and delivers to the Company (or its designee), all rights, titles and interests, in all media now known or hereinafter devised, throughout the universe and in perpetuity, in and to the Company Inventions, including without limitation: (aa) all of Executive's rights, titles and interests in and to any underlying intellectual property (and all renewals, revivals and extensions thereof) related to the Company Inventions; (bb) all rights of any kind or any nature now or hereafter recognized, including without limitation, the unrestricted right to make modifications, adaptations and revisions to the Company Inventions, to exploit and allow others to exploit the Company Inventions; and (cc) all rights to sue at law or in equity for any infringement, or other unauthorized use or conduct in derogation of the Company Inventions, known or unknown, prior to the date hereof, including without limitation the right to receive all proceeds and damages therefrom. In addition, Executive hereby waives any so-called "moral rights" with respect to the Company Inventions. Executive hereby waives any and all currently existing and future monetary rights in and to the Inventions and all patents and other intellectual property rights that may issue thereon, including, without limitation, any rights that would otherwise accrue to Executive's benefit by virtue of Executive being an employee of or other service provider to OptiNose.

(iii) To the extent that Executive is unable to assign any of Executive's right, title or interest in any Company Invention under applicable law, for any such Company Invention and the underlying intellectual property rights, Executive hereby grants to the Company (or its designee) an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid license to such Company Invention and the underlying intellectual property, with the right to sublicense, use, modify, create derivative works and otherwise fully exploit such Company Invention and the underlying intellectual property, to assign this license and to exercise all rights and incidents of ownership of the Company Invention.

(iv) To the extent that any of the Company Inventions are derived by, or require use by OptiNose of, any works, Inventions, or other intellectual property rights that Executive owns, which are not assigned hereby, Executive hereby grants to the Company (or its designee) an irrevocable, perpetual, transferable, worldwide, non-exclusive, royalty free license,

with the right to sublicense, use, modify and create derivative works using such works, Inventions or other intellectual property rights, but only to the extent necessary to permit the Company to fully realize their ownership rights in the Company Inventions.

(h) **Cooperation.** Upon the receipt of notice from the Company (including outside counsel), Executive agrees that while employed by OptiNose (for no additional compensation) and thereafter (for reasonable compensation for Executive's time), Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive's employment with OptiNose, and will provide reasonable assistance to OptiNose and its representatives in defense of any claims that may be made against OptiNose, and will assist OptiNose in the prosecution of any claims that may be made by OptiNose, to the extent that such claims may relate to the period of Executive's employment with OptiNose (or any predecessor). Executive agrees to promptly inform the Company if Executive becomes aware of any lawsuits involving such claims that may be filed or threatened against OptiNose. Executive also agrees to promptly inform the Company (to the extent Executive is legally permitted to do so) if Executive is asked to assist in any investigation of OptiNose (or their actions), regardless of whether a lawsuit or other proceeding has then been filed against OptiNose with respect to such investigation, and will not do so unless legally required.

(i) **Return of Property.** On the date of the termination of Executive's employment with the Company for any reason (or at any time prior thereto at the Company's request), Executive will return all property belonging to OptiNose (including, but not limited to, any Employer provided laptops, computers, cell phones, wireless electronic mail devices or other equipment, or documents and property belonging to OptiNose).

(j) **Injunctive Relief.** It is further expressly agreed that OptiNose will or would suffer irreparable injury if Executive were to violate the provisions of this Section 8 and that OptiNose would by reason of such violation be entitled to injunctive relief in a court of appropriate jurisdiction and Executive further consents and stipulates to the entry of such injunctive relief in such court prohibiting Executive from violating the provisions of this Section 8.

(k) **Survival of Provisions.** The obligations contained in this Section 8 will survive the termination of Executive's employment with the Company and will be fully enforceable thereafter. If it is determined by a court of competent jurisdiction in any state that any restriction in this Section 8 is excessive in duration or scope or extends for too long a period of time or over too great a range of activities or in too broad a geographic area or is unreasonable or unenforceable under the laws of that state, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state or jurisdiction.

(l) **Prior Agreements.** Executive represents and warrants to the Company that there are no restrictions, agreements or understandings whatsoever to which Executive is a party that would prevent or make unlawful Executive's execution of this Agreement or Executive's employment hereunder, is or would be inconsistent or in conflict with this



Agreement or Executive's employment hereunder, or would prevent, limit or impair in any way the performance by Executive of the obligations hereunder.

**9. Assignment; Third Party Beneficiaries.** Notwithstanding anything else herein, this Agreement is personal to Executive and neither the Agreement nor any rights hereunder may be assigned by Executive. The Company may assign the Agreement to an affiliate or to any acquiror of all or substantially all of the assets of the Company. OptiNose shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of OptiNose to expressly assume and agree to perform this Agreement in the same manner and to the same extent that OptiNose would be required to perform it if no such succession had taken place. This Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties. Executive acknowledges that this Agreement is intended to benefit the Company, its shareholders, and its and their parents, affiliates, subsidiaries, divisions, and related companies or entities, now existing or hereafter created. Both Executive and the Company further acknowledge and agree that the intended beneficiaries of this Agreement are entitled to enforce the provisions of this Agreement by seeking injunctive relief or any other appropriate remedy.

**10. Clawback/Recoupment.** Notwithstanding any other provision in this Agreement to the contrary, any compensation paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company shall be subject to mandatory repayment by Executive to the Company to the extent any such compensation paid to Executive is, or in the future becomes, subject to (i) any "claw-back" or recoupment policy applicable to Executive that is adopted to comply with any applicable law, rule or regulation (including stock exchange rule), or (ii) any law, rule or regulation (including stock exchange rule) which imposes mandatory recoupment, under circumstances set forth in such law, rule or regulation.

**11. Arbitration; Waiver of Rights to Sue; Attorneys' Fees.**

(a) Except as provided in Section 8(j), the parties agree that they will use binding arbitration to settle all claims and disputes that may arise out of this Agreement or that in any way relate to Executive's employment with Company. Specifically, both the Company and Executive agree that any claim, dispute and/or controversy that either Executive may have against the Company (or its directors, officers, managers, employees, agents or parties affiliated with its employee benefit and health plans), or that the Company may have against Executive, shall be submitted to binding arbitration conducted before one (1) arbitrator mutually agreed to by the Company and Executive, sitting in Philadelphia, Pennsylvania or such other location mutually agreed to by Executive and the Company, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA Rules") then in effect; provided, however, that if the Company and Executive are unable to agree on a single arbitrator within thirty (30) calendar days of the demand by another party for arbitration, an arbitrator will be designated by the Philadelphia Office of the American Arbitration Association.

(b) **Coverage.** Included within the parties' agreement to submit all disputes to binding arbitration are all employment-related claims and disputes, whether based upon tort, contract, statute (including but not limited to any claims of workplace discrimination, harassment (other than sexual harassment), retaliation, failure to pay proper wages or other compensation (including commissions, bonuses, salary, severance pay or other benefits), or any other unlawful employment practice or wrongful termination, whether based upon the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the National Labor Relations Act, the Labor Management Relations Act, the Worker Adjustment and Retraining Notification Act, the Occupational Safety and Health Act, the Genetic Information Nondiscrimination Act, the Lilly Ledbetter Fair Pay Act of 2009, the Fair Credit Reporting Act, the Family and Medical Leave Act, the Equal Pay Act of 1963, the Consolidated Omnibus Budget Reconciliation Act, the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud and Abuse Act, the Health Insurance Portability & Accountability Act, the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, embezzlement, conversion, non-payment of debt, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault (other than sexual assault), battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions.

EXECUTIVE UNDERSTANDS AND VOLUNTARILY AND FREELY AGREES TO THIS BINDING ARBITRATION PROVISION, AND BOTH EXECUTIVE AND THE COMPANY EXPRESSLY AND FREELY FOREGO AND WAIVE THEIR RIGHT TO TRIAL BY JURY, IN FAVOR OF BINDING ARBITRATION, WITH RESPECT TO ANY CLAIMS OR CONTROVERSIES COVERED BY THIS AGREEMENT EXCEPT AS EXPRESSLY EXCLUDED HEREIN.

(c) **Exclusions.** Notwithstanding the foregoing:

(i) The parties shall not arbitrate: (aa) claims by Executive for workers' compensation or unemployment compensation insurance benefits; (bb) claims by the

Company for injunctive or equitable relief, including without limitation claims related to the misappropriation of trade secrets, theft of confidential and proprietary business information, breach of fiduciary duty and/or violation of other restrictive covenants; and (cc) claims by Executive for sexual assault and/or sexual harassment, unless Executive voluntarily elects for such sexual assault and/or sexual harassment claims to be arbitrated.

(ii) Nothing contained in this Agreement prohibits Executive from filing, a complaint, participating in an investigation, or otherwise communicating with the United States Equal Employment Opportunity Commission and/or any other federal, state, or local agency charged with the processing of complaints and performance of investigation into claims of unlawful employment practices, although if Executive elects to pursue a claim following the exhaustion or completion of any such administrative process, such claim would be subject to the mandatory arbitration provisions set forth in this Section of the Agreement.

(iii) Claims by Executive relating to benefits under any of the Company's employee benefit plans must be raised with the claims administrator of the relevant plan pursuant to the terms of that plan, but if the matter is not resolved under those procedures, Executive may pursue such a claim only through arbitration as provided for in this Section.

(d) **Procedures.** The party seeking arbitration pursuant to this Section of the Agreement shall commence such proceeding in accordance with the applicable AAA rules. All rules of pleading, rules of evidence, and rights to resolution of the dispute by means of summary judgment, judgment on the pleadings, and judgment under Pennsylvania law shall apply and be observed. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") but shall apply the same law as if brought in a court of law. The arbitrator shall possess the authority to rule on any dispositive motions (including a motion to dismiss and/or summary judgment brought by any party) and to order any appropriate legal and equitable relief consistent with that available to parties in civil actions filed in a court of competent jurisdiction, except that the parties agree neither party shall be entitled to punitive damages on any claim.

(e) **Discovery.** During the arbitration, Executive and the Company shall be entitled to engage in and conduct discovery in accordance with any schedule established by the arbitrator; provided, however, the arbitrator must allow the parties to conduct discovery sufficient to adequately arbitrate their claims and defenses in accordance with applicable federal, state, and local law, even if the AAA Rules are more restrictive.

(f) **Determination.** The determination of the arbitrator will be final and binding on Executive and the Company. Awards shall include the arbitrator's written, reasoned opinion and shall contain the arbitrator's essential findings and conclusions. Judgment may be entered on the award of the arbitrator in any court having proper jurisdiction.

(g) **Attorney's Fees; Costs.** Each party will bear their own expenses of such arbitration, except that (i) the prevailing party shall be entitled to be indemnified and reimbursed for their reasonable attorneys' fees and costs incurred in enforcing and/or seeking to enforce the

terms of this Agreement should the other party violate or be alleged to have violated any of its terms or (ii) as otherwise required by a fee-shifting statute.

**12. Indemnification.** The Company and Executive acknowledge that they have entered into an Indemnification Agreement, effective as of December 15, 2022 set forth above (the “Indemnification Agreement”).

**13. Governing Law.** This Agreement and any other document or instrument delivered pursuant hereto, (other than the Indemnification Agreement) and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

**14. Withholding Taxes.** The Company may withhold from any and all amounts payable to Executive such federal, state and local taxes as may be required to be withheld pursuant to any applicable laws or regulations.

**15. Notices.** All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered or three (3) days after being mailed by registered or certified mail to Executive or the Company, as the case may be, at Executive’s address set forth below or the Company’s address set forth below, or to such other names or addresses as Executive or the Company, as the case may be, shall designate by notice to each other party entitled to receive notices in the manner specified in this Section (provided that notice of change of address shall be deemed given only when received).

Company notices shall be delivered to:

OptiNose US, Inc.  
Attn: Chief Legal Officer  
1020 Stony Hill Road  
Third Floor, Suite 300  
Yardley, PA 19067

Executive notices shall be delivered to such address as shall most currently appear on the records of the Company.

**16. Entire Agreement; Amendments.** This Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supersede in their entirety any and all prior and/or contemporaneous agreements, understandings or representations relating to the subject matter hereof, whether written or oral, including without limitation the Existing Agreement. No amendments, alterations or modifications of this Agreement will be valid unless made in writing and signed by the parties hereto.

**17. Section Headings.** The section headings used in this Agreement are included solely for convenience and will not affect, or be used in connection with, the interpretation of this Agreement.

**18. Severability.** The provisions of this Agreement will be deemed severable and the invalidity of unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party, and no course of dealing between the parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

**19. Counterparts.** This Agreement may be executed in several counterparts (including via facsimile and/or .pdf), each of which will be deemed to be an original but all of which together will constitute one and the same instruments.

**20. Section 409A.**

(a) The payments and benefits under this Agreement are intended to comply with or be exempt from Section 409A of the Code, and the regulations and guidance promulgated thereunder (collectively, "Section 409A") and this Agreement shall be interpreted and construed in a manner intended to comply therewith. For purposes of this Agreement, Executive will be considered to have experienced a employment termination only if Executive has a "separation from service" with the Company and all of its controlled group members within the meaning of Section 409A. Whether Executive has a separation from service will be determined based on all of the facts and circumstances and in accordance with the guidance issued under Section 409A.

(b) Each payment under this Agreement, including each installment payment, shall be considered a separate and distinct payment. For purposes of this Agreement, each payment is intended to be excepted from Section 409A to the maximum extent provided as follows: (i) each payment made within the applicable 2½ month period specified in Treas. Reg. § 1.409A-1(b)(4) is intended to be excepted under the short-term deferral exception; (ii) post-termination medical benefits are intended to be excepted under the medical benefits exception as specified in Treas. Reg. § 1.409A-1(b)(9)(v)(B); and (iii) to the extent payments are made as a result of an involuntary separation, each payment that is not otherwise excepted under the short-term deferral exception or medical benefits exception is intended to be excepted under the involuntary pay exception as specified in Treas. Reg. § 1.409A-1(b)(9)(iii). With respect to payments subject to Section 409A (and not excepted therefrom), if any, it is intended that each payment is paid on a permissible distribution event and at a specified time consistent with Section 409A. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. Executive shall have no right to designate the date or any payment under this Agreement.

(c) If Executive is a "specified employee" (as that term is used in Section 409A and regulations and other guidance issued thereunder) on the date of Executive's

separation from service, any benefits payable under this Agreement that constitute non-qualified deferred compensation subject to Section 409A shall be delayed until the earlier of (i) the first business day following the six-month anniversary of the date of Executive's separation from service, or (ii) the date of Executive's death, but only to the extent necessary to avoid the adverse tax consequences and penalties under Section 409A. On the earlier of (x) the first business day following the six-month anniversary of the date of Executive's separation from service, or (y) Executive's death, the Company shall pay Executive (or Executive's estate or beneficiaries) a lump-sum payment equal to all payments delayed pursuant to the preceding sentence.

(d) If any of the reimbursements or in-kind benefits provided for under this Agreement are subject to Section 409A, the following rules shall apply: (i) in no event shall any such reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred; (ii) the amount of such reimbursable expenses incurred, or the provision of in-kind benefits, in one tax year shall not affect the expenses eligible for reimbursement or the provision of in-kind benefits in any other tax year; and (iii) the right to such reimbursement for expenses or provision of in-kind benefits is not subject to liquidation or exchange for any other benefit.

(e) Notwithstanding anything in Section 6(f) hereof to the contrary, in the event that Executive is entitled to the amount set forth in Section 6(f)(i) as a result of a termination of Executive's employment within three (3) months prior to or eighteen (18) months after the date of the Change of Control, and such Change of Control does not constitute a change in ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A(a)(2)(A)(v) of the Code and its corresponding regulations, and any portion of the severance benefit payable to Executive pursuant to Section 6(e)(i) is deemed to constitute deferred compensation subject to the requirements of Section 409A of the Code at the time of Executive's termination, then such portion that constitutes deferred compensation shall reduce the amount that is paid in a lump sum as provided in Section 6(f)(i) and such deferred compensation portion shall instead be paid in substantially equal installments over the installment period as described in Section 6(e)(i).

**21. Construction; Reasonable Time to Review and Consider Agreement.** The parties agree that this Agreement was reached following arms-length negotiations and should not be construed against the drafter. Executive agrees that Executive has been provided reasonable and adequate time to review this Agreement and, if desired, consult with counsel of Executive's own choosing, and that Executive has consulted counsel before signing this Agreement or knowingly waived the right to do so.

*[Signature Page Follows]*

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

**OPTINOSE US, INC.**

By: /s/ Ramy Mahmoud

\_\_\_\_\_  
Ramy Mahmoud

Chief Executive Officer

**EXECUTIVE**

By: /s/ Paul Spence

\_\_\_\_\_  
Paul Spence

## **EXHIBIT A**

### **SAMPLE RELEASE AGREEMENT**

This RELEASE AGREEMENT (“**Agreement**”) made this [Date] day of [Month•], [Year•] (the “**Effective Date**”), between OptiNose US, Inc. (a wholly-owned subsidiary of OptiNose, Inc. and, together with OptiNose, Inc. and each of its and their successors and assigns, the “**Company**”), and [Full Name•] (“**Executive**”).

1. Release.

a. In consideration of the amounts to be paid by the Company pursuant to the Employment Agreement entered into on [Date], by and between the Company and Executive (the “**Employment Agreement**”), Executive, on behalf of himself/herself and on behalf of his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns, irrevocably and unconditionally forever waives, releases, gives up and discharges the Company, its parent, affiliated and related companies (including but not limited to OptiNose, Inc.), all of its and their employee benefit plans and trustees, fiduciaries, administrators, sponsors and parties-in-interest of those plans, all of its and their past and present employees, managers, directors, officers, administrators, shareholders, members, investors, agents, attorneys, insurers, re-insurers and contractors acting in any capacity whatsoever (whether individually or in an official capacity on behalf of the Company), and all of its and their respective predecessors, heirs, personal representatives, successors and assigns (collectively, the “**Released Parties**”), from any and all debts, demands, actions, causes of action, accounts, covenants, contracts, agreements, claims, damages, omissions, promises, and any and all claims and liabilities whatsoever, of every name and nature, known or unknown, suspected or unsuspected, accrued or unaccrued, liquidated or contingent, asserted or unasserted, both in law and equity (“**Claims**”), which Executive ever had, now has, or may hereafter claim to have against the Released Parties by reason of any matter or cause whatsoever based on, related to, or arising from any event that occurred before the date Executive signs this Agreement and based upon, related to or arising out of or in any way concerning Executive’s employment with the Company, the terms, conditions or privileges of Executive’s employment with the Company, Executive’s separation from employment with the Company, and any and all violations and/or alleged violations of federal, state or local human rights laws, fair employment practices and/or other laws by any of the Released Parties for any reason and under any legal theory including, but not limited to, those arising or which may be arising under, as applicable, Title VII of the Civil Rights Act of 1964 (“**Title VII**”), the Americans with Disabilities Act (“**ADA**”), the Age Discrimination in Employment Act (“**ADEA**”), the Older Worker Benefit Protection Act (“**OWBPA**”), the Employee Retirement Income Security Act of 1974 (“**ERISA**”), the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act (“**WARN**”), the Family and Medical Leave Act (“**FMLA**”), the Coronavirus Aid, Relief and Economic Security Act (“**CARES**”), the Families First Coronavirus Relief Act (“**FFCRA**”), the American Rescue Plan Act, the Fair Labor Standards Act (“**FLSA**”), the Equal Pay Act of 1963 (“**EPA**”), the Lilly Ledbetter Fair Pay Act of 2010 (“**Fair Pay Act**”), the Genetic Information Nondiscrimination Act of 2008 (“**GINA**”),



the Rehabilitation Act, the Employee Polygraph Protection Act, the Electronic Communication Privacy Act, the Computer Fraud & Abuse Act, the Health Insurance Portability & Accountability Act (“HIPAA”), the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), the Occupational Safety and Health Act (“OSHA”), the Sarbanes-Oxley Act of 2002, the Fair Credit Reporting Act (“FCRA”), the National Labor Relations Act (“NLRA”), the Labor Management Relations Act (“LMRA”), the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), the Civil Rights Act of 1991, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988), the Pennsylvania Wage Payment & Collection Law, the Pennsylvania Human Relations Act, the Pennsylvania Labor Relations Act, the Pennsylvania Equal Pay Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Workers’ Compensation Act, any personal gain with respect to any claim arising under the Federal False Claims Act, or any other federal, state or local laws, statutes, regulations, rules, ordinances, or orders, each as amended, or under any policy, agreement, contract, understanding or promise, written or oral, formal or informal, between any of the Released Parties and Executive and shall further apply, without limitation, to any and all Claims for breach of implied or express contract, breach of promise, breach of the covenant of good faith and fair dealing, misrepresentation, tortious interference with contract, civil conspiracy, negligence, fraud, estoppel, defamation, libel, misrepresentation, intentional infliction of emotional distress, violation of public policy, invasion of privacy, wrongful, retaliatory or constructive discharge, assault, battery, false imprisonment, negligence, and all other claims or torts, including any whistleblower claims, arising under any federal, state, or local law, regulation, ordinance or judicial decision, or under the United States and Pennsylvania Constitutions (the “General Release”).

b. For the purpose of implementing a full and complete release, Executive understands and agrees that this Agreement is intended to include all claims, if any, which Executive or his/her spouse, civil union or domestic partner, dependents, heirs, executors, devisees, personal representatives, administrators, agents and assigns may have and which Executive does not now know or suspect to exist in his/her favor against the Released Parties, from the beginning of time until the time he/she signs this Agreement, and this Agreement extinguishes those claims.

c. In consideration of the promises of the Company set forth in the Employment Agreement, Executive hereby releases and discharges the Released Parties from any and all Claims that Executive may have against the Released Parties arising under the Age Discrimination Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder (“ADEA”). Executive acknowledges that he/she understands that the ADEA is a federal statute that prohibits discrimination on the basis of age in employment, benefits and benefit plans. Executive also understands that, by signing this Agreement, he/she is waiving all Claims against any and all of the Released Parties.

d. **Executive understands that the laws and actions described above give Executive important remedies that relate to claims that he/she has or may have arising out of or in connection with his/her employment with, or separation from employment from, the Company and agree that he/she is freely and voluntarily giving up those remedies and claims.** By signing this Agreement, Executive agrees that he/she is irrevocably and

unconditionally waiving the right to proceed with discovery concerning any released claim in any future litigation with any Released Party, if any. Executive also agrees that he/she is fully releasing all claims for equitable, punitive or other relief, attorney's fees, and other fees and costs incurred up to the date Executive signs this Agreement for any reason.

e. Executive represents and warrants that: (i) he/she is the lawful owner of all claims released through this Agreement; (ii) he/she has the beneficial interest in the payments and other benefits that he/she will receive under this Agreement; (iii) he/she has not assigned, and will not assign, any interest in any claim released through this Agreement; (iv) he/she has not filed, and is not and has not been subject to a voluntary or involuntary bankruptcy petition in the past three (3) years; (v) he/she is not a debtor in any pending bankruptcy case; (vi) no receiver, bankruptcy trustee or other third party may assert a right to any claim released through this Agreement or the payments and benefits to be tendered or provided under the Employment Agreement. Executive agrees that the foregoing representations and warranties shall survive the execution, performance and consummation or termination of this Agreement. Executive also agrees that he/she will fully indemnify and hold the Released Parties harmless to the extent any of the foregoing representations and warranties is or becomes untrue for any claims or damages, including attorneys' fees, fines, costs, liquidated damages and punitive damages, asserted or awarded against any of the Released Parties and, should it be determined that any bankruptcy trustee or other third party has a right to the payments and benefits provided to Executive under the Employment Agreement, Executive immediately will return to the Company an amount equivalent to the full after-tax value of any such payments or benefits.

f. Executive warrants that he/she does not have any complaint pending before any federal, state or local court or arbitration panel concerning any Released Party. Executive further agrees not to file a lawsuit against any of the Released Parties in any federal, state or local court, or with any arbitration panel, concerning any claim, demand, issue or cause of action released through this Agreement, except to the extent specifically excluded below in Section 2 below and its subparagraphs below. Should Executive file a lawsuit with any court or arbitration panel concerning any claim, demand, issue, or cause of action waived through this Agreement and not specifically excluded as described in Section 2 below and its subparagraphs below, Executive agrees that he/she will be responsible to pay the legal fees and costs that the Released Parties incur defending that lawsuit. Further, Executive agrees that nothing in this Agreement shall limit the right of any court or arbitration panel to determine, in its sole discretion, that the Released Parties are entitled to restitution, recoupment or set off of any monies paid to Executive should the release of any claims under this Agreement subsequently be found to be invalid.

## 2. Exclusions from Release of Claims and Covenant Not to Sue.

a. Executive understands and agrees that nothing in this Agreement limits his/her right to bring an action to enforce the terms of this Agreement.

b. Executive understands and agrees that the General Release contained in Section 1 above and its subparagraphs above does not include a waiver of any claims which

cannot be waived by law and does not include a waiver of any vested rights Executive may have in any existing Company 401(k) plan, if any, nor will it preclude Executive from purchasing continuation health benefits coverage for himself/herself and/or his/her dependents under the Company's continuation health benefits policies to the extent he/she and his/her dependents are otherwise eligible and for the period provided by law under COBRA. The General Release also does not release any pending workers' compensation claim or right to any workers' compensation benefits with respect to any occupational illness or injury arising from or sustained due to his/her employment with the Company.

c. Executive understands and agrees that nothing in this Agreement is intended to or shall prevent, impede or interfere with his/her non-waivable right to file a charge or complaint with the Equal Employment Opportunity Commission ("EEOC"), the Occupational Safety and Health Review Commission ("OSH"), the National Labor Relations Board ("NLRB"), the Securities and Exchange Commission ("SEC"), any other federal agency, labor board or commission, any state or local fair employment practices agency, or any other state or local agency, labor board or commission (collectively, the "Government Agencies"). Executive also understands that nothing in this Agreement in any way limits his/her ability to provide information and/or documents to or otherwise communicate with any Government Agencies, participate in any investigation of any Government Agencies, testify or otherwise participate in any proceeding that may be conducted by any Government Agencies concerning the Company's past or future conduct, or engage in any activities now or in the future that are protected under the whistleblower statutes administered by OSH or any other Government Agencies without notice to the Company. However, Executive agrees that he/she is completely waiving any right to recover money, share in or participate in any monetary award in connection with or resulting from the prosecution of any charge, investigation or proceeding by any Government Agency, except that this Agreement does not limit the right to receive and fully retain a monetary reward from any government-administered whistleblower award or other incentive program for providing information directly to any Government Agencies (such as those administered by the OSH or the SEC).

d. Executive understands and agrees that nothing in this Agreement prohibits him/her filing a claim to collect any unemployment compensation benefits available to him/her under applicable state Unemployment Insurance Compensation law or from collecting any award of benefits granted to him/her in accordance with that law.

e. Executive understands and agrees that this Agreement does not limit any statutory rights he/she may have to bring an action to challenge the terms of this Agreement or contest the validity of the General Release set forth in Section 1 above under the ADEA or the OWBPA.

### 3. Non-Admission of Liability.

a. Executive agrees that this Agreement shall not in any way be construed as an admission that any of the Released Parties owe him/her any money or have acted wrongfully, unlawfully, or unfairly in any way towards him/her. In fact, Executive understands that the

Released Parties specifically deny that they have violated any federal, state or local law or ordinance or any right or obligation that they owe or might have owed to Executive at any time and maintain that they have at all times treated Executive in a fair, lawful, non-discriminatory and non-retaliatory manner.

b. Except as provided in Section 6(e) or Section 6(f), as applicable, of the Employment Agreement or in the Indemnification Agreement, Executive acknowledges and agrees that the Company has fully satisfied any and all obligations owed to him/her arising out of his/her employment with or termination from the Company, and no further sums or benefits are owed to him/her by the Company or by any of the other Released Parties at any time.

c. Executive agrees that the Severance Benefits or Change of Control Severance Benefits, as applicable, as described in the Employment Agreement constitute good and valuable consideration in exchange for the promises herein and are, individually and together, in addition to anything of value to which Executive is presently entitled by virtue of any understandings, agreements or contracts between Executive and any of the Released Parties, his/her employment with any Released Party and separation from that employment, and any of the Released Parties' policies, practices, plans, agreements or prior understandings with him/her, including but not limited to compensation, vacation, bonus, severance, paid time off, incentive compensation, equity incentives, stock options, offer letters, employment agreements and any other fringe benefit plans, policies or practices.

4. No Right or Guarantee to Re-Employment or Reinstatement. Executive agrees that the termination of his/her employment is permanent and the Released Parties have not in any way guaranteed that he/she will be recalled, rehired, reinstated or in any way retained by the Company.

5. Reference-Related Communications.

a. Executive agrees that, should he/she or any prospective employer for him/her desire that the Company engage in any reference-related communications, such inquiries shall be directed exclusively to the Company's Human Resources Department for confirmation only of Executive's: (i) dates of employment and (ii) employment position. Executive also agrees that, except for the Company's verbal confirmation of dates of employment and position title as expressly set forth above, the Released Parties will have no obligation whatsoever to engage in any reference-related communications with any past, existing or prospective employers unless compelled by a court order or other legal process. Notwithstanding the foregoing, Executive understands and agrees that the Released Parties will remain free to internally communicate to those with a business need to know, any and all information concerning his/her employment history with the Company.

b. Executive acknowledges and agrees that any statements made on social media by any current or former employees or other representatives of the Company are not official statements of reference by the Company. Executive understands and agrees that, should he/she wish for the Company to provide any information related to the salary and/or benefits paid

or provided during his/her employment to any third party, Executive will provide the Company's Human Resources Department with a written release expressly authorizing the disclosure of the same.

6. Consultation with Attorney; Voluntary Agreement. The Company advises Executive to consult with an attorney of his/her choosing prior to signing this Agreement. Executive understands and agrees that he/she has the right and has been given the opportunity to review this Agreement and, specifically, the General Release in Section 1 above, with an attorney. Executive also understands and agrees that he/she is under no obligation to consent to the General Release set forth in Section 1 above. Executive acknowledges and agrees that the payments to be made to Executive pursuant to the Employment Agreement are sufficient consideration to require him/her to abide with his/her obligations under this Agreement, including but not limited to the General Release set forth in Section 1. Executive represents that he/she has read this Agreement, including the General Release set forth in Section 1, and understands its terms and that he/she enters into this Agreement freely, voluntarily, and without coercion.

7. Effective Date; Revocation. Executive acknowledges and represents that he/she has been given [Insert minimum required number of days under applicable law] days following the termination of his/her employment during which to review and consider the provisions of this Agreement and, specifically, the General Release set forth in Section 1 above. Executive further acknowledges and represents that he/she has been advised by the Company that he/she has the right to revoke this Agreement for a period of seven (7) days after signing it. Executive acknowledges and agrees that, if he/she wishes to revoke this Agreement, he/she must do so in a writing, signed by him/her and received by the Company no later than 5:00 p.m. Eastern Time on the seventh (7<sup>th</sup>) day of the revocation period. If no such revocation occurs, the General Release and this Agreement shall become effective on the eighth (8<sup>th</sup>) day following his/her execution of this Agreement and shall be final and binding on Executive.

8. Severability. In the event that any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of the Agreement shall not in any way be affected or impaired thereby.

9. Governing Law. This Agreement and any other document or instrument delivered pursuant hereto, and all claims or causes of action that may be based upon, arise out of or relate to this Agreement will be governed by, and construed under and in accordance with, the internal laws of the Commonwealth of Pennsylvania, without reference to rules relating to conflicts of laws.

10. Entire Agreement. This Agreement, the Employment Agreement and the other agreements referred to in the Employment Agreement (other than the Indemnification Agreement) constitute the entire agreement and understanding of the parties with respect to the subject matter herein and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties. Executive acknowledges and agrees that he/she is not

relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement.

11. Amendment. This release shall not be amended, supplemented or otherwise modified in any way except in a writing signed by Executive and the Company.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, intending to be forever legally bound hereby, the parties hereto have executed this Agreement, being seven (7) pages in total length as of the dates set forth below.

OPTINOSE US, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

EXECUTIVE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

**CERTIFICATION UNDER SECTION 302 OF THE**

**SARBANES-OXLEY ACT OF 2002**

I, Ramy A. Mahmoud, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of OptiNose, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2023

/s/ Ramy A. Mahmoud  
Ramy A. Mahmoud  
Chief Executive Officer  
(Principal Executive Officer)



**CERTIFICATION UNDER SECTION 302 OF THE**

**SARBANES-OXLEY ACT OF 2002**

I, Anthony Krick, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of OptiNose, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 11, 2023

/s/ Anthony J. Krick  
Anthony J. Krick  
Chief Accounting Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION UNDER SECTION 906 OF THE**

**SARBANES-OXLEY ACT OF 2002**

I, Ramy A. Mahmoud, Chief Executive Officer of OptiNose, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. the Quarterly Report on Form 10-Q of the Company for the period ending March 31, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: May 11, 2023

/s/ Ramy A. Mahmoud  
Ramy A. Mahmoud  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION UNDER SECTION 906 OF THE**

**SARBANES-OXLEY ACT OF 2002**

I, Anthony J Krick, Chief Accounting Officer of OptiNose, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge

1. the Quarterly Report on Form 10-Q of the Company for the period ended March 31, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Date: May 11, 2023

/s/ Anthony J. Krick  
Anthony J. Krick  
Chief Accounting Officer  
(Principal Financial and Accounting Officer)