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

FORM 8-K

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

Date of earliest event reported: May 16, 2024

Presto Automation Inc.

(Exact name of registrant as specified in its charter)

Delaware	**001-39830**	**84-2968594**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

985 Industrial Road San Carlos, CA	**94070**
(Address of principal executive offices)	**(Zip Code)**

(650) 817-9012
(Registrant's telephone number, including area code)

N/A
(Former name or former address if changed since last report)

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

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

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

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

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, par value $0.0001 per share	PRST	The Nasdaq Stock Market LLC
Warrants, each whole warrant exercisable for one share of common stock	PRSTW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement

Cooperation Agreement

On May 16, 2024, the Company and Presto Automation LLC (the "Borrower"), the Company's wholly owned subsidiary (the "Loan Parties") entered into a Cooperation Agreement (the "Cooperation Agreement") with Metropolitan Partners Group Administration, LLC, the administrative, payment and collateral agent (the "Agent") under the Credit Agreement, dated as of September 21, 2022 (as amended, the "Credit Agreement"), Metropolitan Levered Partners Fund VII, LP, Metropolitan Partners Fund VII, LP, Metropolitan Offshore Partners Fund VII, LP and CEOF Holdings LP (collectively, the "Lenders"), and certain significant stockholders.

Extension to Forbearance Date and Related Terms

The Cooperation Agreement provides that the Lenders will not exercise remedies as a result of certain continuing events of default under the Credit Agreement, subject to the following agreements and conditions (the "Forbearance"):

- If we raise $3,000,000 or more of working capital in this or another registered direct offering or private placement by May 22, 2024, with at least $2,500,000 received by May 15, 2024, the Agent and the Lenders agree to extend the Forbearance termination date to June 14, 2024; and

- If we raise additional working capital of $3,000,000 or more by June 7, 2024 in a registered direct offering or private placement (the "Second Capital Raise"), the Agent and the Lenders agree to extend the Forbearance termination date to July 15, 2024.

Assuming continued Forbearance, the Lenders have agreed to engage in good faith discussions with a view to concluding a binding agreement with a third party based on a binding written offer (the "Offer") from such third party submitted by any Loan Party or Significant Stakeholder (as defined in the Cooperation Agreement) to purchase all of the Lenders' rights and obligations under the Loan Documents, *provided* that such Offer is (A) for a cash purchase price of at least $20.0 million, (B) accompanied by a binding commitment by the Borrower to issue one or more promissory notes to the Lenders (the "Convertible Notes") in an aggregate principal amount equal to fifty percent (50%) of the outstanding balance of the Obligations (as defined in the Credit Agreement) less the proposed cash purchase price, which Convertible Notes shall be convertible into equity of the Company of the same class and on the same terms as are set out in that certain convertible subordinated note issued to Remus Capital Series B II, L.P. on January 30, 2024, and (C) accompanied by evidence, in form and substance satisfactory to Lenders in their sole discretion, reflecting that the Offer will provide us with operating capital of not less than $18.0 million, not including the cash purchase price described in subparagraph (A) above. To the extent that the operating capital is less than $18.0 million but greater than $12.0 million, the amount of the convertible note set forth above will be increased by a dollar amount equal the reduction in operating capital below $18.0 million

Cooperation in Connection with Sale of the Company

In the event of termination of Forbearance, the Loan Parties have agreed to cooperate and not impede in the exercise of the Agent's and Lenders' rights and remedies under the Loan Documents (as defined in the Credit Agreement), including, among other things, the realization of their collateral and a potential sale process under Article 9 of the Uniform Commercial Code. In the event of such outcome, it is likely that the holders of shares of our common stock will receive no value and the shares will become worthless.

Development of Alternative Path

We have agreed to maintain a committee of independent directors to work with the Lenders on the development and execution of a strategic plan (the "Alternative Path") to address our obligations under the Credit Agreement in the event that Forbearance ends, including directing our professional advisors to work with the Agent in the development and execution of the Alternative Path, including the identification and solicitation of additional financing sources. We have agreed to provide access to properties, systems and our access to various types of information as the Lenders reasonably request and make reasonably available its directors, officers, employees and advisors.

Release from Claims

We together with our past, present and future successors, assigns, managers, members, officers, directors, agents, employees, professionals and other representatives (in their capacities as such and not in any other capacity), and entities affiliated with Remus Capital and Presto CA LLC (an affiliate of Cleveland Avenue, LLC) together with their respective past, present and future successors and assigns released the Agent and the Lenders from any claims related to our forbearance agreement, the Credit Agreement and any Loan Documents.

Convertible Note

On May 16, 2024, Presto Automation Inc. (the "Company" or "we") issued to Remus Capital Series B II, L.P, an entity controlled by Krishna Gupta, a member of our Board of Directors, a subordinated convertible note in the principal amount of $1,500,000 (the "May Note") in consideration for a cash investment of $1,500,000 from Remus Capital.

PIK Interest. Interest on the May Note accrues monthly by increasing principal at a rate of 7.5% per annum. The interest rate shall increase to 12% in the case of an event of default.

Conversion. The May Note is convertible into 10,714,286 shares of common stock at the option of the holder at an initial conversion price of $0.14 per share.

The May Note shall convert mandatorily into common stock at the then prevailing conversion price immediately prior to (a) a Restructuring Transaction, and (b) a Change of Control transaction with a financial investor (in each case, as such terms are defined in the May Note). For these purposes:

Conversion Cap. Pursuant to Nasdaq Listing Rule 5635(d), the total number of shares of common stock that can be issued upon conversion of the May Note is limited to 19.99% of the outstanding shares of the Company (the "Conversion Share Cap") at the time of the conversion of the May Note. Absent the Conversion Share Cap, the total number of shares issuable under the May Note is 10,714,286.

Subordination. The May Note is subject to the terms and conditions of the indebtedness (the "Senior Indebtedness") outstanding under the Credit Agreement and additional provisions set forth in the May Note, including, without limitation, (i) the May Note is subordinated to the prior payment in cash in full of the Senior Indebtedness, and (ii) no principal or interest may be paid in cash on the May Note prior to the repayment in cash in full of the Senior Indebtedness.

Registration Rights Agreement

The Company entered into a Registration Rights Agreement with the May Note holder (the "Registration Rights Agreement") dated May 16, 2024. Under the Registration Rights Agreement, the Company will file a registration statement ("Registration Statement") with the SEC within 90 days following the date of the Registration Rights Agreement for purposes of registering the resale of the shares of common stock issuable upon conversion of the May Note. The Company will also use commercially reasonable efforts to cause the SEC to declare the Registration Statement effective as promptly as possible after the filing of the Registration Statement and no later than the earlier of (i) the 150th calendar day following the date of the Registration Rights Agreement and (ii) the 5th trading day after the date the Company is notified by the SEC that the Registration Statement will not be "reviewed" or will not be subject to further review. The Company will also use its commercially reasonable efforts to keep each Registration Statement continuously effective under the Securities Act of 1933, as amended (the "Securities Act") until the earlier of (i) such time as all of the registrable securities covered by such Resale Registration Statement have been sold by the holders publicly or pursuant to Rule 144 or (ii) the date that all registrable securities covered by such Registration Statement may be sold by non-affiliates of the Company without volume or manner-of-sale restrictions under Rule 144, and without the requirement for the Company to be in compliance with the current public information requirements under Rule 144, as determined by counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company's transfer agent and the affected holders.

Extension of Secured Promissory Note

On March 21, 2024, we issued to Presto CA LLC ("Presto CA") a secured promissory note in the principal amount of $4,000,000 (the "Note"), pursuant to which Presto CA made two loans totaling an aggregate of $4.0 million to us. The first loan was made on March 21, 2024 in the amount of $2.0 million and the second loan was made on March 30, 2024 in the amount of $2.0 million (the "Loans"). The Loans were originally to be repaid no later than May 15, 2024.

Presto CA has agreed to extend the maturity of the Note to align with the termination of Forbearance as described above in exchange for an extension of the anti-dilution period in the purchase agreement, dated October 10, 2023 between the Company and Presto CA (as amended, the "CA Purchase Agreement") from September 30, 2024 to December 31, 2024 and a change in the anti-dilution trigger price in the CA Purchase Agreement from $0.25 to $0.14.

The foregoing summaries of the May Note, the Registration Rights Agreement, the Cooperation Agreement, and the Extension do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the applicable agreements filed as exhibits to this Current Report on Form 8-K and incorporated herein by reference.

Forward Looking Statements

This Current Report on Form 8-K (the "Form 8-K") contains statements that constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements, other than statements of present or historical fact included in this Form 8-K, regarding the Company's strategy, future operations, prospects, plans and objectives of management, are forward-looking statements. When used in this Form 8-K, the words "could," "should," "will," "may," "believe," "anticipate," "intend," "estimate," "expect," "project," "initiatives," "continue," the negative of such terms and other similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on management's current expectations and assumptions about future events and are based on currently available information as to the outcome and timing of future events. The forward-looking statements speak only as of the date of this Form 8-K or as of the date they are made. The Company cautions you that these forward-looking statements are subject to numerous risks and uncertainties, most of which are difficult to predict and many of which are beyond the control of the Company. In addition, the Company cautions you that the forward-looking statements contained in this Form 8-K are subject to risks and uncertainties, including but not limited to, the Company's ability to secure additional capital resources, and those additional risks and uncertainties discussed under the heading "Risk Factors" in the Form 10-K filed by the Company with the SEC on October 11, 2023 and the other documents filed, or to be filed, by the Company with the SEC. Additional information concerning these and other factors that may impact the operations and projections discussed herein can be found in the reports that the Company has filed and will file from time to time with the SEC. These SEC filings are available publicly on the SEC's website at www.sec.gov. Should one or more of the risks or uncertainties described in this Form 8-K materialize or should underlying assumptions prove incorrect, actual results and plans could differ materially from those expressed in any forward-looking statements. Except as otherwise required by applicable law, the

Company disclaims any duty to update any forward-looking statements, all of which are expressly qualified by the statements in this section, to reflect events or circumstances after the date of this Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Subordinated Convertible Note, dated as of May 16, 2024
10.2	Cooperation Agreement, dated as of May 16, 2024, by and between Metropolitan Partners Group Administration, LLC, Presto CA LLC, Presto Automation Inc., and Presto Automation LLC.
10.3	Amendment to Senior Secured Promissory Note, dated as of May 16, 2024, by and between Presto Automation LLC, Presto Automation Inc., and Presto CA, LLC
10.4	Registration Rights Agreement, dated as of May 16, 2024
104	Cover page interactive data file (embedded within the Inline XBRL document)

SIGNATURES

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

PRESTO AUTOMATION, INC.

Date: May 16, 2024

By: /s/ Susan Shinoff
Name: Susan Shinoff
Title: General Counsel and Corporate Secretary

Exhibit 10.1

SUBORDINATED CONVERTIBLE NOTE

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE TO THE INDEFEASIBLE PAYMENT IN FULL AND SATISFACTION OF THE SENIOR INDEBTEDNESS OWED TO THE LENDERS AND THE ADMINISTRATIVE AGENT PURSUANT TO THE CREDIT AGREEMENT AND LOAN DOCUMENTS (EACH AS DEFINED HEREIN).

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO THE TERMS OF THIS NOTE.

PRESTO AUTOMATION INC.
SUBORDINATED CONVERTIBLE NOTE

Issuance Date: May 16, 2024 Original Principal Amount: U.S. 1,500,000.00

FOR VALUE RECEIVED**,** Presto Automation Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to the order of Remus Capital Series B II, L.P. or its registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise and as increased by the amount of PIK Interest (as defined below) added to the principal amount of this Subordinated Convertible Note (this "**Note**" and, to the extent separated into more than one Note, the "**Notes**") in accordance with Section 2(a), the ("**Principal**") when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest as provided herein until the same becomes due and payable, whether upon the Maturity Date, or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). Certain capitalized terms used herein are defined in Section 27.

1. PAYMENTS OF PRINCIPAL.

(a) On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, accrued and unpaid Interest and accrued and unpaid Late Charges (as defined below) on such Principal and Interest. The Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any redemption hereunder, as applicable, the Company shall repay or redeem, as applicable, First, all accrued and unpaid Interest hereunder and under any other Notes held by such Holder, Second, all accrued and unpaid Late Charges on any Principal and Interest hereunder and under any other Notes held by such Holder, Third, all other amounts (other than Principal) outstanding under any other Notes held by such Holder and, Fourth, all Principal outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. INTEREST; INTEREST RATE.

(a) *PIK Interest*. PIK Interest on the Principal of this Note shall commence accruing on the Issuance Date at the PIK Interest Rate and shall be computed on the basis of a 360-day year and the actual number of days elapsed, and shall be payable in arrears on each Interest Date (with the first Interest Date being June 1, 2024) to the record holder of this Note. However, PIK Interest shall not be paid in cash on each Interest Date, but instead shall be automatically capitalized on a monthly basis as of such Interest Date and added to the unpaid and outstanding Principal of this Note.

(b) *PIK Interest on Event of Default*. From and after the occurrence and during the continuance of any Event of Default, the PIK Interest Rate shall automatically be increased to 12% per annum. In the event that such Event of Default is subsequently cured, the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure.

3. CONVERSION OF NOTES.

At any time after the Issuance Date, this Note shall be convertible, at any time and from time to time, at the option of the Holder, into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. At any time or times on or after the Issuance Date, the Holder shall be entitled, at its option, to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent (as defined below)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the sum of (x) portion of the Principal to be converted, redeemed or otherwise with respect to which this determination is being made and (y) all accrued and unpaid Interest with respect to such portion of the Principal amount and accrued and unpaid Late Charges with respect to such portion of such Principal and such Interest, if any.

(ii) "**Conversion Price**" means $0.14, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Voluntary Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall deliver via electronic mail, for receipt on or prior to 6:00 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit 1 (the "**Conversion Notice**") to the Company. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 16(b)) to a nationally recognized overnight delivery service for delivery to the Company. On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit to the Holder and the Transfer Agent by electronic mail an acknowledgment, in the form attached hereto as Exhibit 2, confirming receipt of such Conversion Notice and representing as to whether such shares of Common Stock may then be resold pursuant to Rule 144 or an effective and available registration statement, which acknowledgment shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the date on which the Company has received a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the "**Share Delivery Deadline**"), the Company shall (1) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and the shares of Common Stock to be issued are then covered by an effective, usable resale registration statement or may otherwise be resold under Rule 144 and, in each case, the Holder has confirmed that it proposes to promptly sell such shares of Common Stock, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or the shares of Common Stock that are to be issued are not covered by an effective, usable resale registration statement and may not be resold under Rule 144, or the Holder has not confirmed that it proposes to promptly sell such shares of Common Stock, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion containing a restrictive legend under the Securities Act. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than two (2) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 16(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date. Notwithstanding anything to the contrary contained in this Note or the registration rights agreement, after the effective date of the Registration Statement (as defined in the applicable registration rights agreement), the Company shall cause the Transfer Agent to deliver unlegended shares of Common Stock to the Holder (or its designee) in connection with any sale of Registrable Securities (as defined in the registration rights agreement) that the Holder has confirmed that it proposes to promptly sell, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, and for which the Holder has not yet settled.

(ii) Mandatory Conversion. The outstanding Conversion Amount shall be mandatorily converted into shares of Common Stock immediately prior to the consummation of a Change of Control that is not a Strategic Change of Control. The provisions of Section 3(c)(iv) shall apply mutatis mutandis in order to effect such conversion.

(iii) Reserved.

(iv) Registration; Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the "**Registered Notes**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 16, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

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

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an "**Event of Default**" and each of the events in clause (ix) shall constitute a "**Bankruptcy Event of Default**":

(i) the failure of the applicable Registration Statement to be filed with the SEC on or prior to the Filing Date or the failure of the applicable Registration Statement to be declared effective by the SEC on or prior to the Effectiveness Date (as defined in the registration rights agreement);

(ii) while the applicable Registration Statement is required to be maintained effective pursuant to the terms of the registration rights agreement, the effectiveness of the applicable Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement (or the prospectus contained therein) is unavailable to any holder of Registrable Securities (as defined in the registration rights agreement) for sale of all of such holder's Registrable Securities in accordance with the terms of the registration rights agreement, and, such lapse or unavailability continues for a period of 20 consecutive Trading Days or for more than an aggregate of 40 Trading Days in any 365-day period; provided, however, that the foregoing shall not apply in the case of a suspension permitted pursuant to Section 3(j) of the registration rights agreement;

(iii) [reserved];

(iv) the Company's (A) failure to cure a Conversion Failure by delivery of the required number of shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or (B) notice, written or oral, to any holder of the Notes, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes;

(v) the Holder's Authorized Share Allocation (as defined in Section 8 below) is less than the number of shares of Common Stock that the Holder would be entitled to receive upon a conversion of the full Conversion Amount of this Note for more than ten (10) consecutive days;

(vi) Company's or any Subsidiary's failure to pay to the Holder any amount of Principal, Interest, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company's or any Subsidiary's failure to pay any redemption payments or amounts hereunder);

(vii) [reserved];

(viii) the occurrence of any default (after lapse of any applicable cure periods) under, redemption of or acceleration prior to maturity of at least an aggregate of $500,000 of indebtedness of the Company or any of its Subsidiaries, but only if such failure remains uncured for the applicable grace period;

(ix) (A) the Company commences any case, proceeding or other action (1) under the Bankruptcy Code or similar debtor relief laws of the United States or other applicable jurisdiction seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (2) seeking appointment of a receiver, trustee, custodian, conservator, judicial manager or other similar official for it or for all or any substantial part of its assets, or the Company makes a general assignment for the benefit of its creditors; (B) there is, commenced against the Company, any case, proceeding or other action of a nature referred to in clause (A) above that results in the entry of an order for relief or any such adjudication or appointment or remains undismissed, undischarged or unbonded for a period of 60 days; (C) there is, commenced against the Company, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; (D) the Company takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (A), (B), or (C) above; or (E) the Company is, or is be unable to, or admits in writing its inability to, pay its debts as they become due;

(x) there is entered against the Company (i) one or more final judgments or orders for the payment of money involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of $1,000,000 or more, or (ii) one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect and, in either case, enforcement proceedings are commenced by any creditor upon such judgment or order, or all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof;

(xi) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation or warranty, in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of 10 days;

(xii) any provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document, but only if such provision remains invalid or unenforceable for a period of at least 10 days.

(b) Notice of an Event of Default; Redemption Right. Upon obtaining knowledge of the occurrence of an Event of Default with respect to this Note, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an "**Event of Default Notice**") to the Holder. At any time after the earlier of the Holder's receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof (the "**Event of Default Redemption Notice**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the sum of the Conversion Amount to be redeemed and (ii) the product of (X) the Conversion Rate with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the greatest closing sale price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 9. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4(b), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of the Company's redemption of any portion of this Note under this Section 4(b), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

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

(d) Subordination. Until such time as the Senior Indebtedness has been paid in full, in cash, all of the Holder's rights under this Section 4 are and shall remain subject to the terms and provisions of Section 11 hereof.

5. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 6 and 16 below, if at any time (other than in connection with a Restructuring Transaction) the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) Strategic Change of Control; Other Corporate Events.

(i) No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Strategic Change of Control, but not prior to the public announcement of such Change of Control, the Company shall deliver written notice to the Holder. The Company shall not enter into or be party to a Strategic Change of Control unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(b)(i) pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Strategic Change of Control, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes (assuming that the Successor Entity (or its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market) and having similar ranking and security to the Notes, and satisfactory to the Holder. Upon the occurrence of any Strategic Change of Control, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Strategic Change of Control, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Strategic Change of Control, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Strategic Change of Control (assuming that the Successor Entity (or its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market), in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 5 and 16, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes prior to such Strategic Change of Control, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Strategic Change of Control had this Note been converted immediately prior to such Strategic Change of Control (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at their sole option, by delivery of written notice to the Company to waive this Section 5(b)(i) to permit the Strategic Change of Control without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Strategic Changes of Control and shall be applied without regard to any limitations on the conversion of this Note.

(c) In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Strategic Change of Control pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder's option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 5 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

6. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 4(c), if the Company at any time on or after the date hereof subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction (in each case, other than in connection with a Restructuring Transaction)) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 5 or Section 16, if the Company at any time on or after the date hereof combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 6(a) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 6(a) occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

(b) Calculations. All calculations under this Section 6 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(c) Voluntary Adjustment by Company. The Company may at any time during the term of this Note, with the prior written consent of the Holder, reduce the then current Conversion Price of each of the Notes to any amount and for any period of time deemed appropriate by the board of directors of the Company, with the prior written consent of the Administrative Agent, in its sole discretion.

7. NONCIRCUMVENTION.

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

8. RESERVATION OF AUTHORIZED SHARES.

So long as any Notes remain outstanding, the Company shall at all times reserve at least 100% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion, of all of the Notes then outstanding (without regard to any limitations on conversions and assuming such Notes remain outstanding until the Maturity Date) (assuming for purposes of this Section 8 (i) that (x) interest on the Notes shall accrue through the Maturity Date and (y) any such conversion shall not take into account any limitations on the conversion of the Notes set forth in the Notes) (the "**Required Reserve Amount**"). The Required Reserve Amount shall be allocated pro rata among the holders of the Notes based on the original principal amount of the Notes held by each holder on the Closing Date or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer any of such holder's Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the remaining holders of Notes, pro rata based on the principal amount of the Notes then held by such holders.

9. EVENT OF DEFAULT REDEMPTION.

Subject to Section 11, if the Holder delivers an Event of Default Redemption Notice, the Company shall deliver the Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. If the Company has delivered a notice to the Holder, and solely to the extent that such payment would be expressly permitted pursuant to Section 11, the Company shall pay all other amounts due and payable hereunder and under the other Transaction Documents (the "**Prepayment Amount**"). Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Event of Default Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 16(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the Event of Default Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Event of Default Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the Event of Default Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, the Event of Default Redemption Notice shall be null and void with respect to such Conversion Amount. The Holder's delivery of an Event of Default Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

10. VOTING RIGHTS.

The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

11. SUBORDINATION.

(a) Notwithstanding anything in this Note to the contrary, the Company and the Holder (by its acceptance hereof) acknowledge and agree that this Note and the rights of the Holder hereunder are subject to, and limited by, the terms and conditions of (1) the Senior Indebtedness, and (2) this Section 11. If requested by any existing or new Lender, the Holder will enter into a subordination agreement with such Lender on terms similar to those contained in this Section 11.

(i) *Note Subordinated to Existing Debt*. The principal of and interest on this Note and all other amounts payable with respect hereto are expressly subordinated to the prior payment in full, in cash of the Senior Indebtedness and the termination of all commitments to lend under the Loan Documents; provided, that notwithstanding the foregoing, the Holder will be able to receive and retain Common Stock upon a conversion in accordance with Section 3.

(ii) *No Payment on Note in Certain Circumstances*. Until the Senior Indebtedness has been paid in full, in cash, no payment on account of principal of, or interest on, this Note, or any other amounts payable with respect hereto, whether by acceleration, redemption, exchange, prepayment or otherwise (and whether in the form of cash, securities or otherwise), shall be made, either directly or indirectly, by the Company, and Holder shall not be entitled to receive such payment, other than the receipt of Common Stock upon a conversion in accordance with Section 3. Prior to the payment in full, in cash, of the Senior Indebtedness, the Holder shall not enforce or seek to enforce any rights and remedies in respect of this Note (other than conversion to Common Stock in accordance with Section 3), including, without limitation, by accelerating the amounts due hereunder, bringing any judicial or nonjudicial action to recover payments on this Note, seeking or requesting payment of this Note, or exercising or seeking to exercise any right of redemption hereunder.

(iii) *Insolvency, Bankruptcy, Liquidation and Reorganization*. In the event of any voluntary or involuntary insolvency, bankruptcy, liquidation, reorganization or other similar proceeding involving the Company (each, an "**Insolvency Proceeding**"), all Senior Indebtedness shall first be paid in full, in cash before any payment or any distribution of any kind or character is made by the Company in respect of this Note.

(A) The Holder irrevocably authorizes and empowers (but without imposing any obligation on) the Administrative Agent and any trustee in bankruptcy, receiver or assignee for the benefit of creditors of the Company, in any Insolvency Proceeding, on the Holder's behalf, to (1) file any claim, proof of claim or such other instrument of similar character not otherwise filed and (2) vote such Holder's interest in any proceeding under applicable insolvency laws as such vote relates to any Subordinated Debt. In the event that the Administrative Agent votes any claim in accordance with the authority hereby, the Holder shall not be entitled to change, withdraw or challenge any such vote. This authorization and appointment is irrevocable and coupled with an interest. The Holder recognizes that, to the extent permitted by law, this authorization and appointment shall continue in full force and effect, notwithstanding any time limitations set forth in the operating agreement or organizational documents of the Holder or applicable law.

(B) Holder shall not assert, without Administrative Agent's prior written consent, any claim, motion, objection or argument in connection with any liquidation or insolvency proceeding, except for necessary responsive or defensive pleadings required to protect Holder's interest in this Note. Holder agrees that it will consent to, and not object to or oppose any use of cash collateral consented to by Administrative Agent or any financing provided by Administrative Agent or any Lender to the Company or any of its subsidiaries or affiliates (or any financing provided by any other Person consented to by Administrative Agent) (collectively, "**DIP Financing**") on such terms and conditions as Administrative Agent may determine in its sole discretion. Without the prior written consent of Administrative Agent, Holder agrees that it will not, and will not permit, any of its affiliates to, (i) directly or indirectly provide, participate in or otherwise support, any financing in an Insolvency Proceeding to any Obligor or (ii) seek or accept any lien on or security interest in any Collateral (or any assets which would be Collateral but for the operation of the Bankruptcy Code) that would be senior to or pari passu with any liens or security interests securing the Senior Indebtedness or any DIP Financing. Holder agrees that it will not join or seek to join any creditors' committee or other official committee in any Insolvency Proceeding.

(C) Holder agrees that it will consent to, and not object to or oppose, a sale or other disposition (or related sale or disposition procedures) of any property securing any of the Senior Indebtedness in any Insolvency Proceeding, if Administrative Agent has consented to such sale or other disposition (or sale or disposition procedures).

(D) Holder agrees that it will consent to, vote in favor of, and not object to or oppose, any plan of reorganization or liquidation, or any other scheme, arrangement or proposal in any Insolvency Proceeding which is supported or consented to by the Administrative Agent.

(E) Following payment in full of the Senior Indebtedness, should any payment upon the Senior Indebtedness be rescinded thereafter as a voidable preference, or otherwise by operation of law, upon the insolvency, bankruptcy or reorganization of the Company, all of the rights of the holders of the Senior Indebtedness previously extinguished by full payment of the Senior Indebtedness shall be automatically reinstated, and all rights and benefits hereunder shall be retroactively implemented in favor of the holders of the Senior Indebtedness, all as if the payment had never been made to or received by the holders of the Senior Indebtedness.

(iv) *Return of Certain Payments*. In the event that the Holder of this Note receives any payment in respect of this Note in violation of these subordination provisions, such payment shall be held by the Holder in trust for the benefit of, and shall, forthwith upon receipt thereof, be paid over and delivered to the Administrative Agent to the extent necessary to pay the Senior Indebtedness in full in cash.

(v) *Payments in Kind*. Notwithstanding anything to the contrary in the foregoing, the Company shall not be prohibited from making, and the Holder shall not be prohibited from receiving, any payments in kind to the extent set forth herein.

(vi) *Mandatory and Elective Conversion of Note*.

(A) In the event of any Restructuring Transaction consented to by the Administrative Agent (and regardless of whether such Restructuring Transaction would otherwise result in a mandatory conversion pursuant to Section 3, but for this Section 11(a)(vi)), the Holder shall be deemed to have consented to such Restructuring Transaction, and all of the outstanding obligations hereunder shall be mandatorily converted into Common Stock as if such conversion were a mandatory conversion of the Note pursuant to Section 3. Any such conversion shall occur simultaneously with (but immediately prior to) the closing of the applicable Restructuring Transaction. The Holder and the Company shall promptly execute and deliver to the Administrative Agent all documents necessary or reasonably requested by the Administrative Agent to effectuate the foregoing conversion.

(B) In furtherance of the foregoing, the Holder hereby irrevocably appoints the Administrative Agent as its attorney-in-fact, with full authority in the place and stead of the Holder and in the name of the Holder, to execute and deliver any document or instrument that the Holder may be required to deliver pursuant to this Section 11(a)(vi) in order to effectuate the foregoing conversion and cause such a conversion, such power of attorney being coupled with an interest and irrevocable until the Senior Indebtedness is paid in full, in cash.

(C) The Company acknowledges and agrees that it shall take any and all action required to cause the mandatory conversion of this Note upon the occurrence of the conditions set forth in this Section 11(a)(vi).

(b) The subordination provisions of this Note are for the benefit of the holders of the Senior Indebtedness and their successors and assigns and they may enforce such provisions directly against the Holder of this Note in accordance with the terms hereof. No right of any present or future holder of any Senior Indebtedness to enforce subordination as provided herein shall at any time in any way be prejudiced or impaired by any act or omission of the Company or any such holder, unless the holder has expressly waived its rights in writing. The holders of the Senior Indebtedness may, without impairing or releasing the Company or the Holder of this Note from any obligation hereunder, take any and all actions with respect to the Senior Indebtedness, including, without limitation, to (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness; (iii) release any Person liable in any manner for the Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

(c) Authorization to Effect Subordination. The Holder, by its acceptance hereof, solely in its capacity as obligee with respect to Subordinated Debt irrevocably authorizes and empowers (but without imposing any obligation on) the Administrative Agent (through its authorized representatives), on behalf of itself and the Lenders, to demand, sue for, collect and receive such Holder's ratable share of payments or distributions with respect to Subordinated Debt and take all such other action, in the name of such Holder or otherwise, as such Administrative Agent or authorized representatives may determine to be necessary or appropriate for the enforcement of the provisions of this Section 11.

(d) Amendments and Modifications to Note. Under no circumstance shall the Company or the Holder amend or modify, or permit the amendment or modification of, any provision of this Note in any way adverse to the interests of the Administrative Agent and the Lenders, including, without limitation, any amendments to Sections 2, 3, 4, 5, 9, 10, 11, 12 or 24 hereof (or any constituent definitions), or otherwise affecting the same or similar substance of such provisions, each of which shall be deemed to be adverse to the Administrative Agent and the Lenders. The Administrative Agent and the Lenders are intended to be, and shall be, express third party beneficiaries of the terms of Section 11 of this Note and may enforce the provisions of Section 11 of this Note directly against the Company and/or any Holder.

(e) Amendments and Modifications to Senior Indebtedness. The Holder agrees that the Company, the Administrative Agent and the Lenders shall have absolute power and discretion, without notice to the Holder, to deal in any manner with the Senior Indebtedness and the related collateral, including, without limitation, the power and discretion to effect any amendment, modification, supplement, restatement, refinancing, renewal, refund, extension or termination of any Senior Indebtedness.

(f) Security for Subordinated Debt. Except with the prior written consent of the Administrative Agent and the Lenders, in no event shall the Holder take, accept or receive (and the Company shall not, nor permit any of its Subsidiaries or any other Person to grant to the Holder) any lien or security interest on any asset of Company or its Subsidiaries or any other collateral, guaranty, credit support or security for the Subordinated Debt. In the event in violation of the previous sentence the Holder is granted a security interest or lien on any asset of the Company or any of its Subsidiaries or any guaranty or credit support from the Company or any of its Subsidiaries or any other Person, the Holder does hereby expressly immediately and automatically (without further action of any Person) release such security interest, lien, guaranty or credit support, and the Holder and the Company shall immediately take all actions necessary or desirable to confirm and/or effectuate such release. The Administrative Agent may, in its sole discretion, take all steps necessary or desirable to confirm and/or effectuate the release any such lien, security interest, guaranty or credit support without any further action by or consent of any party, and the Holder and the Company expressly consent to and authorize any such action. In furtherance of the foregoing the Company and the Holder each hereby irrevocably appoint the Administrative Agent as its attorney-in-fact, with full authority in the place and stead of the Company and the Holder, as applicable, and in the name of the Company or the Holder, as applicable, to execute and deliver any document or instrument that the Company may be required to deliver pursuant to this Section 11(f) in connection with any such release, such power of attorney being coupled with an interest and irrevocable until the Senior Indebtedness is paid in full in cash.

(g) The Holder agrees that this Section 11 constitutes a "subordination agreement" within the meaning of Section 510(a) of the United States Bankruptcy Code (11 U.S.C. §101, et seq.) and will continue in full force and effect during any Insolvency Proceeding, including after the filing of any petition by or against the Company under the Bankruptcy Code and all converted or succeeding cases in respect thereof. All references herein to the Company or any of its subsidiaries or affiliates shall be deemed to apply to such Person as debtor-in-possession and to any trustee for such Person.

12. NOTE

(a) [reserved];

(b) Notwithstanding anything to the contrary contained herein, the Holder and the Company agree that (i) the total number of shares of Common Stock issuable upon conversion of this Note and the concurrent proposed equity financing, including any shares of Common Stock issued pursuant to anti-dilution protections triggered by the proposed equity financing, (the "**Equity Financing**") may not cause the Company to exceed the requirements of Nasdaq Listing Rule 5635(d) ("**Nasdaq 19.99% Cap**"), except that such limitation will not apply following Approval (defined below). If the aggregate number of shares of Common Stock issuable upon conversion of the Note and in the Equity Financing (the "**Equity Financing Securities**"), and any other securities required to be aggregated with this Note under applicable rules of the Nasdaq Stock Market ("**Additional Securities**" and, together with the Equity Financing Securities, the "**Other Securities**"), reaches the Nasdaq 19.99% Cap, so as not to violate the 20% limit established in Listing Rule 5635(d), the Company shall as soon as reasonably practicable take all action necessary to obtain stockholder approval for the issuance of shares of Common Stock in excess of the Nasdaq 19.99% Cap pursuant to the terms of this Note in accordance with the requirements of Nasdaq Listing Rule 5635(d) (the "**Approval**"). Without limiting the generality of the foregoing sentence, as soon as reasonably practicable after the date of the application of the Nasdaq 19.99% Cap, but in no event later than 90 days after such occurrence, the Company shall use its reasonable best efforts to hold a meeting of its stockholders to seek the Approval. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit the Approval and to cause its board of directors to recommend to the stockholders that they provide the Approval.

13. DISTRIBUTION OF ASSETS.

In addition to any adjustments pursuant to Sections 5 and 6 above, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions.

14. AMENDING THE TERMS OF THIS NOTE.

The prior written consent of the Holder and the Company shall be required for any change, waiver or amendment to this Note. Any change, waiver or amendment so approved shall be binding upon all existing and future holders of this Note; provided, however, that no such change, waiver or, as applied to any of the Notes held by any particular holder of Notes, shall, without the written consent of that particular holder, (i) reduce the amount of Principal, reduce the amount of accrued and unpaid Interest, or extend the Maturity Date, of the Notes, (ii) disproportionally and adversely affect any rights under the Notes of any holder of Notes; or (iii) modify any of the provisions of, or impair the right of any holder of Notes under, this Section 3.

15. TRANSFER.

This Note may not be offered, sold, assigned or transferred by the Holder without the consent of the Company (which shall not be unreasonably withheld).

16. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 16(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 16(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 16(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 16(d) and in principal amounts of at least $100,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 16(a) or Section 16(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

17. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF.

The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein (other than the provisions of Section 11) shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note (including, without limitation, compliance with Section 6).

18. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS.

If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

19. CONSTRUCTION; HEADINGS.

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

20. FAILURE OR INDULGENCE NOT WAIVER.

No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

21. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least five (5) Trading Days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Strategic Change of Control, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing, provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Principal or other amounts due under the Transaction Documents which is not paid when due shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of seven and one-half percent (7.5%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

22. CANCELLATION.

After all Principal, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

23. WAIVER OF NOTICE.

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

24. GOVERNING LAW.

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

25. SEVERABILITY.

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

26. MAXIMUM PAYMENTS.

Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

27. CERTAIN DEFINITIONS.

For purposes of this Note, the following terms shall have the following meanings:

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

(b) "**Administrative Agent**" means Metropolitan Partners Group Administration, LLC, and its successors and assigns in such capacity.

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

(d) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(e) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(f) "**Change of Control**" means (i) a consolidation or merger of the Company or PAL with or into any other corporation or other Person, or any other corporate reorganization, other than (x) with an Excluded Person, or (y) any such consolidation, merger or reorganization in which the shares of capital stock of the Parent or PAL immediately prior to such consolidation, merger or reorganization continue to represent a majority of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; (ii) any transaction or series of related transactions to which the Parent or PAL is a party in which in excess of 20% of the Parent's or PAL's voting power is transferred (other than to an Excluded Person); (iii) any transaction or series of transactions in which a "person" or a "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) (other than an Excluded Person) shall (A) become, or obtain rights (whether by means of common stock, warrants options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of 25% or more of the ordinary voting power or economic interests of Parent or PAL (determined on a fully diluted basis) or (B) have obtained the power (whether exercised or not) to elect a majority of the members of the board of directors (or any similar governing body) of Parent or PAL, as applicable; or (iv) the sale or transfer of all or substantially all of the Parent's or PAL's assets, or the exclusive license of all or substantially all of the Parent's or PAL's material assets and/or material intellectual property, in each case, other than to an Excluded Person. A transaction (other than a Restructuring Transaction) that would otherwise be a Change of Control but for the involvement of an Excluded Person is referred to as a "**Strategic Change of Control.**"

(g) "**Closing Date**" shall mean the date hereof upon funding of the amounts set forth in this Note.

(h) "**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(i) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(j) "**Credit Agreement**" means that certain Credit Agreement, dated as of September 21, 2022, by and among the Company, PAL, as borrower, the Lenders, and the Administrative Agent, as amended, restated, refinanced, modified or supplemented through the date hereof and hereafter and in effect from time to time.

(k) "**Eligible Market**" means The New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market or the Principal Market.

(l) "**Equity Interests**" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

(m) "**Excluded Person**" means a Person other than a Financial Investor.

(n) "**Excluded Securities**" means (i) any shares of Common Stock, options, warrants or convertible securities issued or issuable in connection with (A) any equity compensation plan of the Company as in effect on the date hereof or (B) any Restructuring Transaction, or (ii) any other securities outstanding as of the Effective Date.

(o) "**Financial Investor**" means a Person that (i) does not have any strategic or commercial relationship with the Company, and (ii) does not itself operate in the Company's line of business or a line of business that would be considered competitive or synergistic with the Company's line of business, it being understood that merely holding an investment in another Person that operates in any such line of business shall not cause any Person that would otherwise constitute a Financial Investor to be excluded as a Financial Investor.

(p) "**GAAP**" means United States generally accepted accounting principles, consistently applied.

(q) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(r) [reserved].

(s) "**Interest**" means collectively the Cash Interest and the PIK Interest.

(t) "**Interest Date**" means, with respect to any given calendar month the last Trading Day in such calendar month.

(u) "**Lenders**" means the lenders from time to time party to the Credit Agreement or otherwise holding Senior Indebtedness.

(v) "**Loan Documents**" means the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement).

(w) "**Maturity Date**" shall mean March 30, 2026.

(x) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(y) "**PAL**" means Presto Automation LLC (f/k/a E La Carte, LLC, f/k/a Ventoux Merger Sub II LLC).

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

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

(bb) "**PIK Interest**" means the portion of the interest that accrues on the Principal of this Note as the PIK Interest Rate.

(cc) "**PIK Interest Rate**" means 7.5% per annum.

(dd) "**Principal Market**" means the Nasdaq Capital Market.

(ee) [reserved]

(ff) "**Restructuring Transaction**" means any transaction or series of transactions which has the effect of (i) forgiving, reducing, or modifying the principal balance of, or otherwise adjusting the amount of, the Senior Indebtedness, (ii) exchanging all or any portion of the Senior Indebtedness for any other instrument or security, (iii) the exercise of any rights or remedies by the Administrative Agent or any Lender under the Loan Documents, or (iv) replacing or refinancing the Senior Indebtedness, in whole or in part.

(gg) "**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

(hh) [reserved.]

(ii) "**Senior Indebtedness**" means all loans, advances, debts, liabilities, debit balances, covenants and duties at any time or times owed by Company or any other Loan Party to Administrative Agent or any Lender, whether direct or indirect, absolute or contingent, secured or unsecured, primary or secondary, joint or several, liquidated or unliquidated, due or to become due, now existing or hereafter arising, including (a) all debts, liabilities and obligations now or hereafter owing by Company or any other Loan Party to Administrative Agent or any Lender under any of the Loan Documents, (b) all debts, liabilities or obligations owing by Company or any other Loan Party to others which Administrative Agent or any Lender may have obtained by assignment, pledge, purchase or otherwise, (c) all loans made or credit extended by Administrative Agent or any Lender to Company or any other Loan Party during the pendency of any bankruptcy or other insolvency proceeding of Company or any other Loan Party, (d) all interest, fees, charges, expenses and attorneys' fees for which Company or any other Loan Party is now or hereafter becomes liable to pay to Administrative Agent or any Lender under any agreement or by law (including, all interest, legal fees and other charges that accrue or are incurred in connection with any of the Senior Indebtedness during the pendency of any bankruptcy case or other insolvency proceeding of Buyer, whether or not Administrative Agent or such Lender is authorized by 11 U.S.C. § 506 or otherwise to claim or collect any such interest, legal fees or other charges from Buyer), (e) all Obligations (as defined in the Credit Agreement), (f) the secured promissory note between the Company Presto CA, LLC dated March 21, 2024 (g) any renewals, extensions, replacements or refinancings of any of the foregoing.

(jj) "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(kk) "**Subordinated Debt**" means all amounts payable to the Holder pursuant to this Note or any other documents executed in connection herewith.

(ll) "**Subsidiaries**" means any wholly-owned subsidiaries of the Company.

(mm) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Strategic Change of Control or the Person (or, if so elected by the Holder, the Parent Entity) with which such Strategic Change of Control shall have been entered into.

(nn) "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The Nasdaq Stock Market (or any successor thereto) is open for trading of securities.

(oo) "**Transaction Document**" means this Note and any other document, certificate or notice executed by the Company or the Holder in connection with the issuance of this Note.

[*Signature page follows.*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

Presto Automation Inc.

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

[*Senior Convertible Note – Signature Page*]

EXHIBIT 1

PRESTO AUTOMATION INC. CONVERSION NOTICE

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

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid Late Charges with respect to such portion of the Aggregate Principal and such Aggregate Interest to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please specify the amount of Restricted Principal (if any) being converted: _____.

Please specify the amount of Restricted OID (if any) being converted: _____.

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

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

Issue to:

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

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date:

Name of Registered Holder

Name of Registered Holder

By: _____
Name:
Title:
Tax ID:
E-mail Address:

EXHIBIT 2

ACKNOWLEDGMENT

The Company hereby (a) acknowledges this Conversion Notice, (b) certifies that the above indicated number of shares of Common Stock [are][are not] eligible to be resold by the Holder either (i) pursuant to Rule 144 (subject to the Holder's execution and delivery to the Company of a customary 144 representation letter) or (ii) an effective and available registration statement and (c) hereby directs to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated , 20__ from the Company and acknowledged and agreed to by _____.

Presto Automation Inc.

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

Exhibit 10.2

Execution Version

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this "***Agreement***") is made as of this 16th day of May, 2024 (the "***Effective Date***") by and among Presto Automation LLC (f/k/a E La Carte, LLC, f/k/a Ventoux Merger Sub II LLC), a Delaware limited liability company ("***Borrower***"), Presto Automation Inc. (f/k/a Ventoux CCM Acquisition Corp.), a Delaware corporation (the "***Parent***"), Metropolitan Partners Group Administration, LLC, a Delaware limited liability company, in its capacity as administrative, payment and collateral agent (in such capacity, the "***Agent***") under the Credit Agreement (as defined below), and the Lenders (as defined below) signatory hereto, and, solely for purposes of Sections 7 through 9, 12 through 14, 20 and 22, the Significant Stakeholders identified on the signature pages hereto (collectively, the "***Significant Stakeholders***," and each individually, a "***Significant Stakeholder***").

Recitals

A. Borrower and Parent are parties to that certain Credit Agreement, dated as of September 21, 2022, by and among Borrower, Parent, each other Loan Party party thereto, Agent, and the financial institutions party thereto from time to time (the "***Lender***s"), as amended by the Waiver and First Amendment to Credit Agreement, dated as of March 31, 2023, the Second Amendment to Credit Agreement, dated as of May 25, 2023, the Third Amendment to Credit Agreement, dated as of October 10, 2023, the Forbearance and Fourth Amendment to Credit Agreement, dated as of January 22, 2024, the Fifth Amendment to Credit Agreement and Acknowledgement, dated as of January 30, 2024, the Forbearance and Sixth Amendment to Credit Agreement, dated as of March 1, 2024, and the Seventh Amendment to Credit Agreement, dated as of March 21, 2024 (collectively, and as further amended, restated, supplemented or otherwise modified from time to time, the "***Credit Agreement***"). Capitalized terms used but not otherwise defined herein shall have the definitions attributable to them in the Credit Agreement.

B. As of the date hereof, Event of Defaults have occurred and are continuing under the Credit Agreement, as set forth on **Schedule A** (the "***Existing Defaults***"). As of the date hereof, the Existing Defaults have not been cured or waived and are continuing.

C. Subject to the satisfaction of the conditions set forth herein, the Agent and the Lenders are willing to forbear for a limited period from further exercising their rights and remedies against the Loan Parties until the Termination Date (as defined below), solely upon the terms and conditions set forth herein.

D. In consideration of the terms, conditions and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, promise and agree as follows:

Agreement

1. **Recitals Incorporated.** The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Agreement.

2. **Acknowledgment of Obligations.** Each Loan Party signatory hereto hereby acknowledges, confirms, and agrees that as of the close of business on May 15, 2024, the Loan Parties are indebted to the Lenders in the principal amount of $53,468,583.53, plus accrued interest, fees, costs, expenses and other charges, under the Credit Agreement and other Loan Documents (the "***Outstanding Balance***"). The Outstanding Balance, together with interest accruing thereon, and all fees, costs, expenses, and other charges now or hereafter payable by the Loan Parties to Lenders pursuant to the Loan Documents and hereunder, is unconditionally owing by the Loan Parties to the Lenders, without offset, defense, or counterclaim of any kind, nature, or description whatsoever.

3. **Acknowledgment of Security Interests.** Each Loan Party signatory hereto hereby acknowledges, confirms, and agrees that Agent, for the ratable benefit of itself and the Lenders, has and shall continue to have valid, enforceable, and perfected Liens upon and security interests in the Collateral pursuant to the Security Documents and any other Loan Document pursuant to which Agent is granted a Lien, and the validity and perfection of such Liens and security interests shall remain unaffected by the parties' execution of this Agreement.

4. **Binding Effect of Documents.** Each Loan Party signatory hereto hereby acknowledges, confirms, and agrees that: (i) each of the Loan Documents to which it is a party has been duly executed and delivered to Agent and the Lenders by such Loan Party, and each is and shall remain in full force and effect as of the Effective Date; (ii) the agreements and obligations of such Loan Party contained in the Loan Documents and in this Agreement constitute the legal, valid, and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms, and such Loan Party has no valid defense to the enforcement of the Obligations; and (iii) Agent and the Lenders are entitled to the rights, remedies, and benefits provided for under the Loan Documents and applicable law.

5. **Acknowledgment of Existing Defaults.** Each Loan Party signatory hereto hereby acknowledges and agrees that (i) the Existing Defaults have occurred and are continuing, (ii) each of the Existing Defaults constitutes an "Event of Default" under the Loan Documents, and (iii) as a result of the Existing Defaults, Agent and the Lenders are entitled to exercise their respective rights and remedies under the Loan Documents, applicable law, or otherwise. Each Loan Party further represents and warrants that as of the Effective Date, no other Defaults or Events of Default under the Loan Documents exist. Agent and the Lenders have not waived and do not intend to waive any Existing Default, or any other Default or Event of Default which may exist under any Loan Document, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute such a waiver.

6. **No New Financing**. Each Loan Party acknowledges that the Lenders have, and shall have, no further commitment or obligation to provide any further financing or loans to the Borrower pursuant to the Loan Documents. Notwithstanding the foregoing, the Lenders may from time to time, in their sole discretion and subject to certain conditions precedent, fund capital and make certain Protective Advances, and any amounts so funded or advanced shall be added to the outstanding principal balance and become part of the Obligations (and shall thereafter accrue interest and otherwise be entitled to the benefits and treatment of being Protective Advances under the Credit Agreement). The Lenders' advancement of additional funds hereunder shall not constitute or be construed as a waiver of the Existing Defaults or of any of Agent's or Lenders' rights or remedies in connection therewith.

7. **Representations of Loan Parties.** Each Loan Party, and with respect to clauses (ii) and (iii), each Significant Stakeholder (for itself only, and not for any Loan Party), hereby represents and warrants to Agent and the Lenders as follows:

(i) *Loan Document Representations*. Each of the representations and warranties made by or on behalf of such Loan Party to Agent and the Lenders in any of the Loan Documents was true and correct when made, and is true and correct in all material respects on and as of the Effective Date (except for (x) representations and warranties which are already subject to materiality, which shall be true and correct in all respects, and those referring to an earlier date, which shall be true and correct in all material respects as of such date, and (y) any representations and warranties that no Default or Event of Default exists, solely with respect to the Existing Defaults), with the same full force and effect as if each of such representations and warranties had been made by such Loan Party on the Effective Date and in this Agreement.

(ii) *Binding Effect of Documents*. This Agreement has been duly authorized, executed, and delivered to Agent and the Lenders by such Loan Party or such Significant Stakeholder, as applicable, and is enforceable in accordance with its terms and is in full force and effect.

(iii) *No Conflict*. The execution, delivery, and performance of this Agreement by such Loan Party or such Significant Stakeholder, as applicable, will not violate any requirement of law or contractual obligation of such Loan Party or such Significant Stakeholder, as applicable, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues.

8. **Cooperation Period.**

(i) In reliance upon the undertakings, representations, warranties, and covenants of each Loan Party and each Significant Stakeholder contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, the Agent and the Lenders agree to forbear from further exercising their respective rights and remedies under the Loan Documents or applicable law in respect of or arising out of the Existing Defaults for the period commencing on the Effective Date and ending on the Termination Date (as defined below) (the "***Cooperation Period***").

(ii) During the Cooperation Period, Lenders will engage in good faith discussions with a view to concluding a binding agreement with a third party that is a permitted assignee under Section 8.6 of the Credit Agreement (a "***Potential Assignee***") that submits a binding written offer (an "***Offer***") to purchase of all of the Lenders' rights and obligations under the Loan Documents (the "***Assigned Interest***"), *provided* that such Offer is (A) for a cash purchase price of at least $20,000,000, (B) accompanied by a binding commitment by the Parent to issue one or more promissory notes to the Lenders, guaranteed by the Borrower, in an aggregate principal amount equal to (x) fifty percent (50%) of the outstanding balance of the Obligations less (y) the proposed cash purchase price (the "***Convertible Notes***"), which Convertible Notes shall be convertible into equity of the Parent of the same class and on the same terms as are set out in that certain convertible subordinated note issued to Remus Capital Series B II, L.P. on January 30, 2024, and (C) accompanied by evidence, in form and substance satisfactory to Lenders in their sole discretion, reflecting that the Offer will provide the Borrower with operating capital (net of all fundraising costs) of not less than $12,000,000, not including the cash purchase price described in (ii)(A) above (the "***Operating Capital Contribution***"), provided, that the amount of the Convertible Notes shall increase on a Dollar-for-Dollar basis to the extent that the Operating Capital Contribution is less than $18,000,000. For the avoidance of doubt, Lenders may, at any time, including after the Termination Date, in their sole and absolute discretion (A) engage in discussions or negotiations with any other Person with respect to a potential sale and assignment of the Assigned Interest and (B) sell and assign the Assigned Interest to any other permitted assignee under Section 8.6 of the Credit Agreement and terminate all of Lenders' obligations under this Section. Nothing herein shall be deemed to modify any rights of any party to that certain Subordination Agreement between Borrower, Parent, Agent, and Presto CA LLC dated March 21, 2024.

(iii) As used herein, the "***Termination Date***" means the date that is the earliest of: (a) May 22, 2024, provided, that such date shall automatically be extended to June 14, 2024 if the May Funding generates working capital equal to or greater than $3,000,000, with at least $2,500,000 funded by May 15, 2024 and the remainder funded no later than May 22, 2024; (b) the date on which any Loan Party commences, or threatens in writing to commence, any litigation against the Agent or any Lender; (c) the date on which any Loan Party takes any action inconsistent with the Agent's or any Lender's interests in the Collateral; (d) the commencement of any Insolvency Proceeding by or against any Loan Party; (e) any amendment to the Loan Parties' Operating Documents, or any Loan Party's entry into any stockholders agreement or other Operating Document, which in any way amends or alters (other than such amendments or agreements as are required in order to give effect to the provisions of this Agreement and which shall be reasonably acceptable to the Agent) (A) the composition of the Loan Parties' Governing Bodies, including providing any stockholder or other Person with any right to designate a director (except as may approved in writing by Agent in its sole discretion), (B) the relative voting rights of members of such Governing Bodies or stockholders, or (C) the terms of the Loan Parties' governance, (f) Paul Hastings LLP ceases, for any reason, to act as corporate counsel to the Loan Parties, (g) [reserved], or (h) the occurrence or existence of any Default or Event of Default hereunder or under any Loan Document, or any event or circumstance which, with notice or the passage of time, shall become an Event of Default (an "***Unmatured Default***"), other than the Existing Defaults. For purposes of clarity, failure of the Loan Parties to satisfy any of the covenants herein will constitute an immediate Event of Default for purposes of determining the Termination Date. An "***Insolvency Proceeding***" means any case or proceeding commenced by or against a Person under any Debtor Relief Law, or any agreement of such Person with respect to relief available under any Debtor Relief Law.

(iv) Immediately upon termination of the Cooperation Period, the agreement of the Lenders to forbear shall automatically and without further action terminate and be of no force and effect, it being expressly agreed that the effect of such termination will be to permit the Agent and each Lender to exercise immediately all rights and remedies available to it under the Loan Documents and applicable law, including, without limitation, to accelerate all of the Obligations and impose the Default Rate, in each case without any further notice, demand, presentment, protest, passage of time, or forbearance of any kind (all of which each Loan Party hereby expressly waives).

(v) The Loan Parties understand and accept the temporary nature of the forbearance provided hereby, and the Loan Parties further acknowledge and agree that the Agent and the Lenders have given no assurances, written or oral, that they will extend such forbearance or provide waivers or amendments to the Credit Agreement or any other Loan Document. Nothing in this Cooperation Agreement constitutes a legal obligation on the Agent or any Lender to participate in any restructuring of the Credit Agreement or to execute any related documents and no such obligation shall arise except pursuant to definitive documentation acceptable to and executed by the Agent and the Lenders in their sole and absolute discretion.

9. **Milestones; Additional Agreements**

(i) The Loan Parties have informed the Agent that they intend to obtain $3,000,000 of working capital through (A) incurring Subordinated Indebtedness from Remus Capital Series B II, L.P, or its registered assigns (the "***New Remus Note***") and (B) one or more registered direct offerings or private placements (collectively, the "***May Offerings***," and each, a "***May Offering***," and together with the New Remus Note, the "***May Funding***"). The Loan Parties shall raise additional working capital no later than June 7, 2024 (the "***Capital Raise***"). If the Capital Raise results in gross cash proceeds of $3,000,000 or more, excluding amounts to be held in escrow, the expiration date in clause (a) of the definition of "Termination Date" shall be automatically amended to "July 15, 2024".

(ii) The Agent hereby consents to the Loan Parties' issuance of the New Remus Note, in the form previously provided to the Agent. The New Remus Note is and shall be Subordinated Indebtedness and Parent Subordinated Indebtedness for all purposes under the Loan Documents.

(iii) The Agent and the Loan Parties waive the requirements of Section 5.19(b) of the Credit Agreement with respect to the proposed sale of shares of common stock of the Borrower, provided that agreements for the sale of such securities are entered into or on before May 15, 2024.

10. **Capital Raise.**

(i) *Updates*. At such times reasonably requested by Agent, the Loan Parties and their investment banker or other applicable professional (the "***Loan Party Professionals***," and together with the Lender Professionals (as defined herein), the "***Professionals***," and each, a "***Professional***") in respect of the Capital Raise shall conduct a telephonic meeting, to be attended by management representatives of the Loan Parties, the Loan Party Professionals, and Agent, during which the Loan Parties and the Loan Party Professionals shall present to Agent on the work done and planned to be done by the Loan Party Professionals and the Loan Parties in connection with each Capital Raise and the results and projected results of such work.

(ii) *Cooperation.* During the Cooperation Period and at all times thereafter, the Loan Parties shall (i) maintain an independent committee of the Parent's board of directors to work with the Agent and the Lenders on the development and execution of a strategic plan for the Loan Parties and the Obligations in the event that the Cooperation Period terminates (an "***Alternative Path***") and (ii) direct the Loan Party Professionals to work with the Agent and the Lenders in the development and execution of the Alternative Path, including the identification and solicitation of additional financing sources for the Loan Parties. The Loan Parties shall fully cooperate with, and shall not impede, contest or otherwise interfere with such efforts.

(iii) *Access to Records*. The Loan Parties shall (i) provide access to their properties and systems (including remote access as may be requested) to the Agent, the Lenders, and the Professionals as frequently as any such Professional reasonably determines to be appropriate in order to perform the agreed scope of work under their respective engagements; (ii) make the Loan Parties' directors, officers, employees and advisors available for meetings and discussions with Agent and/or the Professionals at such times as shall be reasonably requested; (iii) permit the Professionals to conduct monitoring and evaluations of the Loan Parties' finances, financial condition, business and operations; (iv) furnish information when reasonably requested and permit Agent and the Professionals to inspect and obtain copies (including electronic data), as available, from the Loan Parties' books and records; and (v) provide timely updates to the Agent and Professionals on any changes in the business or expected financial performance that could reasonably be expected to have a material effect on the affairs of the Loan Parties. The Lender Professionals are also entitled to meet with the Loan Party Professionals and the Loan Parties' counsel.

(iv) *Ordinary Course Operations*. Except as otherwise set forth in the Credit Agreement, the Loan Parties shall continue to operate in the ordinary course of business until all obligations to the Agent and Lenders are satisfied in full or as otherwise consented to by the Agent and Lender in their sole and absolute discretion.

(v) *Additional funding*. During the Cooperation Period, but in contemplation of the termination of the Cooperation Period, Agent, the Lenders and the Loan Parties agree to explore and consider (1) an Alternative Path and (2) a potential new investment by Agent and/or the Lenders in the Loan Parties to bridge the Loan Parties' liquidity needs towards such Alternative Path (together the "***New Transaction***"); *provided, however,* that this section is not binding on the Agent, any Lender or Loan Parties, will not be construed to be an offer, agreement, agreement in principle, agreement to agree, or commitment to enter into a New Transaction, and no binding obligation of Agent or any Lender (with respect to a New Transaction or otherwise) will arise herefrom other than pursuant to the terms of mutually agreeable definitive documentation which is duly executed by all parties thereto. Agent and the Lenders may at any time decline any further consideration of financing or participating in a New Transaction. This section shall not be construed to create a fiduciary relationship or joint venture between Agent, any Lender and any Loan Party. Any New Transaction is subject to the consideration and approval of Agent, each Lender and their respective investment committees, in their sole and absolute discretion.

11. **Agreements upon Termination of the Cooperation Period.** Following the termination of the Cooperation Period:

(i) The Loan Parties shall fully cooperate with, and shall not impede, contest or otherwise interfere with the Agent, the Lenders and the Lender Professionals (as defined herein) in the exercise of Agent's and Lenders' rights and remedies under the Loan Documents, at law or in equity, including, but not limited to, an accelerated sale of the Collateral by the Lender Professionals, a foreclosure or sale process under Article 9 of the Uniform Commercial Code, a sale under section 363 of the Bankruptcy Code (as defined herein), the appointment of a receiver, trustee or other custodian over all or any portion of the Loan Parties' assets (any of the foregoing, a "***Sale Process***"), and the retention of professionals, including, but not limited to, investment bankers (such professionals, collectively, the "***Lender Professionals***") to assist with any such Sale Process. The Loan Parties expressly acknowledge and agree not to contest Agent's and the Lenders' right and ability to credit bid in connection with any of the foregoing transactions, and expressly waive any defenses, rights, actions or other claims in connection therewith.

(ii) The Lender Professionals shall be tasked with facilitating, to the greatest extent permissible by law, any Sale Process discussed in this Section 11. In the event of a Sale Process under section 363 of the Bankruptcy Code, the Lender Professionals shall provide the requisite information, declarations and testimony necessary for such process to be approved and completed.

(iii) The Loan Parties shall (i) provide access to their properties and systems (including remote access as may be requested) to the Lender Professionals as frequently as any Lender Professional reasonably determines to be appropriate in order to perform the agreed scope of work under any applicable engagement agreement or otherwise in connection with any Sale Process and Agent's and Lenders' exercise of remedies; (ii) make the Loan Parties' directors, officers, employees and advisors available for meetings and discussions with Agent, Lenders and/or the Lender Professionals at such times as shall be reasonably requested; (iii) permit the Lender Professionals to conduct monitoring and evaluations of the Loan Parties' finances, financial condition, business and operations in order to perform the agreed scope of work; (iv) furnish information when reasonably requested and permit the Lender Professionals to inspect and obtain copies (including electronic data), as available, from the Loan Parties' books and records; (v) provide all information necessary or requested to populate a data room or otherwise facilitate due diligence by potential investors and/or purchasers; and (vi) provide timely updates to Agent, the Lenders, and the Lender Professionals on any changes in the business or expected financial performance that could reasonably be expected to have a material effect on the affairs of the Loan Parties.

(iv) *Budget.* The Loan Parties (A) agree that the Lender Professionals will develop a budget for the Loan Parties to facilitate the Sale Process, which will be subject to Agent's approval in form and substance, in the Agent's sole discretion (the "***Budget***"), (B) shall implement and operate strictly within the Budget at all times, and (C) agree that any deviations or modifications to the Budget must be approved by the Agent in advance, in writing, in its sole discretion.

(v) *Sale Process Plan*. The Loan Parties shall implement and operate strictly within the plan developed by the Lender Professionals and approved by the Agent in its sole discretion in connection with the Sale Process, and shall do so strictly in accordance with the Budget. Such plan may include, among other things, the hiring of such personnel or managers identified by the Lender Professionals, the use of commercially reasonable efforts to liquidate the Collateral, and winding down operations.

12. **Other Waivers; Reservation of Rights.**

(i) Agent and Lenders have not waived, nor do they have any intention of waiving, any Events of Default or Unmatured Defaults which may be continuing on the Effective Date or any Events of Default which may occur after the Effective Date (whether the same or similar to the Existing Defaults or otherwise), and Agent and Lenders have not agreed to forbear with respect to any of its rights or remedies concerning any other Events of Default or Unmatured Defaults occurring at any time.

(ii) Agent and Lenders reserve the right, in their discretion, to exercise any or all of their respective rights and remedies under the Loan Documents as a result of any other Events of Default or Unmatured Defaults occurring at any time. Agent and Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on Agent's or any Lender's part in exercising any such rights or remedies, should be construed as a waiver of any such rights or remedies.

(iii) In consideration of the agreements of Agent and Lenders contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Significant Stakeholder hereby agrees to waive, release and abstain from exercising any and all veto rights held by such Significant Stakeholder under the governing organizational documents of any Loan Party with respect to any transaction covered thereby or relevant thereto, including, but not limited to, a Capital Raise, a Sale Process or a sale and assignment of the Assigned Interest.

13. **Additional Defaults.** Each Loan Party and Significant Stakeholder acknowledges, confirms, and agrees that any misrepresentation by any Loan Party or any Significant Stakeholder, or any failure of any Loan Party or any Significant Stakeholder to comply with the covenants, conditions, and agreements contained in this Agreement, any other Loan Document, or any other agreement, document, or instrument at any time executed and/or delivered by such Loan Party or Significant Stakeholder, as applicable, with, to or in favor of Agent or the Lenders, shall constitute an Event of Default under this Agreement and the other Loan Documents. In the event any Person other than Agent and the Lenders shall, at any time or for any reason, exercise any of its rights or remedies, or take any other action, against any Loan Party or such Loan Party's property or assets that would in any way affect the Collateral or Agent's Liens thereon or rights thereto, such event shall constitute an Event of Default hereunder and an Event of Default under the Loan Documents.

14. **Conditions Precedent to Effectiveness of Agreement.** The effectiveness of this Agreement shall be subject to the following conditions precedent:

(i) Agent's and each Lender's receipt of this Agreement, duly authorized, executed, and delivered by each Loan Party and each Significant Stakeholder, together with such other documents, agreements and instruments as Agent or any Lender may require or reasonably request;

(ii) The Lenders' receipt of payment of reasonable and documented fees, expenses and disbursements (including the legal fees and expenses of Agent's counsel) required to be reimbursed or paid by the Loan Parties hereunder, under the Credit Agreement, or under any other Loan Document;

(iii) The Loan Parties' receipt of working capital in the amount of not less than $2,500,000 through the May Funding;

(iv) Agent's and each Lender's receipt of amended and restated Third Amendment Conversion Warrants and Fifth Amendment Warrants reflecting (A) an amount of Warrant Shares (as defined therein) inclusive of increases from all Dilutive Issuances (as defined therein) to date and (B) an extension of the end date of the "Anti-Dilution Period" (as defined therein) in Section 2(b) thereof from September 30, 2024 to December 31, 2024; and

(v) All certifications, representations and warranties set forth in this Agreement shall be true and correct.

15. **Effective Agreement.** Except as modified pursuant hereto, no other changes or modifications to the Loan Documents are intended or implied, and in all other respects the Loan Documents hereby are ratified and confirmed by each Loan Party as of the Effective Date. To the extent of conflict between the terms of this Agreement and the other Loan Documents, the terms of this Agreement shall govern and control.

16. **Costs and Expenses.** Each Loan Party absolutely and unconditionally, jointly and severally, agrees to pay to Agent and the Lenders, on demand at any time, all reasonable fees and disbursements, including, but not limited to, the fees of any counsel to Agent and the Lenders arising out of or in connection with the Existing Defaults and any steps or activities taken in connection therewith in respect of the Loan Documents, evaluating and enforcing its rights and remedies thereunder, and the preparation, negotiation, execution, delivery, or enforcement of this Agreement or the Loan Documents, and any agreements contemplated hereby and expenses which shall be at any time incurred or sustained by Agent or any Lender or any of its respective directors, officers, employees, or agents as a consequence of or in any way in connection with the preparation, negotiation, execution, or delivery of this Agreement and any documents contemplated hereby.

17. **Further Assurances.** The Loan Parties shall execute and deliver such additional documents and take such further action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement.

18. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Loan Parties, Agent, the Lenders and their respective successors and assigns.

19. **Survival of Representations and Warranties.** All representations and warranties made in this Agreement or any other document furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the other documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or right of Agent or any Lender to rely upon them.

20. **Release.**

(i) In consideration of the agreements of Agent and Lenders contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Loan Party, on behalf of itself and its past, present and future Subsidiaries, successors, assigns, managers, members, officers, directors, agents, employees, professionals and other representatives (the "***Loan Party Releasing Parties***," and each, a "***Loan Party Releasing Party***"), and each Significant Stakeholder (as identified on the signature pages hereto), on behalf of itself and its past, present and future Subsidiaries, successors, assigns, managers, members, officers, directors, agents, employees, professionals and other representatives (the "***Stockholder Releasing Parties***," and each, a "***Stockholder Releasing Party***," and together with the Loan Party Releasing Parties, the "***Releasing Parties***," and each, a "***Releasing Party***"), hereby absolutely, unconditionally, and irrevocably releases, remises, and forever discharges Agent and each Lender and each of their respective past, present and future stockholders, members, partners, managers, principals, affiliates, subsidiaries, divisions, predecessors, successors, assigns, directors, officers, attorneys, professionals, employees, agents, and other representatives (the "***Released Parties***," and each, a "***Released Party***") of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set off, demands, and liabilities whatsoever (each, individually, a "***Claim***," and collectively, the "***Claims***") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or secondary, liquidated or unliquidated, contractual or tortious, direct, indirect or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, which any such Releasing Party may now or hereafter own, hold, have, or claim to have against any Released Party for, upon, or by reason of any circumstance, action, cause, omission, event or thing whatsoever which arises at any time on or prior to the Effective Date, including, without limitation, for or on account of, or in relation to, or in any way in connection with this Agreement, the Loan Documents, or transactions hereunder or thereunder.

(ii) Each Releasing Party understands, acknowledges, confirms, and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the provisions of such release. Each Loan Party acknowledges and agrees that the foregoing release is a material inducement to the Agent's and the Lenders' execution of this Agreement, and but for the foregoing release, the Agent and the Lenders would not be willing to enter into this Agreement.

(iii) Each Releasing Party agrees that no fact, event, circumstance, evidence, or transaction which could now be asserted or which may hereafter be discovered shall affect, in any manner, the final, absolute, and unconditional nature of the release set forth above.

(iv) Each Releasing Party covenants and agrees never to institute or cause to be instituted or continue prosecution of, or to support, cooperate with or induce any other Person in connection with, any suit or other form of action or proceeding of any kind or nature whatsoever against any Released Party by reason of or in connection with any of the Claims.

(v) Each Releasing Party covenants and agrees that in any suit or other form of action or proceeding brought in violation of this Section 20, (a) the Released Parties shall be entitled to payment of all fees, costs and expenses (including fees, costs and expenses of attorneys) incurred in connection with such suit or other action or proceeding from the applicable Releasing Party, and (b) the Releasing Parties shall indemnify and hold harmless the Released Parties with respect thereto to the fullest extent provided to the Indemnitees under Section 8.5 of the Credit Agreement, which the signatories hereto each acknowledge and agree to be bound for purposes of this Agreement, as if fully set forth herein. Any such payments made pursuant to this Section 20(v) shall be made at the time such indemnified amounts are incurred, and in any event within ten (10) Business Days of written demand therefor.

21. **Severability.** The fact that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable as to any particular situation shall not impair or invalidate the remainder of this Agreement or the application of such provision to any other situation.

22. **Reviewed by Attorneys.** Each Loan Party and Significant Stakeholder represents and warrants to Agent and each Lender that such Loan Party (i) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (ii) has been afforded the opportunity to discuss this Agreement with, and have this Agreement reviewed by, such attorneys and other persons as such Loan Party or Significant Stakeholder may wish, and (iii) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress, or coercion of any kind by any person. Each Loan Party acknowledges and agrees that neither this Agreement nor the other documents executed pursuant hereto shall be construed more favorably in favor of one party than another based upon which party drafted the same, it being acknowledged that all the parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

23. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York. The terms of Section 8.12 and Section 8.13 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

24. **Counterparts.** This Agreement may be executed in any number of counterparts, and by each party on separate counterparts, but all of such counterparts shall together constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by PDF shall be effective as delivery of a manually executed counterpart of this Agreement.

25. **Amendments; Waivers; Consents.** This Agreement may be amended, modified, supplemented or restated only by a written instrument executed by each of the parties hereto. The terms of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach, whether or not similar, and no such waiver shall operate or be construed as a continuing waiver unless so provided. No delay on the part of any party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date first above written.

BORROWER:

PRESTO AUTOMATION LLC
(F/K/A E LA CARTE, LLC)
(F/K/A VENTOUX MERGER SUB II LLC)

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

PARENT:

PRESTO AUTOMATION INC.
(F/K/A VENTOUX CCM ACQUISITION CORP.)

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

[Signature Page to Cooperation Agreement]

AGENT:

METROPOLITAN PARTNERS GROUP ADMINISTRATION, LLC

By: /s/ Paul K. Lisiak
Name: Paul K. Lisiak
Title: Managing Partner

[Signature Page to Cooperation Agreement]

LENDERS:

METROPOLITAN LEVERED PARTNERS FUND VII, LP

By: MPF VII GP, LLC its General Partner

By: /s/ Paul K. Lisiak
Name: Paul K. Lisiak
Title: Managing Partner

METROPOLITAN PARTNERS FUND VII, LP

By: MPF VII GP, LLC its General Partner

By: /s/ Paul K. Lisiak
Name: Paul K. Lisiak
Title: Managing Partner

METROPOLITAN OFFSHORE PARTNERS FUND VII, LP

By: MPF VII GP, LLC its General Partner

By: /s/ Paul K. Lisiak
Name: Paul K. Lisiak
Title: Managing Partner

CEOF HOLDINGS LP

By: CORBIN CAPITAL PARTNERS, L.P., its
Investment Manager:

By: /s/ Daniel Friedman
Name: Daniel Friedman
Title: General Counsel

SIGNIFICANT STAKEHOLDERS:

ROMULUS CAPITAL I, L.P.

By: Romulus Capital Partners I, LLC, its General Partner

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

ROMULUS CAPITAL II, L.P.

By: Romulus Capital Partners II, LLC, its General Partner

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

ROMULUS CAPITAL III, L.P.

By: Romulus Capital Partners II, LLC, its General Partner

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

REMUS CAPITAL IV, L.P.

By: Remus Capital IV GP, LLC

By: /s/ Krishna Gupta
Name: Krishna K. Gupta
Title: Authorized Signatory

ROMULUS ELC B3 SPECIAL OPPORTUNITY, L.P.
ROMULUS ELC B3 SPECIAL OPPORTUNITY, L.P.

By: Romulus GP, its General Partner

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

ZAFFRAN SPECIAL OPPORTUNITIES LLC

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

KKG ENTERPRISES LLC

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

PRESTO CA LLC

By: /s/ Krishna Gupta
Name: Joseph McCoy
Title: Authorized Signatory

REMUS CAPITAL SERIES B II, L.P.

By: Remus Capital IV GP, LLC

By: /s/ Krishna Gupta
Name: Krishna Gupta
Title: Authorized Signatory

KRISHNA GUPTA

By: /s/ Krishna Gupta
Name: Krishna Gupta

[Signature Page to Cooperation Agreement]

SCHEDULE A

Existing Defaults

- An Event of Default pursuant to Section 7.1(a) of the Credit Agreement as a result of the Borrowers' failure to timely make payment on January 2, 2024, of the Monitoring Fee for the period ended December 31, 2023, as defined in the Third Amended and Restated Fee Letter, as and when due pursuant to Section 2.3 of the Credit Agreement.

- An Event of Default pursuant to Section 7.1(c)(i) of the Credit Agreement as a result of the Loan Parties' failure to provide, on or prior to December 31, 2023, either (i) newly-executed MSAs for all existing customers, implementing an upgrade to the Next Generation Technology (ii) a Touch Business Plan that has been approved by the Agent, to wind-down the Touch Business as required pursuant to Section 5.20 of the Credit Agreement.

- An Event of Default pursuant to Section 7.1(p) of the Credit Agreement as a result of the Loan Parties' failure to appoint a new Chief Executive Officer that is a chief restructuring officer or person with significant restructuring, turnaround and insolvency experience reasonably acceptable to the Agent on or prior to February 16, 2024 following Xavier Casanova's resignation.

- An Event of Default pursuant to Section 7.1(c) of the Credit Agreement as a result of the Loan Parties' failure to deliver certain financial reports to the Agent pursuant to Section 5.1(i) of the Credit Agreement for the periods from the Fourth Amendment Effective Date until the Fifth Amendment Effective Date, resulting in an immediate Event of Default under the Fourth Amendment.

- Events of Default pursuant to Section 7.1(c) of the Credit Agreement as a result of the Loan Parties' failure to maintain Unrestricted Cash, measured as of the close of business on each of March 1, 2024 and March 8, 2024, at or above the Minimum Unrestricted Cash Amount as required pursuant to Section 6.17(a) of the Credit Agreement.

- An Event of Default pursuant to Section 7.1(a) of the Credit Agreement as a result of the Loan Parties' failure to pay the reasonable and documented expenses of counsel to the Agent, as required pursuant to Section 8.5 of the Credit Agreement and Section 10 of the Seventh Amendment.

- An Event of Default pursuant to Section 7.1(c) of the Credit Agreement as a result of the Loan Parties' failure to deliver the accounts payable aging reports due and deliverable prior to February 26, 2024 pursuant to Section 5.1(i) of the Credit Agreement.

- An Event of Default pursuant to Section 7.1(c) of the Credit Agreement as a result of the Loan Parties' failure to comply with Section 6.17(b) of the Credit Agreement, and specifically, the failures identified in the accounts payable aging reports dated as of April 5, 2024, April 26, 2024, May 3, 2024 and May 10, 2024, which reports were delivered pursuant to Section 5.1(i) of the Credit Agreement.

Exhibit 10.3

EXTENSION OF SENIOR SECURED PROMISSORY NOTE

This Extension of Senior Secured Promissory Note ("**Note Extension**") is made and entered into as of May 16, 2024, by and between PRESTO AUTOMATION INC., a Delaware corporation and PRESTO AUTOMATION LLC, a Delaware limited liability company (collectively, "**Maker**") and PRESTO CA LLC, a Delaware limited liability company ("**Lender**").

RECITALS

WHEREAS, Maker and Lender are parties to the certain Senior Secured Promissory Note dated March 21, 2024 ("**Note**");

WHEREAS, Maker and Lender wish to extend the Note on the terms and conditions set forth herein.

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

1. Extension of Maturity Date. Reference is made to that certain Cooperation Agreement, dated May 15, 2024, by and among Presto Automation LLC, Presto Automation Inc., the lenders party thereto and Metropolitan Partners Group Administration, LLC (the "**Cooperation Agreement**"). Upon the effectiveness of that Cooperation Agreement, the Maturity Date of the Note as defined in Section 2 thereof is hereby extended to be the same as the Termination Date pursuant to the Cooperation Agreement.

2. Amendment of Purchase Agreement. Reference is made to that certain Purchase Agreement, dated as of October 10, 2023 by and between Presto Automation Inc. and Lender, (as amended, the "Purchase Agreement"). Section 4.11 of the Purchase Agreement is hereby amended so that all references to $0.25 shall be replaced with $0.14 and all references to September 30, 2024 shall be replaced with December 31, 2024.

3. No Further Amendment. Except as expressly set forth herein, the Note shall remain unmodified and in full force and effect.

4. Ratification; Integration; Amendment. The Note, as amended by this Note Extension, constitutes the entire agreement between Maker and Lender with respect to its subject matter and the parties hereby ratify and affirm that the Note remains in full force and effect, enforceable in accordance with its terms as amended by this Note Extension. There are no oral or other agreements, including but not limited to any representations or warranties, which modify or affect the Note (as amended by this Note Extension). No modification, termination or amendment of the Note (as amended by this Note Extension) may be made except by written agreement executed by both Maker and Lender.

5. Counterparts. This Note Extension may be executed and delivered in any number of counterparts and via facsimile with the same effect as if all parties had executed the same original. All such counterparts, when taken together, shall constitute one and the same instrument.

[SIGNATURES FOLLOW ON NEXT PAGE]

DATED as of the date and year first above written.

Maker:

PRESTO AUTOMATION INC.
a Delaware limited liability company

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

PRESTO AUTOMATION LLC
a Delaware limited liability company

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

Holder:

PRESTO CA LLC
a Delaware limited liability company

By: /s/ Joseph McCoy
Name: Joseph McCoy
Title: Authorized Signatory

Exhibit 10.4

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of May 16, 2024, by and between Presto Automation Inc., a Delaware corporation (the "Company"), and Remus Capital Series B II, L.P. (the "Buyer").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and the Buyer (the "Purchase Agreement").

The Company and the Buyer hereby agrees as follows:

1. DEFINITIONS.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(c).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 150th calendar day following the date hereof and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 30th calendar day following the date on which an additional Registration Statement is required to be filed hereunder; provided, however, that in the event the Company is notified by the SEC that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means the 90th calendar day following the Closing Date (as such term is defined in the Purchase Agreement), and (2) with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

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

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the SEC pursuant to the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus. "Registrable Securities" means, as of any date of determination, all Conversion Shares, and (b) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the SEC under the 1933 Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company), as reasonably determined by the Company, upon the advice of counsel to the Company.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post- effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the SEC pursuant to the 1933 Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same purpose and effect as such Rule.

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

"SEC Guidance" means (i) any publicly-available written or oral guidance of the SEC staff, or any comments, requirements or requests of the SEC staff and (ii) the 1933 Act.

2. SHELF REGISTRATION.

(a) On or prior to each Filing Date, the Company shall prepare and file with the SEC a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(d)) and shall contain (unless otherwise directed by at least 50% in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A and substantially the "Selling Stockholder" section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its reasonable best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the 1933 Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its reasonable best efforts to keep such Registration Statement continuously effective under the 1933 Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall promptly notify the Holders via e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the SEC. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the SEC as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the SEC informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the SEC, covering the maximum number of Registrable Securities permitted to be registered by the SEC, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering; with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the SEC for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the SEC or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the SEC for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced by the Company reducing or eliminating any securities to be included other than Registrable Securities.

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its reasonable best efforts to file with the SEC, as promptly as allowed by SEC or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.

3. REGISTRATION PROCEDURES.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than three (3) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than two (2) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex C (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the second (2nd) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the SEC such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the SEC such additional Registration Statements in order to register for resale under the 1933 Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the SEC with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the SEC relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the 1933 Act and the 1934 Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of clause (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the SEC notifies the Company whether there will be a "review" of such Registration Statement and whenever the SEC comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the SEC, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or "Blue Sky" laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of book entry notifications setting out the ownership of the Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus for a period not to exceed an aggregate of 90 calendar days (which need not be consecutive days) in any 12- month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the SEC, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. REGISTRATION EXPENSES.

All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the SEC, (B) with respect to filings required to be made with any Eligible Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) 1933 Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. INDEMNIFICATION.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)–(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(c). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(e).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the 1933 Act and Section 20 of the 1934 Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within thirty (30) days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. MISCELLANEOUS.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(c) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(c). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(d) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 2(g) of the Purchase Agreement.

(f) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

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

(h) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the applicable provisions of the Purchase Agreement.

(i) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

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

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

(l) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

****

[*Signature pages follow.*]

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

PRESTO AUTOMATION INC.

By: /s/ Guillaume Lefevre
Name: Guillaume Lefevre
Title: Interim Chief Executive Officer

[*Signature page of Holders follows.*]

Name of Holder:

Remus Capital Series B II, L.P.

Signature of Authorized Signatory of Holder:

/s/ John Tincoff

Name of Authorized Signatory: John Tincoff
Title of Authorized Signatory: Authorized Signatory

AND

Signature of Authorized Signatory of Holder:

/s/ Krishna K. Gupta

Name of Authorized Signatory: Krishna K. Gupta
Title of Authorized Signatory: Authorized Signatory

ANNEX A

PLAN OF DISTRIBUTION

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

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

The Selling Stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "1933 Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

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

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the 1933 Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the 1933 Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the 1933 Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the 1933 Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the 1933 Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the 1934 Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the 1934 Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the 1933 Act).

ANNEX B

SELLING SHAREHOLDERS

The common stock being offered by the selling shareholders are those issuable to the selling shareholders pursuant to the terms of certain of the Company's promissory notes. For additional information regarding the issuances of those notes, see "Private Placement of Notes" above. We are registering the shares of common stock in order to permit the selling shareholders to offer the shares for resale from time to time. Except for the ownership of the notes, the selling shareholders have not had any material relationship with us within the past three years.

The table below lists the selling shareholders and other information regarding the beneficial ownership of our shares of common stock by each of the selling shareholders. The second column lists the number of shares of common stock beneficially owned by each selling shareholder, based on its ownership of the notes, as of [●], 2024, assuming the conversion of the notes held by the selling shareholders on that date, without regard to any limitations on exercises.

The third column lists the shares of common stock being offered by this prospectus by the selling shareholders.

In accordance with the terms of a registration rights agreement with the selling shareholders, this prospectus generally covers the resale of the maximum number of shares of common stock issuable pursuant to the notes, determined as if the notes were converted in full as of the trading day immediately preceding the date this registration statement was initially filed with the SEC, each as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration right agreement, without regard to any limitations on conversion or exercise, as applicable, in the notes. The fourth column assumes the sale of all of the shares offered by the selling shareholders pursuant to this prospectus.

Name of Selling Shareholder	Number of shares of Common Stock Owned Prior to Offering	Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus	Number of shares of Common Stock Owned After Offering

ANNEX C

PRESTO AUTOMATION INC.
SELLING STOCKHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of common stock (the "Registrable Securities") of Presto Automation Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "SEC") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "1933 Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

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

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder:

[●]

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

[●]

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

[●]

2. Address for Notices to Selling Stockholder:

Telephone: [●]

Fax: [●]

Contact Person: [●]

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the SEC's staff has indicated that you should be identified as an underwriter in the Registration Statement.

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

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the SEC's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

[●]

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date:

Beneficial Owner:
[●]

By: _____
Name:
Title:

PLEASE EMAIL A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO: