

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

OPTINOSE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

42-1771610
(IRS Employer Identification Number)

**1020 Stony Hill Road, Suite 300
Yardley, Pennsylvania 19067
(267) 364-3500**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Ramy A. Mahmoud
Chief Executive Officer
OptiNose, Inc.
1020 Stony Hill Road, Suite 300
Yardley, Pennsylvania 19067
(267) 364-3500**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Steven J. Abrams
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**Michael F. Marino
Chief Legal Officer
OptiNose, Inc.
1020 Stony Hill Road, Suite 300
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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This registration statement contains two prospectuses:

- a base prospectus, which covers the offering, issuance and sale by OptiNose, Inc., or the Registrant, of up to a maximum aggregate offering price of \$200,000,000 of the Registrant's common stock, preferred stock, debt securities, warrants and units; and
- a sale agreement prospectus supplement covering the offering, issuance and sale by the Registrant of up to a maximum aggregate offering price of \$50,000,000 of the Registrant's common stock that may be issued and sold under that certain Open Market Sale AgreementSM, dated as of August 11, 2021, or the Sale Agreement, with Jefferies LLC, or Jefferies.

The base prospectus immediately follows this explanatory note. The sale agreement prospectus supplement immediately follows the base prospectus. The common stock that may be offered, issued and sold by the Registrant under the sale agreement prospectus supplement is included in the \$200,000,000 of securities that may be offered, issued and sold by the Registrant under the base prospectus. Upon termination of the Sale Agreement with Jefferies, any portion of the \$50,000,000 included in the sale agreement prospectus supplement that is not sold pursuant to the Sale Agreement will be available for sale in other offerings pursuant to the base prospectus, and if no shares of common stock are sold under the Sale Agreement, the full \$50,000,000 of securities may be sold in other offerings pursuant to the base prospectus and a corresponding prospectus supplement.

The information contained in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where such offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED AUGUST 10, 2023

PROSPECTUS



\$200,000,000

**Common Stock
Preferred Stock
Warrants
Debt Securities
Units**

We may offer to the public from time to time in one or more series or issuances:

- shares of our common stock;
- shares of our preferred stock;
- warrants to purchase shares of our common stock, preferred stock and/or debt securities;
- debt securities consisting of debentures, notes or other evidences of indebtedness;
- units consisting of a combination of the foregoing securities; or
- any combination of these securities.

The aggregate initial offering price of all securities sold by us pursuant to this prospectus will not exceed \$200,000,000.

This prospectus provides a general description of the securities that we may offer. Each time that we offer securities under this prospectus, we will provide the specific terms of the securities offered, including the public offering price, in a supplement to this prospectus. Any prospectus supplement may add to, update or change information contained in this prospectus.

The securities may be sold by us to or through underwriters or dealers, directly to purchasers or through agents designated from time to time. For additional information on the methods of sale, you should refer to the section entitled "Plan of Distribution" in this prospectus and the comparable section of any applicable prospectus supplement. If any underwriters are involved in the sale of the securities with respect to which this prospectus is being delivered, the names of such underwriters and any applicable discounts or commissions and underwriter options will be set forth in the applicable prospectus supplement.

Our common stock is traded on the Nasdaq Global Select Market under the symbol "OPTN." On August 9, 2023, the closing price of our common stock was \$1.16. We have not yet determined whether the other securities that may be offered by this prospectus will be listed on any exchange, interdealer quotation system or over-the-counter market. If we decide to seek the listing of any such securities upon issuance, the prospectus supplement relating to those securities will disclose the exchange, quotation system or market on which those securities will be listed.

INVESTING IN OUR SECURITIES INVOLVES A HIGH DEGREE OF RISK. RISKS ASSOCIATED WITH AN INVESTMENT IN OUR SECURITIES WILL BE DESCRIBED IN THE APPLICABLE PROSPECTUS SUPPLEMENT AND CERTAIN OF OUR FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION INCORPORATED BY REFERENCE INTO THIS PROSPECTUS, AS DESCRIBED UNDER "[RISK FACTORS](#)" ON [PAGE 6](#).

You should read this prospectus and any applicable prospectus supplement together with additional information described under the heading "Where You Can Find More Information" before you make your investment decision.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2023.

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ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the Commission, using a “shelf” registration process. Under this shelf registration process, we may offer to sell any of the securities, or any combination of the securities, described in this prospectus, in each case in one or more offerings, up to a total dollar amount of \$200,000,000.

This prospectus provides you only with a general description of the securities that we may offer. Each time securities are sold under the shelf registration statement, we will provide a prospectus supplement that will contain specific information about the terms of those securities and the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement. You should read both this prospectus and any prospectus supplement, including all documents incorporated by reference herein and therein, together with the additional information described under “Where You Can Find More Information” below.

The information contained in this prospectus is not complete and may be changed. You should rely only on the information provided in or incorporated by reference in this prospectus or in any prospectus supplement, or documents to which we otherwise refer you. We have not authorized anyone else to provide you with different information.

We have not authorized any dealer, agent or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus or an accompanying prospectus supplement. This prospectus and the accompanying prospectus supplement, if any, do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus and the accompanying prospectus supplement, if any, constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and the accompanying prospectus supplement, if any, is accurate on any date subsequent to the date set forth on the front of such document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.

References in this prospectus to the terms “the Company,” “OptiNose,” “we,” “our” and “us” or other similar terms mean OptiNose, Inc. and our wholly-owned subsidiaries, unless we state otherwise or the context indicates otherwise.

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

FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference herein contain, and any prospectus supplement and the documents incorporated therein, may contain forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this prospectus, any prospectus supplement or the documents incorporated herein and therein by reference, including statements regarding our future financial condition, results of operations, business strategy and plans and objectives of management for future operations, industry trends and other future events, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “believe,” “will,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “expect,” “predict,” “project,” “could,” “potentially,” “continue,” “ongoing,” “scheduled” or the negative of these terms or other similar expressions, although not all forward-looking statements contain these identifying terms. The forward-looking statements in this prospectus and the documents incorporated herein by reference include, among other things, statements about:

- the potential uses for and advantages of XHANCE®, our product candidates and the Exhalation Delivery System (EDS) and related technologies;
- our planned activities in pursuit of a follow-on indication for chronic sinusitis;
- the potential for XHANCE to be the first product approved by the U.S. Food and Drug Administration (FDA) for the treatment of chronic sinusitis;
- the potential to expand into the primary care segment and our plans to seek a partner for such expansion;
- our belief that the current practice of postoperative intranasal steroid (INS) use could support XHANCE’s adoption as a maintenance therapy to improve outcomes following sinus surgery;
- the potential for XHANCE to be the standard of care for the treatment of chronic rhinosinusitis with and without nasal polyps;
- the potential benefits of our patient affordability programs and their potential effect on XHANCE demand and financial results;
- our expectation for XHANCE prescriptions to be impacted by the seasonality observed in the INS market and the seasonal variation in patient visits with their doctor;
- our expectation for XHANCE prescriptions and average net revenue per prescription to be adversely impacted by the annual resetting of patient healthcare insurance plan deductibles and changes in individual patients’ healthcare insurance coverage, both of which often occur in January;
- XHANCE prescription, net revenue, prescriber and other business trends;
- the potential for increasing rates of enforcement of payor utilization management criteria to negatively impact XHANCE prescription volumes;
- our expectation that our research and development costs will significantly decrease in 2023 as compared to 2022;
- our expectation that our operating expenses (consisting of selling, general and administrative expenses and research and development expenses) in 2023 will be between \$88.0 million and \$93.0 million and that our non-cash stock-based compensation expense will be approximately \$6.0 million;
- our expectation that XHANCE net product revenues for the full year of 2023 will be between \$64.0 million and \$70.0 million;
- our expectation that the average net product revenue per prescription for XHANCE for the full year of 2023 will be approximately \$200;

- our potential non-compliance with certain covenants of the A&R Note Purchase Agreement, and the consequences of failing to achieve compliance with such covenants or obtain a waiver or modification of such covenants;
- our belief that our existing cash and cash equivalents will be sufficient to fund our operations and debt service obligations for approximately the next 12 months if we are able to maintain compliance with the financial and other covenants and terms of the A&R Note Purchase Agreement or obtain a waiver to or modification of such covenants;
- our expectations and the accuracy of our estimates regarding our future expenses, revenue, capital requirements, potential sources of capital and consequences of failing to obtain additional capital;
- our ability to continue as a going concern;
- our plans to liquidate and dissolve our wholly-owned subsidiaries OptiNose AS and OptiNose UK in 2023;
- the potential for us to decrease our reliance on sole-source suppliers and increase the third party manufacturing capacity that is available to us;
- our belief that our facilities meet our needs and that we could obtain alternative space on commercially reasonable terms;
- our expectations regarding our ability to obtain and adequately maintain sufficient intellectual property protection for XHANCE; and
- other statements relating to our future operations, financial performance and financial condition, prospects, strategies, objectives or other future events.

Forward-looking statements also include statements other than statements of current or historical fact, including, without limitation, all statements related to any expectations of revenues, expenses, cash flows, earnings or losses from operations, cash required to maintain current and planned operations, capital or other financial items; any statements of the plans, strategies and objectives of management for future operations; any plans or expectations with respect to product research, development and commercialization, including regulatory approvals; any other statements of expectations, plans, intentions or beliefs; and any statements of assumptions underlying any of the foregoing. We often, although not always, identify forward-looking statements by using words or phrases such as “likely”, “expect”, “intend”, “anticipate”, “believe”, “estimate”, “plan”, “project”, “forecast” and “outlook”.

We cannot guarantee that the results and other expectations expressed, anticipated or implied in any forward-looking statement will be realized. The risks set forth under Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, as revised or supplemented by our Quarterly Reports on Form 10-Q and other documents we file with the Commission, describe major risks to our business, and you should read and interpret any forward-looking statements together with these risks. A variety of factors, including these risks, could cause our actual results and other expectations to differ materially from the anticipated results or other expectations expressed, anticipated or implied in our forward-looking statements. Should known or unknown risks materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected in the forward-looking statements. You should bear this in mind as you consider any forward-looking statements.

You should read this prospectus, any prospectus supplement and the documents that we incorporate by reference herein and therein completely and with the understanding that our actual future results may be materially different from what we expect. The forward-looking statements contained in this prospectus are made as of the date of this prospectus and we do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

MARKET, INDUSTRY AND OTHER DATA

This prospectus and any applicable prospectus supplement and the documents incorporated by reference herein and therein contain estimates, projections, market research and other information concerning our industry, our business, markets for XHANCE and the size of those markets, the prevalence of certain medical conditions, XHANCE market access, prescription data, inventory data and other physician, patient and payor data. Unless otherwise expressly stated, we obtain this information from reports, research surveys, studies and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data and similar sources as well as from our own internal estimates and research and from publications, research, surveys and studies conducted by third parties on our behalf. Information that is based on estimates, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances that are reflected in this information. As a result, you are cautioned not to give undue weight to such information.

THE COMPANY

Company Overview

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

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

In March and June 2022, we announced positive top line results from our two Phase 3b clinical trials (ReOpen1 and ReOpen2) of XHANCE for a follow-on indication for the treatment of chronic sinusitis. The results of ReOpen1 and ReOpen2 are summarized in our Form 10-K for the year ended December 31, 2022, filed with the Commission on March 7, 2023. In February 2023, we submitted a prior approval efficacy supplement (sNDA) to support the approval of a new indication for XHANCE for the treatment of chronic rhinosinusitis. The FDA accepted the sNDA for review and assigned a Prescription Drug User Fee Act (PDUFA) target goal date of December 16, 2023. If the sNDA is approved, XHANCE has the potential to be the first drug therapy approved by the FDA for the treatment of chronic rhinosinusitis without nasal polyps.

For more information about our company, please refer to other documents that we have filed with the Commission and that are incorporated by reference into this prospectus, as listed under the heading “Incorporation by Reference.”

Corporate Information

We were incorporated in Delaware in May 2010. Our predecessor entity OptiNose AS was formed under the laws of Norway in September 2000. In 2010, OptiNose AS became our wholly-owned subsidiary as part of an internal reorganization. We are in the process of liquidating and dissolving OptiNose AS and another wholly-owned subsidiary, Optinose UK, both of which dissolutions are expected to be completed in 2023, in order to simplify our corporate structure.

Our primary executive offices are located at 1020 Stony Hill Road, Suite 300, Yardley, Pennsylvania 19067 and our telephone number is (267) 364-3500. Our website address is www.optinose.com. The information contained in, or that can be accessed through, our website is not part of this prospectus or any prospectus supplement that we may file or any other report or document that we file with or furnish to the Commission. We have included our website address in this prospectus as an inactive textual reference and do not intend it to be an active link to our website.

RISK FACTORS

Investing in our securities involves a high degree of risk. The prospectus supplement applicable to each offering of our securities will contain a discussion of the risks applicable to an investment in our securities. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading “Risk Factors” in the applicable prospectus supplement, together with all of the other information contained or incorporated by reference in the prospectus supplement or appearing or incorporated by reference in this prospectus. You should also consider the risks, uncertainties and assumptions discussed under the heading “Risk Factors” in our most recent Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q and other documents that we file with the Commission, which are incorporated herein by reference as described in this prospectus under the heading “Where You Can Find More Information”. The risks and uncertainties we have described in such documents are not the only risks that we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations.

USE OF PROCEEDS

Except as otherwise provided in the applicable prospectus supplement relating to a specific offering, we intend to use the net proceeds from the sale of securities by us under this prospectus for general corporate purposes, which may include working capital, capital expenditures, research and development expenditures, clinical trial expenditures, commercial expenditures, debt service costs and repayment, acquisitions of new technologies, products or businesses, and investments. Additional information on the use of net proceeds from the sale of securities by us under this prospectus may be set forth in the prospectus supplement relating to the specific offering.

PLAN OF DISTRIBUTION

Our Plan of Distribution

We may sell the securities, from time to time pursuant to public offerings, negotiated transactions, block trades, “At the Market Offerings,” within the meaning of Rule 415(a)(4) of the Securities Act, into an existing trading market, at prevailing market prices, or a combination of these methods.

We may sell the securities to or through underwriters or dealers, through agents or remarketing firms, or directly to one or more purchasers. We may distribute securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.
- A prospectus supplement or supplements (and any related free writing prospectus that we may authorize to be provided to you) will describe the terms of the offering of the securities, including, to the extent applicable:
- the name or names of the underwriters, dealers or agents, if any;
- if the securities are to be offered through the selling efforts of brokers or dealers, the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, and, if known, the identity of any broker(s) or dealer(s) who will participate in the offering and the amount to be offered through each;
- the purchase price of the securities or other consideration therefor, and the proceeds, if any, we will receive from the sale;
- if any of the securities being registered are to be offered otherwise than for cash, the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne;
- any delayed delivery arrangements;
- any options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts and other items constituting agents’ or underwriters’ compensation;
- any public offering price;
- any discounts, commissions or concessions allowed or reallocated or paid to dealers;
- the identity and relationships of any finders, if applicable; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement will be underwriters of the securities offered by the prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through

underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Unless otherwise indicated in the prospectus supplement, subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment or other option. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may change from time to time. We may use underwriters, dealers or agents with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, dealer or agent, the nature of any such relationship.

We may use a remarketing firm to offer the securities in connection with a remarketing arrangement upon their purchase. Remarketing firms will act as principals for their own account or as agents for us. These remarketing firms will offer or sell the securities pursuant to the terms of the securities. A prospectus supplement will identify any remarketing firm and the terms of its agreement, if any, with us and will describe the remarketing firm's compensation. Remarketing firms may be deemed to be underwriters in connection with the securities they remarket.

If we offer and sell securities through a dealer, we or an underwriter will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. The name of the dealer and the terms of the transaction will be set forth in the applicable prospectus supplement.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we will pay to the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

Dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and compensation received by them on resale of the securities may be deemed to be underwriting discounts. If such dealers or agents were deemed to be underwriters, they may be subject to statutory liabilities under the Securities Act.

We may sell securities directly to one or more purchasers without using underwriters or agents. Underwriters, dealers and agents that participate in the distribution of the securities may be underwriters as defined in the Securities Act, and any discounts or commissions they receive from us and any profit on their resale of the securities may be treated as underwriting discounts and commissions under the Securities Act.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents, underwriters and dealers with indemnification against civil liabilities, including liabilities under the Securities Act, or contribution with respect to payments that the agents, underwriters or dealers may make with respect to these liabilities. Agents, underwriters and dealers, or their respective affiliates, may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we may offer, other than common stock, will be new issues of securities with no established trading market. Any underwriter may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in over-allotment, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Over-allotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum price. Syndicate-covering or other short-covering transactions involve purchases of the securities, either through exercise of the over-allotment option or in the open market after the distribution is completed, to cover short positions. Penalty bids permit the underwriters to reclaim a

selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters that are qualified market makers on the Nasdaq Global Select Market may engage in passive market making transactions in the common stock on the Nasdaq Global Select Market in accordance with Regulation M under the Exchange Act, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the common stock. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

GENERAL DESCRIPTION OF OUR SECURITIES

We may offer and sell, at any time and from time to time:

- shares of our common stock;
- shares of our preferred stock;
- warrants to purchase shares of our common stock, preferred stock and/or debt securities;
- debt securities consisting of debentures, notes or other evidences of indebtedness;
- units consisting of a combination of the foregoing securities; or
- any combination of these securities.

The terms of any securities we offer will be determined at the time of sale. We may issue debt securities that are exchangeable for and/or convertible into common stock or any of the other securities that may be sold under this prospectus. When particular securities are offered, a supplement to this prospectus will be filed with the Commission, which will describe the terms of the offering and sale of the offered securities.

DESCRIPTION OF OUR COMMON STOCK

The following summary of the terms of our common stock is subject to and qualified in its entirety by reference to our fourth amended and restated certificate of incorporation and our amended and restated bylaws, copies of which are on file with the Commission as exhibits to previous filings with the Commission. Please refer to “Where You Can Find More Information” below for directions on obtaining these documents.

Outstanding Shares

Our fourth amended and restated certificate of incorporation, as amended, authorizes us to issue up to 355,000,000 shares, 350,000,000 of which are designated as common stock with a par value of \$0.001 per share. As of June 30, 2023, there were 112,091,735 shares of common stock outstanding, held by approximately 14 stockholders of record. This figure does not reflect the number of beneficial owners of shares of our common stock as a single stockholder of record often holds shares in nominee name (also referred to as, “street name”) on behalf of multiple beneficial owners.

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, other than election of directors, which is determined by a plurality of the votes cast by the stockholders entitled to vote on the election of such director. In addition, the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then outstanding voting stock is required to take certain actions, including amending certain provisions of our fourth amended and restated certificate of incorporation, such as the provisions relating to director liability, amending our bylaws or changing the Court of Chancery of the State of Delaware and United States District Court for the District of Delaware and any appellate courts thereof from being the sole and exclusive forums for certain actions brought by our stockholders against us or our directors, officers or employees.

Under our fourth amended and restated certificate of incorporation, as amended, and our amended and restated bylaws, our stockholders do not have cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to the preferences that may be applicable to any outstanding preferred stock, holders of our common stock are entitled to receive ratably any dividends that may be declared by our board of directors out of funds legally available for that purpose.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any outstanding preferred stock.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights and is not subject to conversion, redemption or sinking fund provisions. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Outstanding Stock Options

As of June 30, 2023, we had outstanding options to purchase 10,634,934 shares of our common stock at a weighted-average exercise price of \$7.03 per share, pursuant to our Amended and Restated 2010 Stock Incentive Plan. As of June 30, 2023, there were 5,849,650 shares of our common stock reserved for future issuance under our Amended and Restated 2010 Stock Incentive Plan.

As of June 30, 2023, we had outstanding options to purchase 711,500 shares of our common stock at a weighted-average exercise price of \$1.70 per share, which options were issued outside of our equity compensation plan as an inducement material to certain individuals entering into employment with us in accordance with Nasdaq Listing Rule 5635(c)(4).

Outstanding Restricted Stock Units

As of June 30, 2023, we had 2,429,266 shares of our common stock underlying outstanding restricted stock units granted pursuant to our Amended and Restated 2010 Stock Incentive Plan.

Outstanding Warrants

2021 Warrants

In November 2021, we issued equity-classified common stock warrants (the 2021 Warrants) in connection with the Pharmakon Senior Secured Notes (as defined below) which warrants are exercisable for an aggregate of 2,500,000 shares of our common stock at an exercise price of \$1.60 per share (subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock), and expire on November 14, 2024. As of June 30, 2023, all of the 2021 Warrants remained outstanding.

2022 Warrants

In November 2022, we issued liability-classified common stock warrants (the 2022 Warrants) in connection with an underwritten public offering which warrants are exercisable for an aggregate of 30,268,000 shares of our common stock at an exercise price of \$2.565 per share (subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock), and expire on November 23, 2027.

If we issue or sell, or are deemed pursuant to the terms of the 2022 Warrants to have issued or sold, any shares of our common stock (excluding certain issuances defined in the 2022 Warrants as excluded issuances) for a price per share less than the exercise price of the 2022 Warrants in effect immediately prior to such issuance or sale or deemed issuance or sale (such event, a “dilutive issuance”), then immediately after such dilutive issuance the exercise price then in effect of the 2022 Warrants would be reduced to be equal to the price of the shares of our common stock issued in the dilutive issuance.

In the event of a fundamental transaction, as defined in the 2022 Warrants, a holder of the 2022 Warrants would be entitled to receive upon exercise of such 2022 Warrants the kind and amount of securities, cash or other property that such holder would have received had it exercised such 2022 Warrants immediately prior to such fundamental transaction. In addition, in certain circumstances, upon a fundamental transaction, a holder of the 2022 Warrants would have the right to require us to repurchase such 2022 Warrants for cash at the Black Scholes Value (as defined in the 2022 Warrants).

As of June 30, 2023, all of the 2022 Warrants remained outstanding.

2017 Employee Stock Purchase Plan

As of June 30, 2023, there were 1,408,871 shares of our common stock reserved for future issuance under our 2017 Employee Stock Purchase Plan.

Registration Rights

In connection with our initial public offering in October 2017, we entered into that certain First Amendment to the Second Amended and Restated Registration Rights Agreement, dated October 2, 2017, with certain of our stockholders, or the Registration Rights Agreement.

As of the date of this prospectus, one stockholder still has registration rights pursuant to the Registration Rights Agreement with respect to 2,622,088 shares of common stock. After registration of these shares of common stock pursuant to these rights, these shares will become freely tradable without restriction under the Securities Act. The registration rights will terminate with respect to this stockholder on the date on which such stockholder ceases to beneficially own more than one percent of our shares of common stock then outstanding or can sell all of its registrable shares without limitation during a three-month period without registration pursuant to Rule 144 of the Securities Act or another similar exemption under the Securities Act. The stockholder has waived its piggyback registration rights in connection with the filing of this Registration Statement on Form S-3.

Delaware Anti-Takeover Law and Provisions of Our Certificate of Incorporation and Bylaws

Delaware Anti-Takeover Law

Our fourth amended and restated certificate of incorporation, as amended, provides that we are subject to the provisions of Section 203 of the Delaware General Corporation Law, or Section 203. Section 203 generally prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding upon consummation of the transaction, excluding for purposes of determining the number of shares outstanding (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the consummation of the transaction, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Certificate of Incorporation and Bylaws

Provisions of our fourth amended and restated certificate of incorporation, as amended, and our amended and restated bylaws may delay or discourage transactions involving an actual or potential change of control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our fourth amended and restated certificate of incorporation and our amended and restated bylaws:

- permit our board of directors to issue up to 5,000,000 shares of preferred stock, with any rights, preferences and privileges as it may designate, which issuance could result in the loss of voting control by other stockholders;
- provide that our board of directors is classified into three classes with staggered, three-year terms and that directors may only be removed for cause by the affirmative vote of the holders of at least a majority of the voting power of outstanding shares of our capital stock;
- provide that all vacancies on our board of directors, including as a result of newly created directorships, may, except as otherwise required by law, be filled only by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide advance notice in writing, and also specify requirements as to the form and content of a stockholder's notice;
- require that the amendment of certain provisions of our certificate of incorporation relating to several anti-takeover measures and other provisions may only be approved by a vote of 66 2/3 % of our outstanding common stock;
- require that the amendment of our bylaws be approved by the affirmative vote of a majority of directors then in office or 66 2/3% of our outstanding common stock entitled to vote thereon;
- do not provide for cumulative voting rights, thereby allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election; and
- provide that special meetings of our stockholders may be called only by the chairman or vice chairman of our board of directors, our chief executive officer, or a majority of our board of directors.

Choice of Forum

Our fourth amended and restated certificate of incorporation, as amended, provides that the Court of Chancery of the State of Delaware, or the United States District Court for the District of Delaware and any appellate courts thereof where subject matter jurisdiction is vested exclusively in the federal courts of the United States of America, will be the exclusive forum for:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of fiduciary duty;
- any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our fourth amended and restated certificate of incorporation or our amended and restated bylaws; or
- any action asserting a claim against us that is governed by the internal affairs doctrine.

The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any action, a court could find the choice of forum provisions contained in our fourth amended and restated certificate of incorporation to be inapplicable or unenforceable in such action.

The Nasdaq Global Select Market

Our common stock is listed on the Nasdaq Global Select Market under the symbol "OPTN."

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Broadridge Corporate Issuer Solutions, Inc. The transfer agent's address is 1717 Arch St., Suite 1300, Philadelphia, Pennsylvania 19103.

DESCRIPTION OF OUR PREFERRED STOCK

We are authorized to issue up to 5,000,000 shares of preferred stock with a par value of \$0.001 per share. As of June 30, 2023, there were no shares of our preferred stock outstanding.

Our board of directors may, without further action by our stockholders, from time to time, direct the issuance of shares of preferred stock in series and may, at the time of issuance, determine and fix the number of shares of such series and the designation of such series, the voting powers, if any, of the shares of such series, the preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, of the shares of such series. Satisfaction of any dividend preferences of outstanding shares of our preferred stock would reduce the amount of funds available for the payment of dividends on shares of our common stock. Holders of shares of our preferred stock may be entitled to receive a preference payment in the event of any liquidation, dissolution or winding-up of our Company before any payment is made to the holders of shares of our common stock. In some circumstances, the issuance of shares of preferred stock may render more difficult or tend to discourage a merger, tender offer or proxy contest, the assumption of control by a holder of a large block of our securities or the removal of incumbent management. Upon the affirmative vote of our board of directors, without stockholder approval, we may issue shares of preferred stock with voting and conversion rights which could adversely affect the holders of shares of our common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock on the rights of holders of common stock until the board of directors determines the specific rights attached to that preferred stock. We have no current plan to issue any shares of preferred stock.

If we offer a specific series of preferred stock under this prospectus, we will describe the terms of the preferred stock in the prospectus supplement for such offering and will file a copy of the certificate establishing the terms of the preferred stock with the Commission. To the extent required, this description will include:

- the title and stated value;
- the number of shares offered, the liquidation preference per share and the purchase price;
- the dividend rate(s), period(s) and/or payment date(s), or method(s) of calculation for such dividends;
- whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
- the procedures for any auction and remarketing, if any;
- the provisions for a sinking fund, if any;
- the provisions for redemption, if applicable;
- any listing of the preferred stock on any securities exchange or market;
- whether the preferred stock will be convertible into our common stock or our other securities and, if applicable, the conversion price (or how it will be calculated), the conversion period and any other terms of conversion (including any anti-dilution provisions, if any);
- whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange price (or how it will be calculated), the exchange period and any other terms of exchange (including any anti-dilution provisions, if any);
- voting rights, if any, of the preferred stock;
- a discussion of any material and/or special U.S. federal income tax considerations applicable to the preferred stock;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of our affairs;

- any material limitations on issuance of any class or series of preferred stock ranking senior to or on a parity with the series of preferred stock as to dividend rights and rights upon our liquidation, dissolution, or winding up; and
- any other affirmative, negative or other covenants or contractual rights which might be attendant with the specific series of preferred stock.

The preferred stock offered by this prospectus, when issued, will not have, or be subject to, any preemptive or similar rights.

Transfer Agent and Registrar

The transfer agent and registrar for any series of preferred stock will be set forth in each applicable prospectus supplement.

DESCRIPTION OF OUR WARRANTS

We may issue warrants to purchase shares of our common stock, preferred stock and/or debt securities in one or more series together with other securities or separately, as described in each applicable prospectus supplement. Below is a description of certain general terms and provisions of the warrants that we may offer. Particular terms of the warrants will be described in the applicable warrant agreements and the applicable prospectus supplement for the warrants.

The applicable prospectus supplement will contain, where applicable, the following terms of and other information relating to the warrants:

- the specific designation and aggregate number of, and the price at which we will issue, the warrants;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- the designation, amount and terms of the securities purchasable upon exercise of the warrants;
- if applicable, the exercise price for shares of our common stock and the number of shares of common stock to be received upon exercise of the warrants;
- if applicable, the exercise price for shares of our preferred stock, the number of shares of preferred stock to be received upon exercise of the warrants, and a description of that series of our preferred stock;
- if applicable, the exercise price for our debt securities, the amount of our debt securities to be received upon exercise of the warrants, and a description of that series of debt securities;
- the date on which the right to exercise the warrants will begin and the date on which that right will expire or, if the warrants may not be continuously exercised throughout that period, the specific date or dates on which the warrants may be exercised;
- whether the warrants will be issued in fully registered form or bearer form, in definitive or global form or in any combination of these forms, although, in any case, the form of a warrant included in a unit will correspond to the form of the unit and of any security included in that unit;
- any applicable material U.S. federal income tax or foreign tax consequences;
- the identity of the warrant agent for the warrants, if any, and of any other depositaries, execution or paying agents, transfer agents, registrars or other agents;
- the proposed listing, if any, of the warrants or any securities purchasable upon exercise of the warrants on any securities exchange or market;
- if applicable, the date from and after which the warrants and the common stock, preferred stock and/or debt securities will be separately transferable;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- information with respect to book-entry procedures, if any;
- the anti-dilution provisions of the warrants, if any;
- any redemption, put or call provisions;
- whether the warrants are to be sold separately or with other securities as parts of units; and
- any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

Transfer Agent and Registrar

The transfer agent and registrar for any warrants will be set forth in the applicable prospectus supplement.

Description of Outstanding Warrants

See “Description of Our Capital Stock—Description of Our Common Stock—Outstanding Warrants.”

DESCRIPTION OF OUR DEBT SECURITIES

This section describes the general terms and provisions of the debt securities that we may offer under this prospectus, any of which may be issued as convertible or exchangeable debt securities. We will set forth the particular terms of the debt securities we offer in a prospectus supplement. The extent, if any, to which the following general provisions apply to particular debt securities will be described in the applicable prospectus supplement. The following description of general terms relating to the debt securities and the indenture under which the debt securities will be issued are summaries only and therefore are not complete. You should read the indenture and the prospectus supplement regarding any particular issuance of debt securities.

We will issue the debt securities offered by this prospectus and any accompanying prospectus supplement under an indenture to be entered into between us and the trustee identified in the applicable prospectus supplement. The terms of the debt securities will include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as in effect on the date of the indenture. We have filed or will file a copy of the form of indenture as an exhibit to the registration statement in which this prospectus is included. The indenture will be subject to and governed by the terms of the Trust Indenture Act of 1939.

We may offer under this prospectus up to an aggregate principal amount of \$200,000,000 in debt securities, or if debt securities are issued at a discount, or in a foreign currency, foreign currency units or composite currency, the principal amount as may be sold for an aggregate initial public offering price of up to \$200,000,000. Unless otherwise specified in the applicable prospectus supplement, the debt securities will represent direct, unsecured obligations of ours and will rank equally with all of our other unsecured indebtedness.

The following statements relating to the debt securities and the indenture are summaries, qualified in their entirety by reference to the detailed provisions of the indenture and the final form indenture as may be filed with a future prospectus supplement.

General

We may issue the debt securities in one or more series with the same or various maturities, at par, at a premium, or at a discount. We will describe the particular terms of each series of debt securities in a prospectus supplement relating to that series, which we will file with the Commission.

The prospectus supplement will set forth, to the extent required, the following terms of the debt securities in respect of which the prospectus supplement is delivered:

- the title of the series;
- the aggregate principal amount;
- the issue price or prices, expressed as a percentage of the aggregate principal amount of the debt securities;
- any limit on the aggregate principal amount;
- the date or dates on which principal is payable;
- the interest rate or rates (which may be fixed or variable) or, if applicable, the method used to determine such rate or rates;
- the date or dates from which interest, if any, will be payable and any regular record date for the interest payable;
- the place or places where principal and, if applicable, premium and interest, is payable;
- the terms and conditions upon which we may, or the holders may require us to, redeem or repurchase the debt securities;

- the denominations in which such debt securities may be issuable, if other than denominations of \$1,000 or any integral multiple of that number;
- whether the debt securities are to be issuable in the form of certificated securities (as described below) or global debt securities (as described below);
- the portion of principal amount that will be payable upon declaration of acceleration of the maturity date if other than the principal amount of the debt securities;
- the currency of denomination;
- the designation of the currency, currencies or currency units in which payment of principal and, if applicable, premium and interest, will be made;
- if payments of principal and, if applicable, premium or interest, on the debt securities are to be made in one or more currencies or currency units other than the currency of denomination, the manner in which the exchange rate with respect to such payments will be determined;
- if amounts of principal and, if applicable, premium and interest may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index, then the manner in which such amounts will be determined;
- the provisions, if any, relating to any collateral provided for such debt securities;
- any addition to or change in the covenants and/or the acceleration provisions described in this prospectus or in the indenture;
- any events of default, if not otherwise described below under “Events of Default”;
- the terms and conditions, if any, for conversion into or exchange for shares of our common stock or preferred stock;
- any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents; and
- the terms and conditions, if any, upon which the debt securities shall be subordinated in right of payment to other indebtedness of OptiNose.

We may issue discount debt securities that provide for an amount less than the stated principal amount to be due and payable upon acceleration of the maturity of such debt securities in accordance with the terms of the indenture. We may also issue debt securities in bearer form, with or without coupons. If we issue discount debt securities or debt securities in bearer form, we will describe material U.S. federal income tax considerations and other material special considerations that apply to these debt securities in the applicable prospectus supplement. We may issue debt securities denominated in or payable in a foreign currency or currencies or a foreign currency unit or units. If we do, we will describe the restrictions, elections, and general tax considerations relating to the debt securities and the foreign currency or currencies or foreign currency unit or units in the applicable prospectus supplement.

Exchange and/or Conversion Rights

We may issue debt securities which can be exchanged for or converted into shares of our common stock or preferred stock. If we do, we will describe the terms of exchange or conversion in the prospectus supplement relating to these debt securities.

Transfer and Exchange

We may issue debt securities that will be represented by either:

- “book-entry securities,” which means that there will be one or more global securities registered in the name of a depositary or a nominee of a depositary; or

- “certificated securities,” which means that they will be represented by a certificate issued in definitive registered form.

We will specify in the prospectus supplement applicable to a particular offering whether the debt securities offered will be book-entry or certificated securities.

Certificated Debt Securities

If you hold certificated debt securities issued under an indenture, you may transfer or exchange such debt securities in accordance with the terms of the indenture. You will not be charged a service charge for any transfer or exchange of certificated debt securities but may be required to pay an amount sufficient to cover any tax or other governmental charge payable in connection with such transfer or exchange.

Global Securities

The debt securities of a series may be issued in the form of one or more global securities that will be deposited with a depository or its nominees identified in the prospectus supplement relating to the debt securities. In such a case, one or more global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal amount of outstanding debt securities of the series to be represented by such global security or securities.

Unless and until it is exchanged in whole or in part for debt securities in definitive registered form, a global security may not be registered for transfer or exchange except as a whole by the depository for such global security to a nominee of the depository and except in the circumstances described in the prospectus supplement relating to the debt securities. The specific terms of the depository arrangement with respect to a series of debt securities will be described in the prospectus supplement relating to such series.

Protection in the Event of Change of Control

Any provision in an indenture that governs our debt securities covered by this prospectus that includes any covenant or other provision providing for a put or increased interest or otherwise that would afford holders of our debt securities additional protection in the event of a recapitalization transaction, a change of control of the Company, or a highly leveraged transaction will be described in the applicable prospectus supplement.

Covenants

Unless otherwise indicated in this prospectus or the applicable prospectus supplement, our debt securities may not have the benefit of any covenant that limits or restricts our business or operations, the pledging of our assets or the incurrence by us of indebtedness. We will describe in the applicable prospectus supplement any material covenants in respect of a series of debt securities.

Consolidation, Merger and Sale of Assets

We may agree in any indenture that governs the debt securities of any series covered by this prospectus that we will not consolidate with or merge into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, unless such person and such proposed transaction meets various criteria, which we will describe in detail in the applicable prospectus supplement.

Defaults and Notice

The debt securities of any series will contain events of default to be specified in the applicable prospectus supplement, which may include, without limitation:

- failure to pay the principal of, or premium or make-whole amount, if any, on any debt security of such series when due and payable (whether at maturity, by call for redemption, through any mandatory sinking fund, by redemption at the option of the holder, by declaration or acceleration or otherwise);
- failure to make a payment of any interest on any debt security of such series when due;

- failure to perform or observe any other covenants or agreements in the indenture with respect to the debt securities of such series;
- certain events relating to our bankruptcy, insolvency or reorganization; and
- certain cross defaults, if and as applicable.

If an event of default with respect to debt securities of any series shall occur and be continuing, we may agree that the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding debt securities of such series may declare the principal amount (or, if the debt securities of such series are issued at an original issue discount, such portion of the principal amount as may be specified in the terms of the debt securities of such series) of all debt securities of such series or such other amount or amounts as the debt securities or supplemental indenture with respect to such series may provide, to be due and payable immediately. Any provisions pertaining to events of default and any remedies associated therewith will be described in the applicable prospectus supplement.

Any indenture that governs our debt securities covered by this prospectus may require that the trustee under such indenture shall, within 90 days after the occurrence of a default, give to holders of debt securities of any series notice of all uncured defaults with respect to such series known to it. However, in the case of a default that results from the failure to make any payment of the principal of, premium or make-whole amount, if any, or interest on the debt securities of any series, or in the payment of any mandatory sinking fund installment with respect to debt securities of such series, if any, the trustee may withhold such notice if it in good faith determines that the withholding of such notice is in the interest of the holders of debt securities of such series. Any terms and provisions relating to the foregoing types of provisions will be described in further detail in the applicable prospectus supplement.

Any indenture that governs our debt securities covered by this prospectus will contain a provision entitling the trustee to be indemnified by holders of debt securities before proceeding to exercise any trust or power under the indenture at the request of such holders. Any such indenture may provide that the holders of at least a majority in aggregate principal amount of the then outstanding debt securities of any series may direct the time, method and place of conducting any proceedings for any remedy available to the trustee, or of exercising any trust or power conferred upon the trustee with respect to the debt securities of such series. However, the trustee under any such indenture may decline to follow any such direction if, among other reasons, the trustee determines in good faith that the actions or proceedings as directed may not lawfully be taken, would involve the trustee in personal liability or would be unduly prejudicial to the holders of the debt securities of such series not joining in such direction.

Any indenture that governs our debt securities covered by this prospectus may endow the holders of such debt securities to institute a proceeding with respect to such indenture, subject to certain conditions, which will be specified in the applicable prospectus supplement and which may include, that the holders of at least a majority in aggregate principal amount of the debt securities of such series then outstanding make a written request upon the trustee to exercise its power under the indenture, indemnify the trustee and afford the trustee reasonable opportunity to act. Even so, such holders may have an absolute right to receipt of the principal of, premium or make-whole amount, if any, and interest when due, to require conversion or exchange of debt securities if such indenture provides for convertibility or exchangeability at the option of the holder and to institute suit for the enforcement of such rights. Any terms and provisions relating to the foregoing types of provisions will be described in further detail in the applicable prospectus supplement.

Modification of the Indenture

We and the trustee may modify any indenture that governs our debt securities of any series covered by this prospectus with or without the consent of the holders of such debt securities, under certain circumstances to be described in a prospectus supplement.

Defeasance; Satisfaction and Discharge

The prospectus supplement will outline the conditions under which we may elect to have certain of our obligations under the indenture discharged and under which the indenture obligations will be deemed to be satisfied.

Regarding the Trustee

We will identify the trustee and any relationship that we may have with such trustee, with respect to any series of debt securities, in the prospectus supplement relating to the applicable debt securities. You should note that if the trustee becomes a creditor of OptiNose, the indenture and the Trust Indenture Act of 1939 limit the rights of the trustee to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim, as security or otherwise. The trustee and its affiliates may engage in, and will be permitted to continue to engage in, other transactions with us and our affiliates. If, however, the trustee acquires any “conflicting interest” within the meaning of the Trust Indenture Act of 1939, it must eliminate such conflict or resign.

Governing Law

The law governing the indenture and the debt securities will be identified in the prospectus supplement relating to the applicable indenture and debt securities.

Outstanding Senior Secured Notes

On September 12, 2019 (the Closing Date), we entered into a Note Purchase Agreement with funds managed by Pharmakon Advisors, LP (Pharmakon), the investment manager of BioPharma Credit Funds (BioPharma). The Note Purchase Agreement provided us with \$130.0 million in debt financing, of which \$80.0 million of Pharmakon Senior Secured Notes was issued on the Closing Date, \$30.0 million was issued on February 13, 2020, and \$20.0 million was issued on December 1, 2020.

On November 23, 2022, we amended and restated the Note Purchase Agreement (as so amended and restated, the A&R Note Purchase Agreement), among us, certain of our subsidiaries and BioPharma Credit PLC, as collateral agent, and the purchasers party thereto from time to time. The A&R Note Purchase Agreement provides for an extension of the maturity date of the Pharmakon Senior Secured Notes from September 12, 2024 to June 30, 2027 (the New Maturity Date), and an extension of the interest-only period from September 2023 to September 2025, after which principal repayments will be made in eight equal quarterly installments of principal and interest through the New Maturity Date. As of June 30, 2023, the outstanding principal and back end fees under the Pharmakon Senior Secured Notes was \$136.0 million.

As part of the A&R Note Purchase Agreement, the Pharmakon Senior Secured Notes now bear interest at the 3-month Secured Overnight Financing Rate (subject to a 2.50% floor), determined as of the date that is two business days prior to the commencement of each quarter, plus 8.50% per annum, which interest rate shall be increased by an additional 3.00% per annum upon the occurrence and during the continuation of any event of default. Pursuant to the A&R Note Purchase Agreement, certain modifications to the affirmative and negative covenants, events of default and other terms were made, including, without limitation, (i) the requirement for us to deliver quarterly and annual financial statements that, commencing with our financial statements for the year ending December 31, 2023, are not subject to a “going concern” statement and (ii) the removal of certain exceptions to the negative covenants which previously permitted us to enter into certain transactions without the consent of the holders of the Pharmakon Senior Secured Notes, including permitted acquisitions, swap contracts, convertible bonds and revolving credit facilities. The financial covenants requiring us to achieve minimum trailing twelve-month consolidated XHANCE net product sales and royalties were also modified as follows (shown in millions):

Trailing Twelve-Months Ending	Requirement Prior to A&R Note Purchase Agreement	Requirement Under A&R Note Purchase Agreement
September 30, 2022	N/A	N/A
December 31, 2022	N/A	N/A
March 31, 2023	\$98.75	N/A
June 30, 2023	102.50	N/A
September 30, 2023	106.25	N/A
December 31, 2023	110.00	N/A
March 31, 2024	113.75	\$82.50
June 30, 2024	117.50	90.00
September 30, 2024	N/A	102.50
December 31, 2024	N/A	110.00
March 31, 2025	N/A	115.00
June 30, 2025	N/A	120.00
September 30, 2025	N/A	125.00
December 31, 2025	N/A	130.00
March 31, 2026	N/A	135.00
June 30, 2026	N/A	140.00
September 30, 2026	N/A	145.00
December 31, 2026	N/A	150.00
March 31, 2027	N/A	155.00
June 30, 2027	N/A	160.00
September 30, 2027	N/A	165.00

In conjunction with the A&R Note Purchase Agreement, a modification was made to the “make-whole” premium payment due in connection with any principal prepayments (whether mandatory or voluntary) made prior to November 23, 2025. On any such prepayment date, we will be required to pay a make-whole premium in the amount of (i) for any prepayment date occurring on or before May 23, 2024, the foregone interest from such prepayment date through the 18-month anniversary of such prepayment date; and (ii) for any prepayment after May 23, 2024, the foregone interest from such prepayment date through November 23, 2025; provided, however, that in no event shall the amount of all make-whole premium payments exceed \$24.0 million in the aggregate.

DESCRIPTION OF OUR UNITS

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the units that we may offer under this prospectus. Units may be offered independently or together with common stock, preferred stock, debt securities and/or warrants offered by any prospectus supplement, and may be attached to or separate from those securities. While the terms we have summarized below will generally apply to any future units that we may offer under this prospectus, we will describe the particular terms of any series of units that we may offer in more detail in the applicable prospectus supplement. The terms of any units offered under a prospectus supplement may differ from the terms described below.

We will incorporate by reference into the registration statement of which this prospectus forms a part the form of unit agreement, including a form of unit certificate, if any, that describes the terms of the series of units we are offering before the issuance of the related series of units. The following summaries of material provisions of the units, and the unit agreements, are subject to, and qualified in their entirety by reference to, all the provisions of the unit agreement applicable to a particular series of units. We urge you to read the applicable prospectus supplements related to the units that we sell under this prospectus, as well as the complete unit agreements that contain the terms of the units.

General

We may issue units comprised of one or more shares of our common stock or preferred stock, debt securities and warrants in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

We will describe in the applicable prospectus supplement the terms of the series of units, including:

- the designation and terms of the units and of the securities comprising the units, including whether, and under what circumstances, those securities may be held or transferred separately;
- the rights and obligations of the unit agent, if any;
- any provisions of the governing unit agreement that differ from those described below; and
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units.

The provisions described in this section, as well as those described under “Description of Our Common Stock,” “Description of our Preferred Stock,” “Description of Our Debt Securities” and “Description of Our Warrants,” will apply to each unit and to any common stock, preferred stock, debt securities or warrants included in each unit, respectively.

Issuance in Series

We may issue units in such amounts and in numerous distinct series as we determine.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Commission. The Commission maintains an Internet website at www.sec.gov that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission. Our reports on Forms 10-K, 10-Q and 8-K, and amendments to those reports, are also available for download, free of charge, as soon as reasonably practicable after these reports are filed with, or furnished to, the Commission, in the investor section of our website at www.optinose.com. Information contained on or accessible through our website is not a part of this prospectus or any prospectus supplement, and the inclusion of our website address in this prospectus is an inactive textual reference only.

INCORPORATION BY REFERENCE

The Commission allows us to “incorporate by reference” into this prospectus the information in other documents that we file with it. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this prospectus, and information in documents that we file later with the Commission will automatically update and supersede information contained in documents filed earlier with the Commission or contained in this prospectus. We incorporate by reference in this prospectus (i) the documents listed below, (ii) all documents that we file with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial filing of the registration statement of which this prospectus is included and prior to the effectiveness of such registration statement, and (iii) and any future filings that we may make with the Commission under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of the offering under this prospectus; provided, however, that we are not incorporating, in each case, any documents or information deemed to have been furnished and not filed, including any information that we disclose under Items 2.02 or 7.01 of any Current Report on Form 8-K, in accordance with Commission rules:

- Our Annual Report on Form 10-K for the year ended [December 31, 2022](#) filed with the Commission on March 7, 2023;
- Our Quarterly Report on Form 10-Q for the quarterly period ended [March 31, 2023](#) filed with the Commission on May 11, 2023 and our Quarterly Report on Form 10-Q for the quarterly period ended [June 30, 2023](#) filed with the Commission on August 10, 2023;
- Our Current Reports on Form 8-K filed with the Commission on [January 31, 2023](#) (other than Item 2.02 and Exhibit 99.1), [March 7, 2023](#) (other than Item 2.02 and Exhibit 99.1), [March 28, 2023](#), [May 4, 2023](#), [May 11, 2023](#) (other than Item 2.02 and Exhibit 99.1), [June 13, 2023](#) and [August 10, 2023](#) (other than Item 2.02 and Exhibit 99.1);
- Our Definitive Proxy Statement on [Schedule 14A](#), filed with the Commission on [May 1, 2023](#) (other than the portions thereof that are furnished and not filed); and
- The description of our common stock contained in [our registration statement on Form 8-A \(File No. 001-38241\) filed with the Commission on October 10, 2017](#), as updated by Exhibit 4.5 to our Annual Report on Form 10-K for the year ended [December 31, 2022](#), including any further amendment or report filed for the purpose of updating such description.

You may request, orally or in writing, a copy of any or all of the documents incorporated herein by reference. These documents will be provided to you at no cost by contacting: OptiNose, Inc., 1020 Stony Hill Road, Suite 300, Yardley, PA 19067, Attention: Chief Legal Officer, or by calling (267) 364-3500. In addition, copies of any or all of the documents incorporated herein by reference may be accessed at our website at www.optinose.com. The information on such website is not incorporated by reference and is not a part of this prospectus.

LEGAL MATTERS

The validity of the issuance of the securities offered hereby will be passed upon for us by Hogan Lovells US LLP. As appropriate, legal counsel representing the underwriters, dealers or agents will be named in the accompanying prospectus supplement and may opine to certain legal matters.

EXPERTS

The consolidated financial statements of OptiNose, Inc. appearing in OptiNose, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2022, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 2 to the consolidated financial statements), included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.



\$200,000,000
Common Stock
Preferred Stock
Warrants
Debt Securities
Units

PROSPECTUS

, 2023

The information contained in this prospectus supplement is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus supplement is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where such offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED AUGUST 10, 2023

PROSPECTUS SUPPLEMENT



Up to \$50,000,000
Common Stock

We have previously entered into an Open Market Sale AgreementSM, dated August 11, 2021, or the Sale Agreement, with Jefferies LLC, or Jefferies, relating to the sale of shares of our common stock offered by this prospectus supplement. In accordance with the terms of the Sale Agreement, under this prospectus supplement, we may offer and sell shares of our common stock, par value \$0.001 per share, having an aggregate offering price of up to \$50,000,000 from time to time through Jefferies acting as our agent.

Our common stock is listed on the Nasdaq Global Select Market under the symbol "OPTN." On August 9, 2023, the last reported sale price of our common stock on the Nasdaq Global Select Market was \$1.16 per share.

Sales of our common stock, if any, under this prospectus supplement and the accompanying prospectus may be made by any method permitted that is deemed an "at the market offering" as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, or the Securities Act. Jefferies is not required to sell any specific amount of securities, but will act as our sales agent using commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between Jefferies and us. There is no arrangement for funds to be received in any escrow, trust or similar arrangement.

The compensation to Jefferies for sales of common stock sold pursuant to the Sale Agreement will be at a commission rate of up to 3.0% of the gross proceeds of any shares sold under the Sale Agreement. In connection with the sale of shares of our common stock on our behalf, Jefferies will be deemed to be an "underwriter" within the meaning of the Securities Act and the compensation of Jefferies will be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to Jefferies with respect to certain liabilities, including civil liabilities under the Securities Act or the Securities Exchange Act of 1934, as amended, or the Exchange Act. See "Plan of Distribution" beginning on page [S-11](#) for additional information regarding the compensation to be paid to Jefferies.

Investing in our common stock involves a high degree of risk. Please read the "[Risk Factors](#)" beginning on page [S-3](#) of this prospectus supplement, [page 6](#) of the accompanying base prospectus, and under similar headings in the documents incorporated by reference into this prospectus supplement and the accompanying base prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, or determined if this prospectus supplement and the accompanying base prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Jefferies

The date of this prospectus supplement is _____, 2023.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement and the accompanying prospectus are part of a shelf registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the Commission, on August 10, 2023.

This document is in two parts. The first part is this prospectus supplement, which describes the terms of this offering of our common stock and also adds to and updates the information contained in the accompanying prospectus. The second part, the accompanying prospectus, provides more general information, some of which may not apply to this offering. Generally, when we refer to this prospectus, we are referring to both parts of this document combined.

To the extent there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying base prospectus or in any document incorporated by reference that was filed with the Commission before the date of this prospectus supplement, on the other hand, or the information contained in any free writing prospectus prepared by us or on our behalf that we have authorized for use in connection with this offering, you should rely on the information in this prospectus supplement. If any statement in one of these documents is inconsistent with a statement in another document having a later date – for example, a document incorporated by reference in this prospectus supplement or the accompanying base prospectus – the statement in the document having the later date modifies or supersedes the earlier statement unless otherwise specified.

We further note that the representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference into this prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreement, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants were accurate only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

You should rely only on the information contained in or incorporated by reference into this prospectus and any free writing prospectus prepared by us or on our behalf that we have authorized for use in connection with this offering. We have not, and Jefferies has not, authorized any dealer, salesperson or other person to provide any information or to make any representation other than those contained or incorporated by reference into this prospectus or into any free writing prospectus prepared by or on our behalf or to which we have referred you. If anyone provides you with additional, different or inconsistent information, you should not rely on it. We and Jefferies take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not, and Jefferies is not, making an offer to sell shares of our common stock in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing or incorporated by reference into this prospectus or in any free writing prospectus prepared by us or on our behalf that we have authorized for use in connection with this offering is accurate only as of the date of each such respective document. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus, including the documents incorporated by reference herein, and any free writing prospectus prepared by us or on our behalf that we have authorized for use in connection with this offering, in their entirety before making an investment decision. You should also read and consider the information in the documents we have referred you to in the sections of this prospectus supplement entitled, “Documents Incorporated By Reference” and “Where You Can Find More Information” and the sections of the accompanying base prospectus entitled “Incorporation By Reference” and “Where You Can Find Additional Information.”

Other than in the United States, no action has been taken by us or Jefferies that would permit a public offering of shares of our common stock offered by this prospectus in any jurisdiction where action for that purpose is required. The shares of our common stock offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of the shares be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to this offering and

the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy shares of our common stock offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Unless stated otherwise or the context otherwise requires, references in this prospectus to “OptiNose,” the “Company,” “we,” “our” and “us” and other similar terms refer to OptiNose, Inc. and our wholly owned subsidiaries through which we conduct our business, unless we state otherwise or the context indicates otherwise. OPTINOSE®, XHANCE®, EDS® and EXHALATION DELIVERY SYSTEM™ are trademarks of ours in the United States. All other trademarks, trade names and service marks appearing in this prospectus are the property of their respective owners. We do not intend our use or display of other companies' trademarks, trade names or service marks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

PROSPECTUS SUPPLEMENT SUMMARY

This summary highlights selected information about us and this offering and does not contain all of the information that you should consider in making your investment decision. You should carefully read this entire prospectus supplement and the accompanying prospectus, including the risks and uncertainties discussed under the heading “[Risk Factors](#)” beginning on page [S-3](#) of this prospectus supplement, and the information incorporated by reference in this prospectus supplement and the accompanying prospectus, including our financial statements, before making an investment decision. If you invest in our securities, you are assuming a high degree of risk.

Our Business

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

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

In March and June 2022, we announced positive top line results from our two Phase 3b clinical trials (ReOpen1 and ReOpen2) of XHANCE for a follow-on indication for the treatment of chronic sinusitis. The results of ReOpen1 and ReOpen2 are summarized in our Form 10-K for the year ended December 31, 2022, filed with the Commission on March 7, 2023. In February 2023, we submitted a prior approval efficacy supplement (sNDA) to support the approval of a new indication for XHANCE for the treatment of chronic rhinosinusitis. The FDA accepted the sNDA for review and assigned a Prescription Drug User Fee Act (PDUFA) target goal date of December 16, 2023. If the sNDA is approved, XHANCE has the potential to be the first drug therapy approved by the FDA for the treatment of chronic rhinosinusitis without nasal polyps.

For more information about our company, please refer to other documents that we have filed with the Commission and that are incorporated by reference into this prospectus supplement and the accompanying prospectus, as listed under the heading “Incorporation by Reference.”

Corporate Information

We were incorporated in Delaware in May 2010. Our predecessor entity OptiNose AS was formed under the laws of Norway in September 2000. In 2010, OptiNose AS became our wholly-owned subsidiary as part of an internal reorganization. We are in the process of liquidating and dissolving OptiNose AS and another wholly-owned subsidiary, Optinose UK, both of which dissolutions are expected to be completed in 2023, in order to simplify our corporate structure.

Our primary executive offices are located at 1020 Stony Hill Road, Suite 300, Yardley, Pennsylvania 19067 and our telephone number is (267) 364-3500. Our website address is www.optinose.com. The information contained in, or that can be accessed through, our website is not part of this prospectus supplement, the accompanying prospectus or any other report or document that we file with or furnish to the Commission. We have included our website address in this prospectus supplement as an inactive textual reference and do not intend it to be an active link to our website.

THE OFFERING

Common stock offered by us	Shares of our common stock having an aggregate offering price of up to \$50,000,000.
Common stock to be outstanding after this offering	Up to 155,195,212 shares, assuming sales of 43,103,448 shares of our common stock in this offering at an offering price of \$1.16 per share, which was the last reported sale price of our common stock on the Nasdaq Global Select Market on August 9, 2023. The actual number of shares issued will vary depending on the sale prices under this offering.
Plan of Distribution	“At the market offering” that may be made from time to time on the Nasdaq Global Select Market or such other national securities exchanges on which our common stock is listed, through or to our sales agent, Jefferies LLC. See “Plan of Distribution” on page S-11 of this prospectus supplement.
Use of Proceeds	We intend to use the net proceeds from this offering for working capital and general corporate purposes, including the commercialization of XHANCE, the pursuit of a follow-on indication for XHANCE for the treatment of chronic sinusitis and other potential development programs, and interest, principal and fees under our indebtedness. See “Use of Proceeds” on page S-8 of this prospectus supplement.
Risk Factors	An investment in our common stock involves a high degree of risk. See the information contained in or incorporated by reference under “Risk Factors” on page S-3 of this prospectus supplement, page 40 of our Annual Report on Form 10-K for the year ended December 31, 2022, and under similar headings in the other documents that are incorporated by reference herein, as well as the other information included in or incorporated by reference in this prospectus supplement and the accompanying prospectus.
The Nasdaq Global Select Market symbol	“OPTN”

Outstanding Shares

The number of shares of our common stock to be outstanding after this offering is based on 112,091,764 shares of our common stock outstanding as of June 30, 2023. Unless specifically stated otherwise, the information in this prospectus supplement is as of June 30, 2023, and excludes:

- 10,634,934 shares of our common stock issuable upon the exercise of stock options outstanding as of June 30, 2023 at a weighted-average exercise price of \$7.03 per share;
- 2,429,266 shares of common stock underlying our restricted stock units outstanding as of June 30, 2023;
- 6,673,600 shares of our common stock available for future issuance under our Amended and Restated 2010 Stock Incentive Plan, or the 2010 Plan, as of June 30, 2023 (plus 823,950 shares of our common stock underlying stock options or restricted stock units that were canceled or expired subsequent to June 30, 2023 through August 8, 2023 and became available for issuance under the 2010 Plan);
- 32,768,000 shares of our common stock issuable on exercise of warrants outstanding as of June 30, 2023, which had a weighted average exercise price of \$2.49 per share at that date; and
- 1,408,871 shares of our common stock reserved for future issuance under our 2017 Employee Stock Purchase Plan, or the 2017 ESPP, as of June 30, 2023.

RISK FACTORS

Investing in our common stock involves a high degree of risk. Before investing in our common stock, you should carefully consider the risks described below, together with all of the other information contained in this prospectus supplement and the accompanying prospectus and incorporated by reference herein and therein, including from our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K, as well as any amendments or update to our risk factors thereto reflected in subsequent filings with the Commission. Some of these factors relate principally to our business and the industry in which we operate. Other factors relate principally to your investment in our securities. The risks and uncertainties described therein and below are not the only risks facing us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also materially and adversely affect our business and operations.

If any of the matters included in the following risks were to occur, our business, financial condition, results of operations, cash flows or prospects could be materially and adversely affected. In such case, you may lose all or part of your investment.

A substantial number of shares may be sold in the market following this offering, which may depress the market price for our common stock.

Sales of a substantial number of shares of our common stock in the public market following this offering could cause the market price of our common stock to decline. Although there can be no assurance that any of the \$50,000,000 worth of shares being offered under this prospectus supplement will be sold or the price at which any such shares might be sold, assuming that an aggregate of 43,103,448 shares of our common stock are sold during the remaining term of the Sale Agreement with Jefferies, in each case, for example, at a price of \$1.16 per share, the last reported sale price of our common stock on the Nasdaq Global Select Market on August 9, 2023, upon completion of this offering, based on our shares outstanding as of June 30, 2023, we will have outstanding an aggregate of 155,195,212 shares of common stock, assuming no exercise or settlement, as the case may be, of our outstanding stock options, restricted stock units and warrants. A substantial majority of the outstanding shares of our common stock are, and all of the shares sold in this offering upon issuance will be, freely tradable without restriction or further registration under the Securities Act, unless these shares are owned or purchased by “affiliates” as that term is defined in Rule 144 under the Securities Act.

In addition, as of June 30, 2023, there were outstanding (i) options to purchase an aggregate of 10,634,934 shares of our common stock at a weighted average exercise price of \$7.03 per share, of which options to purchase 5,909,489 shares of our common stock were then exercisable, (ii) restricted stock units to acquire up to an aggregate of 2,429,266 shares of our common stock, and (iii) warrants to purchase 32,768,000 shares of our common stock at a weighted average exercise price of \$2.49 per share. The shares of our common stock issuable upon exercise or settlement of these options, restricted stock units, and warrants may be immediately eligible for resale in the open market. Such sales, along with any other market transactions, could adversely affect the market price of our common stock. Additional dilution may result from the issuance of shares of our common stock in connection with collaborations or manufacturing arrangements or in connection with other financing efforts.

Moreover, if we issue options, performance stock units, restricted stock units, warrants or other securities to purchase or acquire our common stock in the future and those options, performance stock units, restricted stock units, warrants or other securities are exercised, converted or settled you may experience further dilution. Holders of shares of our common stock have no preemptive rights that entitle them to purchase their pro rata share of any offering of shares of any class or series.

You may experience immediate and substantial dilution.

The offering price per share in this offering may exceed the as adjusted net tangible book deficit per share of our common stock outstanding prior to this offering. Assuming that an aggregate of 43,103,448 shares of our common stock are sold at a price of \$1.16 per share, the last reported sale price of our common stock on the Nasdaq Global Select Market on August 9, 2023, for aggregate gross proceeds of \$50,000,000, and after deducting commissions and estimated offering expenses payable by us, you will experience immediate dilution of \$1.30 per share, representing the difference between our as adjusted net tangible book deficit per share as of June 30, 2023

after giving effect to this offering and the assumed offering price. The exercise of outstanding stock options and warrants and the settlement of outstanding restricted stock units will result in further dilution of your investment. See the section entitled “Dilution” below for a more detailed illustration of the dilution you would incur if you participate in this offering.

You may experience future dilution as a result of future equity offerings or other equity issuances.

In order to raise additional capital, we may in the future offer and issue additional shares of our common stock or other securities convertible into, exercisable or exchangeable for, or settled in, our common stock. We cannot assure you that we will be able to sell shares or other securities in any other offering at a price per share that is equal to or greater than the price per share paid by investors in this offering, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock or other securities convertible into, exercisable or exchangeable for, or settled in, our common stock in future transactions may be higher or lower than the price per share in this offering. As of June 30, 2023, we had reserved 10,634,934 shares of our common stock for issuance upon the exercise of outstanding stock options, 2,429,266 shares of our common stock for issuance upon the vesting of our outstanding restricted stock units, 5,849,650 shares of our common stock for future issuance under the 2010 Plan, 32,768,000 shares of our common stock for issuance upon exercise of outstanding warrants and 1,408,871 shares of our common stock reserved for future issuance under the 2017 ESPP. You will incur dilution upon the grant of any shares pursuant to such plan, upon vesting of any stock awards under any such plan, or upon exercise of any such outstanding options or warrants.

We have broad discretion in the use of the net proceeds of this offering and may invest or spend the proceeds in ways with which you do not agree and in ways that may not increase the value of your investment.

We intend to use the net proceeds from this offering for working capital and general corporate purposes, including the commercialization of XHANCE, the pursuit of a follow-on indication for XHANCE for the treatment of chronic sinusitis and other potential development programs, and interest, principal and fees under our indebtedness. However, we have not determined the specific allocation of the net proceeds among these potential uses. Our management will have broad discretion over the use and investment of the net proceeds of this offering, and, accordingly, investors in this offering will need to rely upon the judgment of our management with respect to the use of proceeds, with only limited information concerning our specific intentions. These proceeds could be applied in ways that do not improve our operating results or increase the value of your investment. Please see the section entitled “Use of Proceeds” on page [S-8](#) of this prospectus supplement for further information.

We have a significant number of warrants outstanding that contain anti-dilution provisions that may result in the reduction of their exercise prices in the future.

The warrants to purchase shares of our common stock issued in our November 2022 public offering (2022 Warrants) contain anti-dilution provisions, which provisions require the lowering of the exercise price, as applicable, to the purchase price of certain future sales of our common stock. If, in the future we issue or are deemed to issue securities for less than the exercise price of the 2022 Warrants, we may be required to reduce the exercise prices of the 2022 Warrants. During the term that the 2022 Warrants are outstanding, the holders of those securities are given the opportunity to profit from a rise in the market price of our common stock. In addition, we may find it more difficult to raise additional equity capital while these warrants are outstanding. Any future adjustments to the exercise prices of the 2022 Warrants may have a negative impact on the trading price of our common stock. Additionally, raising additional capital with new investors may be difficult as a result of the adjustment feature.

We do not anticipate paying any cash dividends on our capital stock in the foreseeable future; accordingly, capital appreciation, if any, will be your sole source of gain and you may never receive a return on your investment.

We have never declared or paid cash dividends on our capital stock, and you should not rely on an investment in our common stock to provide dividend income. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. In addition, our amended and restated note purchase agreement prohibits us, and the terms of

any future debt agreements may also preclude us, from paying dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

It is not possible to predict the aggregate proceeds resulting from sales made under the Sale Agreement.

Subject to certain limitations in the Sale Agreement and compliance with applicable law, we have the discretion to deliver a placement notice to Jefferies at any time throughout the term of the Sale Agreement. The number of shares that are sold through Jefferies after delivering a placement notice will fluctuate based on a number of factors, including the market price of our common stock during the sales period, any limits we may set with Jefferies in any applicable placement notice and the demand for our common stock. Because this offering can be terminated at any time and the price per share of each share sold pursuant to the Sale Agreement will fluctuate over time, it is not currently possible to predict the aggregate proceeds to be raised in connection with sales under the Sale Agreement.

Sales of common stock offered hereby will be in “at the market offerings,” and investors who buy shares at different times will likely pay different prices.

Investors who purchase shares in this offering at different times will likely pay different prices, and accordingly may experience different levels of dilution and different outcomes in their investment results. We will have discretion, subject to market demand, to vary the timing, prices and number of shares sold in this offering. In addition, subject to the final determination by our board of directors or any restrictions we may place in any applicable placement notice delivered to Jefferies, there is no minimum or maximum sales price for shares to be sold in this offering. Investors may experience a decline in the value of the shares they purchase in this offering as a result of sales made at prices lower than the prices they paid.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

Various statements made in this prospectus supplement and the accompanying prospectus and in the documents incorporated by reference herein and therein are forward-looking and involve risks and uncertainties. All statements, other than statements of historical facts, included in this prospectus supplement, the accompanying prospectus or the documents incorporated herein and therein by reference, including statements regarding our future financial condition, results of operations, business strategy and plans and objectives of management for future operations, industry trends and other future events, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “believe,” “will,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “expect,” “predict,” “project,” “could,” “potentially,” “continue,” “ongoing,” “scheduled” or the negative of these terms or other similar expressions, although not all forward-looking statements contain these identifying terms. The forward-looking statements in this prospectus supplement, the accompanying prospectus and the documents incorporated herein and therein by reference include, among other things, statements about:

- the potential uses for and advantages of XHANCE®, our product candidates and the Exhalation Delivery System (EDS) and related technologies;
- our planned activities in pursuit of a follow-on indication for chronic sinusitis;
- the potential for XHANCE to be the first product approved by the U.S. Food and Drug Administration (FDA) for the treatment of chronic sinusitis;
- the potential to expand into the primary care segment and our plans to seek a partner for such expansion;
- our belief that the current practice of postoperative intranasal steroid (INS) use could support XHANCE’s adoption as a maintenance therapy to improve outcomes following sinus surgery;
- the potential for XHANCE to be the standard of care for the treatment of chronic rhinosinusitis with and without nasal polyps;
- the potential benefits of our patient affordability programs and their potential effect on XHANCE demand and financial results;
- our expectation for XHANCE prescriptions to be impacted by the seasonality observed in the INS market and the seasonal variation in patient visits with their doctor;
- our expectation for XHANCE prescriptions and average net revenue per prescription to be adversely impacted by the annual resetting of patient healthcare insurance plan deductibles and changes in individual patients’ healthcare insurance coverage, both of which often occur in January;
- XHANCE prescription, net revenue, prescriber and other business trends;
- the potential for increasing rates of enforcement of payor utilization management criteria to negatively impact XHANCE prescription volumes;
- our expectation that our research and development costs will significantly decrease in 2023 as compared to 2022;
- our expectation that our operating expenses (consisting of selling, general and administrative expenses and research and development expenses) in 2023 will be between \$88.0 million and \$93.0 million and that our non-cash stock-based compensation expense will be approximately \$6.0 million;
- our expectation that XHANCE net product revenues for the full year of 2023 will be between \$64.0 million and \$70.0 million;
- our expectation that the average net product revenue per prescription for XHANCE for the full year of 2023 will be approximately \$200;

- our potential non-compliance with certain covenants of the A&R Note Purchase Agreement, and the consequences of failing to achieve compliance with such covenants or obtain a waiver or modification of such covenants;
- our belief that our existing cash and cash equivalents will be sufficient to fund our operations and debt service obligations for approximately the next 12 months if we are able to maintain compliance with the financial and other covenants and terms of the A&R Note Purchase Agreement or obtain a waiver to or modification of such covenants;
- our expectations and the accuracy of our estimates regarding our future expenses, revenue, capital requirements, potential sources of capital and consequences of failing to obtain additional capital;
- our ability to continue as a going concern;
- our plans to liquidate and dissolve our wholly owned subsidiaries OptiNose AS and OptiNose UK in 2023;
- the potential for us to decrease our reliance on sole-source suppliers and increase the third party manufacturing capacity that is available to us;
- our belief that our facilities meet our needs and that we could obtain alternative space on commercially reasonable terms;
- our expectations regarding our ability to obtain and adequately maintain sufficient intellectual property protection for XHANCE; and
- other statements relating to our future operations, financial performance and financial condition, prospects, strategies, objectives or other future events.

Forward-looking statements also include statements other than statements of current or historical fact, including, without limitation, all statements related to any expectations of revenues, expenses, cash flows, earnings or losses from operations, cash required to maintain current and planned operations, capital or other financial items; any statements of the plans, strategies and objectives of management for future operations; any plans or expectations with respect to product research, development and commercialization, including regulatory approvals; any other statements of expectations, plans, intentions or beliefs; and any statements of assumptions underlying any of the foregoing. We often, although not always, identify forward-looking statements by using words or phrases such as “likely”, “expect”, “intend”, “anticipate”, “believe”, “estimate”, “plan”, “project”, “forecast” and “outlook”.

We cannot guarantee that the results and other expectations expressed, anticipated or implied in any forward-looking statement will be realized. The risks set forth under Item 1A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and any supplementary risks set forth under Item 1A of our Quarterly Reports on Form 10-Q and other documents we file with the Commission, describe major risks to our business, and you should read and interpret any forward-looking statements together with these risks. A variety of factors, including these risks, could cause our actual results and other expectations to differ materially from the anticipated results or other expectations expressed, anticipated or implied in our forward-looking statements. You should read and interpret any forward-looking statements in light of these risks. Should known or unknown risks materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected in the forward-looking statements. You should bear this in mind as you consider any forward-looking statements. Our forward-looking statements speak only as of the dates on which they are made. We do not undertake any obligation to publicly update or revise our forward-looking statements even if experience or future changes makes it clear that any projected results expressed or implied in such statements will not be realized.

Before deciding to purchase our securities, you should carefully consider the risk factors discussed and incorporated by reference in this prospectus supplement and the accompanying prospectus and in the registration statement of which this prospectus supplement and the accompanying prospectus form a part.

USE OF PROCEEDS

The amount of proceeds from this offering will depend upon the number of shares of our common stock sold and the market price at which they are sold. There can be no assurance that we will be able to sell any shares under or fully utilize the Sale Agreement with Jefferies as a source of financing.

We intend to use the net proceeds from this offering for working capital and general corporate purposes, including the commercialization of XHANCE, the pursuit of a follow-on indication for XHANCE for the treatment of chronic sinusitis and other potential development programs, and interest, principal and fees under our indebtedness.

In September 2019, we entered into a Note Purchase Agreement, or the Note Purchase Agreement, with funds managed by Pharmakon Advisors, LP, or Pharmakon, the investment manager of the BioPharma Credit funds, or BioPharma. The Note Purchase Agreement provided us with \$130.0 million in debt financing, of which \$80.0 million was issued on the date we closed the transaction, \$30.0 million was issued in February 2020, and \$20.0 million was issued in December 2020. On November 23, 2022, we amended and restated the Note Purchase Agreement (as so amended and restated, the A&R Note Purchase Agreement), among us, certain of our subsidiaries, and BioPharma Credit PLC, as collateral agent, and the purchasers party thereto from time to time. The A&R Note Purchase Agreement provides for an extension of the maturity date of the Pharmakon Senior Secured Notes from September 12, 2024 to June 30, 2027, and an extension of the interest-only period from September 2023 to September 2025, after which principal repayments will be made in eight equal quarterly installments of principal and interest through June 2027. As of June 30, 2023, the outstanding principal and back end fees under the Pharmakon Senior Secured Notes was \$136.0 million.

As part of the A&R Note Purchase Agreement the notes (the Pharmakon Senior Secured Notes) now bear interest at the 3-month Secured Overnight Financing Rate (subject to a 2.50% floor), determined as of the date that is two business days prior to the commencement of each quarter, plus 8.50% per annum, which interest rate shall be increased by an additional 3.00% per annum upon the occurrence and during the continuation of any event of default. For more information about the Pharmakon Senior Secured Notes, please see “Description of our Debt Securities – Outstanding Senior Secured Notes” in the accompanying base prospectus.

The amounts and timing of our use of the net proceeds from this offering will depend on a number of factors, such as the timing and progress of our commercialization efforts, research and development efforts, the timing and progress of any partnering efforts, technological advances and the competitive environment for our product candidates. As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses for the net proceeds to us from the sale of the shares of common stock offered by us hereunder. Accordingly, our management will have broad discretion in the timing and application of these proceeds. Pending application of the net proceeds as described above, we intend to temporarily invest the proceeds in short-term, interest-bearing instruments.

DILUTION

Purchasers of common stock in this offering will experience immediate dilution to the extent of the difference between the public offering price per share of common stock, and the as adjusted net tangible book deficit per share of common stock immediately after this offering.

Our net tangible book deficit as of June 30, 2023 was approximately \$69.7 million, or \$(0.62) per share of common stock. Net tangible book deficit per share is determined by dividing our net tangible book deficit (equal to total tangible assets less total liabilities) by the aggregate number of shares of common stock outstanding as of June 30, 2023. Dilution per share to new investors represents the difference between the amount per share paid by purchasers of our common stock in this offering and the as adjusted net tangible book deficit per share of our common stock immediately following the completion of this offering.

After giving effect to the sale of shares of common stock offered by this prospectus supplement at an assumed public offering price of \$1.16 per share of common stock (the last reported sale price of our common stock on the Nasdaq Global Select Market on August 9, 2023), and after deducting the commissions and estimated aggregate offering expenses payable by us, our as adjusted net tangible book deficit as of June 30, 2023 would have been approximately \$21.6 million, or \$(0.14) per share of common stock. This represents an immediate decrease in net tangible book deficit of \$0.48 per share to our existing stockholders and an immediate dilution of \$1.30 per share of common stock issued to the new investors purchasing securities in this offering.

The following table illustrates this per share dilution:

Assumed public offering price per share of common stock		\$	1.16
Net tangible book deficit per share as of June 30, 2023	\$	(0.62)	
Increase per share attributable to new investors	\$	0.48	
As adjusted net tangible book deficit per share as of June 30, 2023, after giving effect to this offering	\$	(0.14)	
Dilution per share to new investors	\$	1.30	

The table above assumes for illustrative purposes that an aggregate of 43,103,448 shares of our common stock are sold at a price of \$1.16 per share, the last reported sale price of our common stock on the Nasdaq Global Select Market on August 9, 2023, for aggregate gross proceeds of approximately \$50.0 million. The shares sold in this offering, if any, will be sold from time to time at various prices. An increase of \$1.00 per share in the price at which the shares are sold from the assumed offering price of \$1.16 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$50.0 million is sold at that price, would result in an adjusted net tangible book deficit per share after this offering of approximately \$(0.16) per share and would increase the dilution in net tangible book deficit per share to new investors to \$2.32 per share, after deducting commissions and estimated aggregate offering expenses payable by us. A decrease of \$1.00 per share in the price at which the shares are sold from the assumed offering price of \$1.16 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$50.0 million is sold at that price, would result in an adjusted net tangible book deficit per share after this offering of approximately \$(0.05) per share and would increase the dilution in net tangible book deficit per share to new investors to \$0.21 per share, after deducting commissions and estimated aggregate offering expenses payable by us.

The information discussed above is illustrative only and may differ based on the actual offering price and the actual number of shares offered.

The above table is based on 112,091,764 shares of our common stock outstanding as of June 30, 2023. Unless specifically stated otherwise, the information in this prospectus supplement is as of June 30, 2023, and excludes:

- 10,634,934 shares of our common stock issuable upon the exercise of stock options outstanding as of June 30, 2023 at a weighted-average exercise price of \$7.03 per share;
- 2,429,266 shares of common stock underlying our restricted stock units outstanding as of June 30, 2023;

- 6,673,600 shares of our common stock available for future issuance under the 2010 Plan as of June 30, 2023 (plus 823,950 shares of our common stock underlying stock options or restricted stock units that were canceled or expired subsequent to June 30, 2023 through August 8, 2023 and became available for issuance under the 2010 Plan);
- 32,768,000 shares of our common stock issuable on exercise of warrants outstanding as of June 30, 2023, which had a weighted average exercise price of \$2.49 per share at that date; and
- 1,408,871 shares of our common stock reserved for future issuance under the 2017 ESPP as of June 30, 2023.

To the extent that outstanding options or warrants are exercised, outstanding restricted stock units vest and settle, new equity awards, including options, are granted under our 2010 Plan or as inducements material to an individual's acceptance of employment with us, shares of common stock are issued under our 2017 ESPP, or we otherwise issue additional shares of common stock in the future, there may be further dilution to investors participating in this offering. In addition, we may choose to raise additional capital because of market conditions or strategic considerations, even if we believe that we have sufficient funds for our current or future operating plans. If we raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

PLAN OF DISTRIBUTION

We previously entered into a Sale Agreement with Jefferies, under which we may offer and sell up to \$50,000,000 of our shares of common stock from time to time through Jefferies acting as agent. Sales of our shares of common stock, if any, under this prospectus supplement and the accompanying prospectus will be made by any method that is deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act.

Each time we wish to issue and sell shares of common stock under the Sale Agreement, we will notify Jefferies of the number of shares to be issued, the dates on which such sales are anticipated to be made, any limitation on the number of shares to be sold in any one day and any minimum price below which sales may not be made. Once we have so instructed Jefferies, unless Jefferies declines to accept the terms of such notice, Jefferies has agreed to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such shares up to the amount specified on such terms. The obligations of Jefferies under the Sale Agreement to sell our shares of common stock are subject to a number of conditions that we must meet.

The settlement of sales of shares between us and Jefferies is generally anticipated to occur on the second trading day following the date on which the sale was made. Sales of our shares of common stock as contemplated in this prospectus supplement will be settled through the facilities of The Depository Trust Company or by such other means as we and Jefferies may agree upon. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

We will pay Jefferies a commission of up to 3.0% of the aggregate gross proceeds we receive from each sale of our shares of common stock. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. In addition, we have agreed to reimburse Jefferies for fees and disbursements of its counsel, payable upon execution of the Sale Agreement, in an amount not to exceed \$50,000, in addition to certain ongoing disbursements of its legal counsel, unless we and Jefferies otherwise agree. We estimate that the total expenses for the offering, excluding any commissions or expense reimbursement payable to Jefferies under the terms of the Sale Agreement, will be approximately \$400,000. The remaining sale proceeds, after deducting any other transaction fees, will equal our net proceeds from the sale of such shares.

Jefferies will provide written confirmation to us before the open on the Nasdaq Global Select Market on the day following each day on which shares of common stock are sold under the Sale Agreement. Each confirmation will include the number of shares sold on that day, the aggregate gross proceeds of such sales and the proceeds to us.

In connection with the sale of the shares of common stock on our behalf, Jefferies will be deemed to be an “underwriter” within the meaning of the Securities Act, and the compensation of Jefferies will be deemed to be underwriting commissions or discounts. We have agreed to indemnify Jefferies against certain civil liabilities, including liabilities under the Securities Act. We have also agreed to contribute to payments Jefferies may be required to make in respect of such liabilities.

The offering of our shares of common stock pursuant to the Sale Agreement will terminate upon the earlier of (i) the sale of all shares of common stock subject to the Sale Agreement and (ii) the termination of the Sale Agreement as permitted therein.

This summary of the material provisions of the Sale Agreement does not purport to be a complete statement of its terms and conditions. A copy of the Sale Agreement is filed as an exhibit to the registration statement of which this prospectus supplement forms a part.

Jefferies and its affiliates may in the future provide various investment banking, commercial banking, financial advisory and other financial services for us and our affiliates, for which services they may in the future receive customary fees. In the course of its business, Jefferies may actively trade our securities for its own account or for the accounts of customers, and, accordingly, Jefferies may at any time hold long or short positions in such securities.

A prospectus supplement and the accompanying prospectus in electronic format may be made available on a website maintained by Jefferies, and Jefferies may distribute the prospectus supplement and the accompanying prospectus electronically.

LEGAL MATTERS

The validity of the securities we are offering will be passed upon by Hogan Lovells US LLP. Jefferies LLC is being represented in connection with this offering by Cooley LLP, New York, New York.

EXPERTS

The consolidated financial statements of OptiNose, Inc. appearing in OptiNose, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2022, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 2 to the consolidated financial statements), included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Commission a registration statement on Form S-3 under the Securities Act, of which this prospectus supplement forms a part. The rules and regulations of the Commission allow us to omit from this prospectus supplement certain information included in the registration statement. For further information about us and the securities we are offering under this prospectus, you should refer to the registration statement and the exhibits and schedules filed with the registration statement. With respect to the statements contained in this prospectus supplement regarding the contents of any agreement or any other document, in each instance, the statement is qualified in all respects by the complete text of the agreement or document, a copy of which has been filed as an exhibit to the registration statement.

Because we are subject to the information and reporting requirements of the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the Commission. The Commission maintains an Internet site at www.sec.gov that contains the reports, statements and other information about issuers, such as us, who file electronically with the Commission.

We make available free of charge on our website our annual, quarterly and current reports, including amendments to such reports, as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Commission. Please note, however, that we have not incorporated any other information by reference from our website, other than the documents listed under the heading "Incorporation of Certain Information by Reference" on page [S-14](#) of this prospectus supplement. In addition, you may request copies of these filings at no cost by writing or telephoning us at the following address or telephone number:

OptiNose, Inc.
1020 Stony Hill Road, Suite 300
Yardley, PA 19067
Attention: Chief Legal Officer
(267) 364-3500

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The Commission allows us to “incorporate by reference” into this prospectus supplement the information in other documents that we file with it. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus supplement, and information in documents that we file later with the Commission will automatically update and supersede information contained in documents filed earlier with the Commission or contained in this prospectus supplement. We incorporate by reference in this prospectus supplement (i) the documents listed below, (ii) all documents that we file with the Commission under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial filing of the registration statement of which this prospectus supplement is included and prior to the effectiveness of such registration statement, and (iii) and any future filings that we may make with the Commission under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of the offering under this prospectus supplement; provided, however, that we are not incorporating, in each case, any documents or information deemed to have been furnished and not filed, including any information that we disclose under Items 2.02 or 7.01 of any Current Report on Form 8-K, in accordance with Commission rules:

- Our Annual Report on Form 10-K for the year ended [December 31, 2022](#) filed with the Commission on March 7, 2023;
- Our Quarterly Report on Form 10-Q for the quarterly period ended [March 31, 2023](#) filed with the Commission on May 11, 2023 and our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2023 filed with the Commission on [August 10, 2023](#);
- Our Current Reports on Form 8-K filed with the Commission on [January 31, 2023](#) (other than Item 2.02 and Exhibit 99.1), [March 7, 2023](#) (other than Item 2.02 and Exhibit 99.1), [March 28, 2023](#), [May 4, 2023](#), [May 11, 2023](#) (other than Item 2.02 and Exhibit 99.1), [June 13, 2023](#) and [August 10, 2023](#) (other than Item 2.02 and Exhibit 99.1);
- Our Definitive Proxy Statement on [Schedule 14A](#), filed with the Commission on [May 1, 2023](#) (other than the portions thereof that are furnished and not filed); and
- The description of our common stock contained in our [registration statement on Form 8-A \(File No. 001-38241\) filed with the Commission on October 10, 2017](#), as updated by Exhibit 4.5 to our Annual Report on Form 10-K for the year ended [December 31, 2022](#), including any further amendment or report filed for the purpose of updating such description.

All reports and other documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this prospectus supplement and prior to the termination or completion of the offering of securities under this prospectus supplement shall be deemed to be incorporated by reference in this prospectus supplement and to be a part hereof from the date of filing such reports and other documents.

To obtain copies of these filings, see “Where You Can Find More Information” on page [S-13](#) of this prospectus supplement.



Up to \$50,000,000

Common Stock

PROSPECTUS SUPPLEMENT

Jefferies

, 2023

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

Set forth below is an estimate (except in the case of the SEC registration fee) of the amount of fees and expenses to be incurred in connection with the issuance and distribution of the offered securities registered hereby, other than underwriting discounts and commission, if any, incurred in connection with the sale of the offered securities. All such amounts will be borne by OptiNose, Inc.

	Amount to be paid
SEC Registration Fee	\$ 22,040.00
Legal Fees and Expenses	\$ (1)
Accounting Fees and Expenses	\$ (1)
Printing Expenses	\$ (1)
Miscellaneous Fees and Expenses	\$ (1)
Total:	(1)

(1) These fees are calculated based on the securities offered and the number of issuances and accordingly cannot be estimated at this time.

Item 15. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such person as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred. Our fourth amended and restated certificate of incorporation and amended and restated bylaws provide for the indemnification of our directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;

- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

Our fourth amended and restated certificate of incorporation includes such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by us.

As permitted by the Delaware General Corporation Law, we have entered into indemnification agreements with our directors and executive officers. These agreements, among other things, require us to indemnify each director and officer to the fullest extent permitted by law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

At present, there is no pending litigation or proceeding involving any of our directors or executive officers as to which indemnification is required or permitted.

We have an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act or otherwise.

Insofar as the forgoing provisions permit indemnification of directors, executive officers, or persons controlling us for liability arising under the Securities Act, we have been informed that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
1.1*	Form of Underwriting Agreement.				
1.2	Open Market Sale AgreementSM, dated August 11, 2021, by and between OptiNose, Inc. and Jefferies LLC.	10-Q	8/11/2021	10.1	
3.1	Fourth Amended and Restated Certificate of Incorporation of OptiNose, Inc.	8-K	10/18/2017	3.1	
3.2	Certificate Of Amendment of Fourth Amended and Restated Certificate of Incorporation of OptiNose, Inc.	10-Q	8/10/2023	3.3	
3.3	Amended and Restated Bylaws of OptiNose, Inc.	8-K	10/18/2017	3.2	
4.1	Form of Common Stock Certificate.	S-1/A	10/3/2017	4.1	
4.2	Second Amended and Restated Registration Rights Agreement, dated March 24, 2017, by and among the Registrant and certain of its stockholders.	S-1	9/18/2017	4.2	
4.3	First Amendment to the Second Amended and Restated Registration Rights Agreement, dated October 2, 2017, by and among the Registrant and certain of its stockholders.	S-1/A	10/11/2017	4.7	
4.4	Common Stock Warrant issued by OptiNose, Inc. dated November 16, 2021	8-K	11/16/2021	4.1	
4.5	Form of Common Stock Warrant issued by OptiNose, Inc. on November 23, 2022	8-K	11/23/2022	4.1	
4.6	Warrant Agency Agreement, dated November 23, 2022, by and between OptiNose, Inc. and Broadridge Corporate Issuer Solutions, Inc.	8-K	11/23/2022	4.2	
4.7*	Specimen Stock Certificate evidencing shares of preferred stock				
4.8*	Form of Common Stock Warrant Agreement and Warrant Certificate				
4.9*	Form of Preferred Stock Warrant Agreement and Warrant Certificate				
4.10*	Form of Debt Securities Warrant Agreement and Warrant Certificate				
4.11	Amended and Restated Note Purchase Agreement dated November 21, 2022, among OptiNose US, Inc., OptiNose, Inc. and OptiNose AS, BioPharma Credit PLC, as collateral agent, and the purchasers from time to time party thereto.	8-K	11/21/2022	10.1	
4.12	Form of Indenture				x
5.1	Opinion of Hogan Lovells US LLP relating to the base prospectus and ATM prospectus.				x
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm.				x
23.2	Consent of Hogan Lovells US LLP (included in Exhibit 5.1).				x
24.1	Power of attorney (included in signature pages hereto).				x
25.1**	Form T-1 Statement of Eligibility and Qualification under the Trust Indenture Act of 1939 of Trustee for Form of Indenture.				
107	Filing Fee Table				x

* To be filed, if necessary, subsequent to the effectiveness of this registration statement by an amendment to this registration statement or incorporated by reference pursuant to a Current Report on Form 8-K in connection with an offering of securities.

** To be filed in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939 and Rule 5b-3 thereunder.

Item 17. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i), (ii) and (iii) do not apply if the registration statement is on Form S-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;

(5) That, for the purpose of determining liability under the Securities Act to any purchaser:

- (i) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no

statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; and

- (6) That, for the purpose of determining liability of the Registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.
- (j) If and when applicable, the undersigned Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b)(2) of the Act.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant, OptiNose, Inc., certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Borough of Yardley, Commonwealth of Pennsylvania, on this 10th day of August, 2023.

OPTINOSE, INC.

By: /s/ Ramy Mahmoud

Name: Ramy Mahmoud

Title: *Chief Executive Officer*

POWER OF ATTORNEY

We, the undersigned officers and directors of OptiNose, Inc., hereby severally constitute and appoint Ramy Mahmoud and Anthony Krick, and all or any one of them, our true and lawful attorneys-in-fact and agents, with full power of substitution and re-substitution in for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and any subsequent registration statements pursuant to Rule 462 of the Securities Act, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Ramy Mahmoud</u> Ramy Mahmoud	Chief Executive Officer and Director (Principal Executive Officer)	August 10, 2023
<u>/s/ Anthony Krick</u> Anthony Krick	Chief Accounting Officer (Principal Financial Officer and Principal Accounting Officer)	August 10, 2023
<u>/s/ R. John Fletcher</u> R. John Fletcher	Chairman of the Board of Directors	August 10, 2023
<u>/s/ Eric Bednarski</u> Eric Bednarski	Director	August 10, 2023
<u>/s/ Kyle Dempsey</u> Kyle Dempsey	Director	August 10, 2023
<u>/s/ Catherine E. Owen</u> Catherine E. Owen	Director	August 10, 2023
<u>/s/ Tomas J. Heyman</u> Tomas J. Heyman	Director	August 10, 2023
<u>/s/ Wilhelmus Groenhuysen</u> Wilhelmus Groenhuysen	Director	August 10, 2023
<u>/s/ Sandra L. Helton</u> Sandra L. Helton	Director	August 10, 2023

Calculation of Filing Fee Table

Form S-3
(Form Type)

OptiNose, Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title ⁽¹⁾	Fee Calculation Rule	Amount Registered ⁽²⁾	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee ⁽⁵⁾
Equity	Common Stock, par value \$0.001 per share	457(o)	(3)	(4)	—	0.0001102	—
Equity	Preferred Stock, par value \$0.001 per share	457(o)	(3)	(4)	—	0.0001102	—
Other	Warrants	457(o)	(3)	(4)	—	0.0001102	—
Debt	Debt Securities	457(o)	(3)	(4)	—	0.0001102	—
Other	Units	457(o)	(3)	(4)	—	0.0001102	—
Unallocated (Universal) Shelf	Unallocated (Universal) Shelf	457(o)	(3)	(4)	\$200,000,000 ⁽³⁾	0.0001102	\$22,040
Total Offering Amount					\$200,000,000 ⁽³⁾		\$22,040
Total Fees Previously Paid							—
Total Fee Offsets							—
Net Fee Due							\$22,040

- (1) The securities covered by this registration statement to be sold by OptiNose, Inc., or the Registrant, may be sold separately or in any combination with other securities registered under this registration statement.
- (2) Pursuant to Rule 416 under the Securities Act of 1933, as amended, or the Securities Act, the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.
- (3) The securities being registered consist of such indeterminate number of shares of common stock and preferred stock, such indeterminate number of warrants to purchase common stock, preferred stock or debt securities, such indeterminate number of units, and such indeterminate principal amount of debt securities, as may be determined from time to time at indeterminate prices. The securities being registered also include such indeterminate number of shares of common stock and preferred stock and such indeterminate principal amount of debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange, upon exercise of warrants or pursuant to the anti-dilution provisions of any such securities. In no event will the aggregate maximum offering price of all securities being registered pursuant to this registration statement exceed \$200,000,000, or, if any debt securities are issued at an original issue discount, such greater amount as will result in an aggregate initial offering price of \$200,000,000, less the aggregate dollar amount of all securities previously issued hereunder.
- (4) The proposed maximum offering price per security and the proposed maximum aggregate offering price per class of security will be determined from time to time by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder and is not specified as to each class of security pursuant to General Instruction II.D. of Form S-3 under the Securities Act.
- (5) Calculated pursuant to Rule 457(o) under the Securities Act based on the proposed maximum aggregate offering price of all securities listed.

OPTINOSE, INC.

and

as Trustee

INDENTURE

Dated as of _____ ,

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INDENTURE, dated as of _____, by and between OptiNose, Inc., a Delaware corporation, as Issuer (the “**Company**”), and _____, a _____, organized under the laws of _____, as Trustee (the “**Trustee**”).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the “**Securities**”), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors or by supplemental indenture.

All things necessary to make this Indenture a valid agreement of the Company in accordance with its terms have been done, and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

NOW, THEREFORE, THIS INDENTURE WITNESSETH: For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of a Series thereof, as follows:

ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE

1.1 Definitions.

“**Affiliate**” of any specified Person means any other Person which, directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, such specified Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Agent**” means any Registrar, Paying Agent, co-registrar or agent for service of notices and demands. “**Board of Directors**” means the Board of Directors of the Company or any committee duly authorized to act therefor.

“**Board Resolution**” means a copy of a resolution certified pursuant to an Officers’ Certificate to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification which has been delivered to the Trustee.

“**Capital Stock**” means, with respect to any Person, any and all shares or other equivalents (however designated) of capital stock, partnership interests or any other participation, right or other interest in the nature of an equity interest in such Person or any option, warrant or other security convertible into any of the foregoing.

“**Company**” means the party named as such in the first paragraph of this Indenture until a successor replaces such party pursuant to ARTICLE 5 of this Indenture, and thereafter means the successor and any other primary obligor on the Securities.

“**Company Order**” means a written order signed in the name of the Company by two of the Company’s executive Officers, one of whom must be its Chief Executive Officer or its Chief Financial Officer.

“**Company Request**” means any written request signed in the name of the Company by its Chief Executive Officer, its President, any Vice President, its Chief Financial Officer or its Treasurer and attested to by its Secretary or any Assistant Secretary.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered.

“**Default**” means any event that is, or that with the passing of time or giving of notice or both would be, an Event of Default.

“**Depository**” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean each Person who is then a Depository hereunder, and if at any time there is more than one such Person, such Persons.

“**Dollars**” means the currency of the United States of America.

“**Euro**” means the single currency of participating member states of the economic and monetary union as contemplated in the Treaty on European Union.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Foreign Currency**” means any currency or currency unit issued by a government other than the government of the United States of America.

“**Foreign Government Obligations**” means, with respect to Securities that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, such government, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) and (ii), are not callable or redeemable at the option of the issuer thereof.

“**GAAP**” means generally accepted accounting principles consistently applied as in effect in the United States of America from time to time.

“**Global Security**” or “Global Securities” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2, evidencing all or part of a Series of Securities

issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee, and bearing the legend set forth in Section 2.15(c) (or such other legend(s) as may be applied to such Securities in accordance with Section 2.2(24)).

“**Holder**” or “**Securityholder**” means the Person in whose name a Security is registered on the Registrar’s books.

“**Indebtedness**” means (without duplication), with respect to any Person, any indebtedness at any time outstanding, secured or unsecured, contingent or otherwise, which is for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, debentures or similar instruments, or representing the balance deferred and unpaid of the purchase price of any property (excluding any balances that constitute accounts payable or trade payables, and other accrued liabilities arising in the ordinary course of business), if and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP.

“**Indenture**” means this Indenture as amended, restated or supplemented from time to time.

“**Interest Payment Date**” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“**Lien**” means, with respect to any property or assets of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or assets (including, without limitation, any capitalized lease obligation, conditional sales or other title retention agreement having substantially the same economic effect as any of the foregoing).

“**Maturity**” when used with respect to any Security, means the date on which the principal of such Security, or an installment of principal, becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, notice of option to elect payment or otherwise.

“**Officer**” means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer or the Secretary of the Company, or any other officer designated by the Board of Directors, as the case may be.

“**Officers’ Certificate**” means, with respect to any Person, a certificate signed by the Chairman, Chief Executive Officer, President or any Senior or Executive Vice President and the Chief Financial Officer or any Treasurer of such Person, that shall comply with applicable provisions of this Indenture.

“**Opinion of Counsel**” means a written opinion from legal counsel, which counsel is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

“**Person**” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government (including any agency or political subdivision thereof).

“**Redemption Date**,” when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

“**Responsible Officer**,” when used with respect to the Trustee, means any officer within the corporate trust department or division of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“**SEC**” means the United States Securities and Exchange Commission as constituted from time to time, or any successor performing substantially the same functions.

“**Securities**” means the securities that are issued under this Indenture, as amended or supplemented from time to time pursuant to this Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Series**” or “**Series of Securities**” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2.

“**Significant Subsidiary**” means (i) any direct or indirect Subsidiary of the Company that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof, or (ii) any group of direct or indirect Subsidiaries of the Company that, taken together as a group, would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

“**Stated Maturity**” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security, or such installment of principal or interest, is due and payable, and when used with respect to any other Indebtedness, means the date specified in the instrument governing such Indebtedness as the fixed date on which the principal of such Indebtedness, or any installment of interest thereon, is due and payable.

“**Subsidiary**” of any specified Person means any corporation, limited liability company, partnership, joint venture, association or other business entity, whether now existing or hereafter organized or acquired, (i) in the case of a corporation, of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is held, directly or indirectly, by such Person or any of its Subsidiaries; or (ii) in the case of a partnership, joint venture, association or other business entity, with respect to which such Person or any of its Subsidiaries has the power to direct or cause the direction of the management and policies of such entity by contract or otherwise, or if

in accordance with GAAP such entity is consolidated with such Person for financial statement purposes.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb) as in effect on the date of this Indenture (except as provided in [Section 8.3](#)).

“Trustee” means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture, and thereafter means the successor, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean **the Trustee with respect to Securities of that Series**.

“U.S. Government Obligations” means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

1.2 [Other Definitions](#)

The definitions of the following terms may be found in the sections indicated as follows:

	DEFINED IN SECTION
TERM	
“Bankruptcy Law”	6.1
“Business Day”	10.7
“Covenant Defeasance”	9.3
“Custodian”	6.1
“Event of Default”	6.1
“Journal”	10.15
“Judgment Currency”	10.16
“Legal Defeasance	9.2
“Legal Holiday”	10.7
“Market Exchange Rate”	10.15
“New York Paying Agent”	2.4
“Paying Agent”	2.4
“Place of Payment”	10.7
“Registrar”	2.4
“Required Currency”	10.16
“Service Agent”	2.4

1.3 [Incorporation by Reference of Trust Indenture Act](#)

Whenever this Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for this Indenture to be qualified under the TIA is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“**indenture securities**” means the Securities.

“**indenture securityholder**” means a Holder or Securityholder. “**indenture to be qualified**” means this Indenture.

“**indenture trustee**” or “**institutional trustee**” means the Trustee.

“**obligor on the indenture securities**” means the Company.

All other terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by SEC rule have the meanings therein assigned to them.

1.4 Rules of Construction

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein, whether defined expressly or by reference;
- (2) with GAAP; an accounting term not otherwise defined has the meaning assigned to it in accordance
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) words used herein implying any gender shall apply to each gender; and
- (6) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2 THE SECURITIES

2.1 Issuable in Series

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is \$. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers’ Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers’ Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, Stated Maturity, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, PROVIDED, that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

2.2 Establishment of Terms of Series of Securities

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2(1) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2(2) through 2.2(24)) by a Board Resolution, a supplemental indenture or an Officers' Certificate, in each case, pursuant to authority granted under a Board Resolution:

- (1) the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- (2) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Sections 2.7, 2.8, 2.11, 3.6 or 8.5);
- (3) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;
- (4) the date or dates on which the principal of the Securities of the Series is payable;
- (5) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any Interest Payment Date;
- (6) the place or places where the principal of, and interest and premium, if any, on, the Securities of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means;
- (7) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;
- (8) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (9) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof, and other detailed terms and provisions of such repurchase obligations;
- (10) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

- (11) the forms of the Securities of the Series in bearer (if to be issued outside of the United States of America) or fully registered form (and, if in fully registered form, whether the Securities will be issuable as Global Securities);
- (12) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.2;
- (13) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, including, but not limited to, the Euro, and, if such currency of denomination is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency;
- (14) the designation of the currency, currencies or currency units in which payment of the principal of, and interest and premium, if any, on, the Securities of the Series will be made;
- (15) if payments of principal of, or interest or premium, if any, on, the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;
- (16) the manner in which the amounts of payment of principal of, or interest and premium, if any, on, the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;
- (17) the provisions, if any, relating to any collateral provided for the Securities of the Series;
- (18) any addition to or change in the covenants set forth in Articles 4 or 5 that applies to Securities of the Series;
- (19) any addition to or change in the Events of Default which applies to any Securities of the Series, and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;
- (20) the terms and conditions, if any, for conversion of the Securities into or exchange of the Securities for shares of common stock or preferred stock of the Company that apply to Securities of the Series;
- (21) any depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;
- (22) the terms and conditions, if any, upon which the Securities shall be subordinated in right of payment to other Indebtedness of the Company;

(23) if applicable, that the Securities of the Series, in whole or any specified part, shall be defeasible pursuant to ARTICLE 9; and

(24) any other terms of the Securities of the Series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 8.1, but which may modify or delete any provision of this Indenture insofar as it applies to such Series).

All Securities of any one Series need not be issued at the same time, and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officers' Certificate referred to above, however, the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution, supplemental indenture or Officers' Certificate.

2.3 Execution and Authentication

The Securities shall be executed on behalf of the Company by two Officers of the Company or an Officer and an Assistant Secretary of the Company. Each such signature may be either manual or facsimile. The Company's seal may be impressed, affixed, imprinted or reproduced on the Securities and may be in facsimile form.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture. The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Each Security shall be dated the date of its authentication.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.1) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of any Series: (a) if the Trustee, being advised in writing by outside counsel, determines that such

action may not lawfully be taken; or (b) if the Trustee in good faith by its board of directors or trustees, executive committee or a trust committee of directors and/or vice-presidents shall reasonably determine that such action would expose the Trustee to personal liability, or cause it to have a conflict of interest with respect to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Any appointment shall be evidenced by an instrument signed by an authorized officer of the Trustee, a copy of which shall be furnished to the Company. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

2.4 Registrar and Paying Agent

The Company shall maintain in each Place of Payment for any Series of Securities (i) an office or agency where such Securities may be presented for registration of transfer or for exchange (“**Registrar**”), (ii) an office or agency where such Securities may be presented for payment (“**Paying Agent**”) (PROVIDED that the Company shall at all times maintain a Paying Agent in the Borough of Manhattan, City of New York, State of New York (the “**New York Paying Agent**”), and PROVIDED, FURTHER, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the register for the Securities maintained by the Registrar), and (iii) an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served (“**Service Agent**”). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office, or to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee as set forth in Section 10.2. If the Company acts as Paying Agent, it shall segregate the money held by it for the payment of principal of, and interest and premium, if any, on, the Securities and hold it as a separate trust fund. The Company may change any Paying Agent, Registrar, co-registrar or any other Agent without notice to any Securityholder.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; PROVIDED, HOWEVER, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any Series for such purposes. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company. The Company shall give prompt written notice to the Trustee of such designation or rescission, and of any change in the location of any such other office or agency.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and

address of any such Agent. If the Company fails to maintain a Registrar or Paying Agent, or agent for service of notices and demands, or fails to give the foregoing notice, the Trustee shall act as such. The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Service Agent for each Series unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued. The Company designates , as the New York Paying Agent, with offices at .

2.5 Paying Agent to Hold Assets in Trust

The Trustee as Paying Agent shall, and the Company shall require each Paying Agent other than the Trustee to agree in writing that each Paying Agent shall, hold in trust for the benefit of the Holders of any Series of Securities or the Trustee all assets held by the Paying Agent for the payment of principal of, or interest or premium, if any, on, such Series of Securities (whether such assets have been distributed to it by the Company or any other obligor on such Series of Securities), and the Company and the Paying Agent shall notify the Trustee in writing of any Default by the Company (or any other obligor on such Series of Securities) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed, and the Trustee may, at any time during the continuance of any payment default with respect to any Series of Securities, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company to the Paying Agent, the Paying Agent shall have no further liability for such assets.

2.6 Securityholder Lists

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities. If the Trustee is not the Registrar, the Company shall furnish to the Trustee as of each regular record date for the payment of interest on the Securities of a Series and before each related Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders of each Series of Securities.

2.7 Transfer and Exchange

When Securities of a Series are presented to the Registrar with a request to register the transfer thereof, the Registrar shall register the transfer as requested if the requirements of applicable law are met, and when such Securities of a Series are presented to the Registrar with a request to exchange them for an equal principal amount of other authorized denominations of Securities of the same Series, the Registrar shall make the exchange as requested. To permit transfers and exchanges, upon surrender of any Security for registration of transfer at the office or agency maintained pursuant to Section 2.4, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request.

If Securities are issued as Global Securities, the provisions of Section 2.15 shall apply.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar or a co-registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar or a co-registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

Any exchange or transfer shall be without charge, except that the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to a transfer or exchange, but this provision shall not apply to any exchange pursuant to Section 2.11, 3.6 or 8.5. The Trustee shall not be required to register transfers of Securities of any Series, or to exchange Securities of any Series, for a period of 15 days before the record date for selection for redemption of such Securities. The Trustee shall not be required to exchange or register transfers of Securities of any Series called or being called for redemption in whole or in part, except the unredeemed portion of such Security being redeemed in part.

2.8 Replacement Securities

If a mutilated Security is surrendered to the Trustee, or if the Holder of a Security presents evidence to the satisfaction of the Company and the Trustee that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. An indemnity bond may be required by the Company or the Trustee that is sufficient in the reasonable judgment of the Company or the Trustee, as the case may be, to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Company may charge such Holder for the Company's out-of-pocket expenses in replacing a Security, including the fees and expenses of the Trustee. Every replacement Security shall constitute an original additional obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

2.9 Outstanding Securities

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.9 as not outstanding.

If a Security is replaced pursuant to Section 2.8 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding until the Company and the Trustee receive proof satisfactory to each of them that the replaced Security is held by a bona fide purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.8.

If a Paying Agent holds on a Redemption Date or the Stated Maturity money sufficient to pay the principal of, premium, if any, and accrued interest on, Securities payable on that date, and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture (PROVIDED, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made), then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding solely because the Company or an Affiliate holds the Security.

2.10 When Treasury Securities Disregarded; Determination Of Holders Action

In determining whether the Holders of the required aggregate principal amount of the Securities of any Series have concurred in any direction, waiver or consent, the Securities of any Series owned by the Company or any other obligor on such Securities, or by any Affiliate of any of them, shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities of such Series which the Trustee actually knows are so owned shall be so disregarded. Securities of such Series so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities of such Series and that the pledgee is not the Company or any other obligor on the Securities of such Series, or an Affiliate of any of them.

2.11 Temporary Securities

Until definitive Securities are ready for delivery, the Company may prepare and execute, and the Trustee shall authenticate, temporary Securities. Temporary Securities shall be substantially in the form, and shall carry all rights, of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and execute, and the Trustee shall authenticate, definitive Securities in exchange for temporary Securities without charge to the Holder.

2.12 Cancellation

All Securities surrendered for payment, redemption or registration of transfer or exchange, or for credit against any sinking fund payment, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent, and no one else, shall cancel, and at the written request of the Company shall dispose of, all Securities surrendered for transfer, exchange, payment or cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption

or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.12. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.12, except as expressly permitted by this Indenture.

2.13 Payment of Interest; Defaulted Interest; Computation of Interest

Except as otherwise provided as contemplated by Section 2.2 with respect to any Series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the regular record date for such interest, as provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the terms of such Series.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted amounts, plus any interest payable on defaulted amounts pursuant to Section 4.1, to the Persons who are Securityholders on a subsequent special record date, which date shall be the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, or the next succeeding Business Day if such date is not a Business Day. At least 15 days before the special record date, the Company shall mail or cause to be mailed to each Securityholder, with a copy to the Trustee, a notice that states the special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

Except as otherwise specified as contemplated by Section 2.2 for Securities of any Series, interest on the Securities of each Series shall be computed on the basis of a 360-day year of twelve 30-day months.

2.14 Cusip Number

The Company in issuing the Securities may use one or more "**CUSIP**" numbers, and, if the Company does so, the Trustee shall use the CUSIP number(s) in notices of redemption or exchange as a convenience to Holders, PROVIDED, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number(s) printed in the notice or on the Securities, and that reliance may be placed only on the other identification numbers printed on the Securities, and that any such redemption or exchange shall not be affected by any defect in or omission of any such numbers.

2.15 Provisions for Global Securities

(a) A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities, and the Depository for such Global Securities or Securities.

(b) Notwithstanding any provisions to the contrary contained in Section 2.7 and in addition thereto, if, and only if the Depository (i) at any time is unwilling or unable to continue as Depository for such Global Security or ceases to be a clearing agency registered under the Exchange Act and (ii) a successor Depository is not appointed by the Company within

90 days after the date the Company is so informed in writing or becomes aware of the same, the Company promptly will execute and deliver to the Trustee definitive Securities, and the Trustee, upon receipt of a Company Request for the authentication and delivery of such definitive Securities (which the Company will promptly execute and deliver to the Trustee) and an Officers' Certificate to the effect that such Global Security shall be so exchangeable, will authenticate and deliver definitive Securities, without charge, registered in such names and in such authorized denominations as the Depository shall direct in writing (pursuant to instructions from its direct and indirect participants or otherwise) in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms. Upon the exchange of a Global Security for definitive Securities, such Global Security shall be canceled by the Trustee. Unless and until it is exchanged in whole or in part for definitive Securities, as provided in this Section 2.15(b), a Global Security may not be transferred except as a whole by the Depository with respect to such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

(c) Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to, and is registered in the name of the Depository or a nominee of the Depository. This Security is exchangeable for Securities registered in the name of a Person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.”

(d) The Depository, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of, and interest and premium, if any, on, any Global Security shall be made to the Depository or its nominee in its capacity as the Holder thereof.

(f) Except as provided in Section 2.15(e) above, the Company, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of any Series represented by a Global Security as shall be specified in a written statement of the Depository (which may be in the form of a participants' list for such Series) with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture, PROVIDED, that until the Trustee is so provided with a written statement, it may treat the Depository or any other Person in whose name a Global Security is registered as the owner of such Global Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Global Security and for all other purposes whatsoever, and none of

the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

2.16 Persons Deemed Owners

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Registrar or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Security and for all other purposes whatsoever, and none of the Company, the Trustee, the Registrar or any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

ARTICLE 3 REDEMPTION

3.1 Notices to Trustee

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities, or may covenant to redeem and pay the Series of Securities or any part thereof, prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities or the related Board Resolution, supplemental indenture or Officers' Certificate. If a Series of Securities is redeemable and the Company elects to redeem all or part of such Series of Securities, it shall notify the Trustee of the Redemption Date and the principal amount of Securities to be redeemed at least 45 days (unless a shorter notice shall be satisfactory to the Trustee) before the Redemption Date. Any such notice may be canceled at any time prior to notice of such redemption being mailed to any Holder, and shall thereby be void and of no effect.

3.2 Selection by Trustee of Securities to be Redeemed

Unless otherwise indicated for a particular Series of Securities by a Board Resolution, a supplemental indenture or an Officers' Certificate, if fewer than all of the Securities of a Series are to be redeemed, the Trustee shall select the Securities of a Series to be redeemed pro rata, by lot or by any other method that the Trustee considers fair and appropriate (unless the Company specifically directs the Trustee otherwise) and, if such Securities are listed on any securities exchange, by a method that complies with the requirements of such exchange.

The Trustee shall make the selection from Securities of a Series outstanding and not previously called for redemption, and shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed at least 35 but not more than 60 days before the Redemption Date. Securities of a Series in denominations of \$1,000 may be redeemed only in whole. The Trustee may select for redemption portions of the principal of Securities of a Series that have denominations larger than \$1,000. Securities of a Series and portions of them it selects shall be in amounts of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2(10), the minimum principal denomination for each Series

and integral multiples thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

3.3 Notice of Redemption

Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officers' Certificate, at least 30 days, and no more than 60 days, before a Redemption Date, the Company shall mail, or cause to be mailed, a notice of redemption by first-class mail to each Holder of Securities to be redeemed at his or her last address as the same appears on the registry books maintained by the Registrar. The notice shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the redemption price, and that such redemption price shall become due and payable on the Redemption Date;
- (3) if any Security of a Series is being redeemed in part, the portion of the principal amount of such Security of a Series to be redeemed and that, after the Redemption Date and upon surrender of such Security of a Series, a new Security or Securities in principal amount equal to the unredeemed portion will be issued;
- (4) the name and address of the Paying Agent;
- (5) that Securities of a Series called for redemption must be surrendered to the Paying Agent to collect the redemption price, and the place or places where each such Security is to be surrendered for such payment;
- (6) that, unless the Company defaults in making the redemption payment, interest on the Securities of a Series called for redemption ceases to accrue on the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;
- (7) if fewer than all of the Securities of a Series are to be redeemed, the identification of the particular Securities of a Series (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities of a Series to be redeemed and the aggregate principal amount of Securities of a Series to be outstanding after such partial redemption.
- (8) the CUSIP number, if any, printed on the Securities being redeemed; and
- (9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's sole expense.

3.4 Effect of Notice of Redemption

Once the notice of redemption described in Section 3.3 is mailed, Securities of a Series called for redemption become due and payable on the Redemption Date and at the redemption

price, plus interest, if any, accrued to the Redemption Date. Upon surrender to the Trustee or Paying Agent, such Securities of a Series shall be paid at the redemption price, plus accrued interest, if any, to the Redemption Date; PROVIDED, that if the Redemption Date is after a regular interest payment record date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date, as specified by the Company in the notice to the Trustee pursuant to Section 3.1.

3.5 Deposit of Redemption Price

On or prior to the Redemption Date (but no later than 11:00 A.M. Eastern Time on such date), the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the redemption price of, and accrued interest on, Securities called for redemption shall have been made available in accordance with the preceding paragraph and the Company and the Paying Agent are not prohibited from paying such moneys to Holders, the Securities called for redemption will cease to accrue interest and the only right of the Holders of such Securities will be to receive payment of the redemption price of and, subject to the proviso in Section 3.4, accrued and unpaid interest on such Securities to the Redemption Date. If any Security called for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Security and any interest or premium, if any, not paid on such unpaid principal, in each case, at the rate and in the manner provided in the Securities.

3.6 Securities Redeemed in Part

Upon surrender of a Security of a Series that is redeemed in part, the Company shall execute, and the Trustee shall authenticate, for a Holder a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE 4 COVENANTS

4.1 Payment of Securities

The Company shall pay the principal of, and interest and premium, if any, on, each Series of Securities on the dates and in the manner provided in such Securities and this Indenture.

An installment of principal or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay such installment and is not prohibited from paying such money to the Holders pursuant to the terms of this Indenture or otherwise.

The Company shall pay interest on overdue principal, and overdue interest, to the extent lawful, at the rate specified in the Series of Securities.

4.2 SEC REPORTS

The Company will deliver to the Trustee within 15 days after the filing of the same with the SEC, copies of the quarterly and annual reports and of the information, documents and other reports, if any, which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; PROVIDED, HOWEVER, that each such report or document will be deemed to be so delivered to the Trustee if the Company files such report or document with the SEC through the SEC's EDGAR database no later than the time such report or document is required to be filed with the SEC pursuant to the Exchange Act. Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will file with the SEC, to the extent permitted, and provide the Trustee with, such quarterly and annual reports and such information, documents and other reports specified in Sections 13 and 15(d) of the Exchange Act. The Company will also comply with the other provisions of TIA Section 314(a).

4.3 Waiver of Stay, Extension or Usury Laws

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension, usury or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, and/or interest and premium, if any, on, the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and the Company hereby expressly waives (to the extent that they may lawfully do so) all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

4.4 Compliance Certificate

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate which complies with TIA Section 314(a)(4) stating that a review of the activities of the Company and its Subsidiaries during such fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and that there is no default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, or interest or premium, if any, on, the Securities is prohibited, or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) (i) If any Default or Event of Default has occurred and is continuing or (ii) if any Holder seeks to exercise any remedy hereunder with respect to a claimed Default under this Indenture or the Securities, within five Business Days after the Company becoming aware of such occurrence the Company shall deliver to the Trustee an Officers' Certificate specifying such event, notice or other action and what action the Company is taking or proposes to take with respect thereto.

4.5 Corporate Existence

Subject to ARTICLE 5, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with the organizational documents (as the same may be amended from time to time) of the Company and the rights (charter and statutory), licenses and franchises of the Company; PROVIDED, HOWEVER, that the Company shall not be required to preserve any such right, license or franchise, or its corporate existence, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not adverse in any material respect to the Holders.

ARTICLE 5 SUCCESSOR CORPORATION

5.1 Limitation on Consolidation, Merger and Sale of Assets

(a) The Company will not, in any transaction or series of transactions, merge or consolidate with or into, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets (as an entirety or substantially as an entirety in one transaction or a series of related transactions), to any Person or Persons, unless at the time of and after giving effect thereto (i) either (A) if the transaction or series of transactions is a merger or consolidation, the Company shall be the surviving Person of such merger or consolidation, or (B) the Person formed by such consolidation or into which the Company is merged or to which the properties and assets of the Company are transferred (any such surviving Person or transferee Person being the "**Surviving Entity**") shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, or a corporation or comparable legal entity organized under the laws of a foreign jurisdiction and shall expressly assume by a supplemental indenture executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company (including, without limitation, the obligation to pay the principal of, and premium and interest, if any, on, the Securities and the performance of the other covenants) under the Securities of each Series and this Indenture, and in each case, this Indenture shall remain in full force and effect; and (ii) immediately before and immediately after giving effect to such transaction or series of transactions on a pro forma basis (including, without limitation, any Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing.

(b) In connection with any consolidation, merger or transfer of assets contemplated by this Section 5.1, the Company shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and

an Opinion of Counsel, each stating that such consolidation, merger or transfer, and the supplemental indenture in respect thereto, comply with this Section 5.1, and that all conditions precedent herein provided for relating to such transaction or transactions have been complied with.

5.2 Successor Person Substituted

Upon any consolidation, merger or transfer of all or substantially all of the assets of the Company in accordance with Section 5.1 above, the successor corporation formed by such consolidation, or into which the Company is merged or to which such transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter (except with respect to any such transfer which is a lease) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 6 DEFAULTS AND REMEDIES

6.1 Events of Default

“**Events of Default**,” wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers’ Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

- (1) there is a default in the payment of any principal of, or premium, if any, on, the Securities when the same becomes due and payable at Maturity, upon acceleration, redemption or otherwise;
- (2) there is a default in the payment of any interest on any Security of a Series when the same becomes due and payable, and the Default continues for a period of 30 days;
- (3) the Company defaults in the observance or performance of any other covenant in the Securities of a Series or in this Indenture for 60 days after written notice from the Trustee or the Holders of not less than 25% in the aggregate principal amount of the Securities of such Series then outstanding, which notice must specify the Default, demand that it be remedied and state that the notice is a “**Notice of Default**”;
- (4) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (A) commences a voluntary case,
 - (B) consents to the entry of an order for relief against it in an involuntary case,
 - (C) consents to the appointment of a Custodian of it or for all or substantially all of its property,

- (D) makes a general assignment for the benefit of its creditors, or
 - (E) generally is not paying its debts as they become due;
- (5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (A) is for relief against the Company or any Significant Subsidiary in an involuntary case;
 - (B) appoints a Custodian of the Company or any Significant Subsidiary, or for all or substantially all of the property of the Company or any Significant Subsidiary; or
 - (C) orders the liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 consecutive days; or
- (6) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.2(19).

The term "**Bankruptcy Law**" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors. The term "**Custodian**" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee may withhold notice of any Default (except in the payment of the principal of, or interest or premium, if any, on, the Securities) to the Holders of the Securities of any Series in accordance with Section 7.5. When a Default is cured, it ceases to exist.

6.2 Acceleration

If an Event of Default with respect to Securities of any Series at the time outstanding (other than an Event of Default arising under Section 6.1(4) or 6.1(5)) occurs and is continuing, the Trustee by written notice to the Company, or the Holders of not less than 25% in aggregate principal amount of the Securities of that Series then outstanding by written notice to the Company and the Trustee, may declare that the entire principal amount of all the Securities of that Series then outstanding plus accrued and unpaid interest to the date of acceleration are immediately due and payable, in which case such amounts shall become immediately due and payable; PROVIDED, HOWEVER, that after such acceleration but before a judgment or decree based on such acceleration is obtained by the Trustee, the Holders of a majority in aggregate principal amount of the outstanding Securities of that Series may rescind and annul such acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of accelerated principal, interest or premium, if any, that has become due solely because of the acceleration, have been cured or waived, (ii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid and (iii) the rescission would not conflict with any judgment or decree. No such rescission shall affect any subsequent Default or impair any right consequent thereto. In case an Event of Default specified in Section 6.1(4) or

6.1(5) with respect to the Company occurs, such principal, premium, if any, and interest amount with respect to all of the Securities of that Series shall be due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Securities of that Series.

6.3 Remedies

If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of, or interest and premium, if any, on, the Securities of that Series, or to enforce the performance of any provision of the Securities of that Series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities of that Series or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

6.4 Waiver of Past Defaults and Events of Default

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding have the right to waive any existing Default or Event of Default with respect to such Series or compliance with any provision of this Indenture (with respect to such Series) or the Securities of such Series. Upon any such waiver, such Default with respect to such Series shall cease to exist, and any Event of Default with respect to such Series arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto. This Section 6.4 shall be in lieu of TIA Section 316(a)(1)(B), and TIA Section 316(a)(1)(B) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

6.5 Control by Majority

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee by this Indenture with respect to such Series. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture, or that the Trustee determines may be unduly prejudicial to the rights of another Securityholder, or that may involve the Trustee in personal liability; PROVIDED, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 6.5 shall be in lieu of TIA Section 316(a)(1)(A), and TIA Section 316(a)(1)(A) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

6.6 Limitation on Suits

Subject to Section 6.7, a Securityholder may not institute any proceeding or pursue any remedy with respect to this Indenture or the Securities of a Series unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to the Securities of that Series;
- (2) the Holders of at least 25% in aggregate principal amount of the Securities of such Series then outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to be incurred in compliance with such request;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities of such Series then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder, or to obtain a preference or priority over another Securityholder.

6.7 Rights of Holders to Receive Payment

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security of a Series to receive payment of the principal of, and interest and premium, if any, on, the Security of such Series on or after the respective due dates expressed in the Security of such Series, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional, and shall not be impaired or affected without the consent of the Holder.

6.8 Collection Suit by Trustee

If an Event of Default in payment of principal, interest or premium, if any, specified in Section 6.1(1) or 6.1(2) with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company (or any other obligor on the Securities of that Series) for the whole amount of unpaid principal and premium, if any, and accrued interest remaining unpaid, together with interest on overdue principal and premium, if any, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate then borne by the Securities of that Series, and such further amounts as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as set forth in Section 7.7.

6.9 Trustee May File Proofs of Claim

The Trustee may file such proofs of claim and other papers or documents, and take other actions (including sitting on a committee of creditors), as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), any of their respective creditors or any of their respective property, and the Trustee shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings, and any custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or accept or adopt on behalf of any Securityholder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities of a Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceedings.

6.10 Priorities

If the Trustee collects any money pursuant to this ARTICLE 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts then due and unpaid for the principal of, and interest and premium, if any, on, the Securities in respect of which, or for the benefit of which, such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities; for principal and any premium and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder a notice that states the record date, the payment date and amount to be paid.

6.11 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit,

and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of the Securities of a Series then outstanding.

ARTICLE 7 TRUSTEE

7.1 Duties of Trustee

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the same circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture, and no covenants or obligations shall be implied in this Indenture against the Trustee.

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(3) This paragraph does not limit the effect of paragraph (b) of this Section 7.1.

(4) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(5) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Sections 6.2 and 6.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds, or otherwise incur any financial liability, in the performance of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, paragraphs (a), (b), (c) and (d) of this Section 7.1 shall govern every provision of this Indenture that in any way relates to the Trustee.

(f) The Trustee and Paying Agent shall not be liable for interest on any money received by either of them, except as the Trustee and Paying Agent may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

(g) The Paying Agent, the Registrar and any authenticating agent shall be entitled to the protections, immunities and standard of care set forth in paragraphs (a), (b), (c), (d) and (f) of this Sections 7.1 and in 7.2 with respect to the Trustee.

7.2 Rights of Trustee

(a) Subject to Section 7.1:

(1) The Trustee may rely on, and shall be protected in acting or refraining from acting upon, any document reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 10.5. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(3) The Trustee may act through agents and attorneys, and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(5) The Trustee may consult with counsel reasonably acceptable to the Trustee, which may be counsel to the Company, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

(7) The Trustee shall not be deemed to have knowledge of any fact or matter (including, without limitation, a Default or Event of Default) unless such fact or matter is known to a Responsible Officer of the Trustee.

(8) Unless otherwise expressly provided herein or in the Securities of a Series or the related Board Resolution, supplemental indenture or Officers' Certificate, the Trustee shall not have any responsibility with respect to reports, notices, certificates or other documents filed with it hereunder, except to make them available for inspection, at reasonable times, by Securityholders, it being understood that delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (except as set forth in Section 4.4).

7.3 Individual Rights Of Trustee

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities, and may make loans to, accept deposits from, perform services for or otherwise deal with the Company, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.10 and 7.11.

7.4 Trustee's Disclaimer

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities (except that the Trustee represents that it is duly authorized to execute and deliver this Indenture and authenticate the Securities and perform its obligations hereunder), and the Trustee shall not be accountable for the Company's use of the proceeds from the sale of Securities or any money paid to the Company pursuant to the terms of this Indenture, and the Trustee shall not be responsible for any statement in the Securities other than its certificates of authentication.

7.5 Notice of Default

If a Default or an Event of Default occurs and is continuing with respect to the Securities of any Series, and if it is known to the Trustee, the Trustee shall mail to each Securityholder of the Securities of that Series notice of the Default or the Event of Default, as the case may be, within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default (except if such Default or Event of Default has been validly cured or waived before the giving of such notice). Except in the case of a Default or an Event of Default in payment of the principal of, or interest or premium, if any, on, any Security of any Series, the Trustee may withhold the notice if and so long as the Board of Directors of the Trustee, the executive committee or any trust committee of such board and/or its Responsible Officers in good faith determine(s) that withholding the notice is in the interests of the Securityholders of that Series.

7.6 Reports by Trustee to Holders

If and to the extent required by the TIA, within 60 days after April 1 of each year, commencing the April 1 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such April 1 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Sections 313(b) and 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and any stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when the Securities of any Series are listed on any stock exchange or any delisting thereof, and the Trustee shall comply with TIA Section 313(d).

7.7 Compensation and Indemnity

The Company shall pay to the Trustee from time to time reasonable compensation for its services. The Trustee's compensation shall not be limited by any provision of law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee within 45 days after receipt of request for all reasonable out-of-pocket disbursements and expenses incurred or made by it in connection with its duties under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee for, and hold it harmless against, any and all loss or liability incurred by it in connection with the acceptance or performance of its duties under this Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity.

The failure by the Trustee to so notify the Company shall not however relieve the Company of its obligations. Notwithstanding the foregoing, the Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by the Trustee through its negligence or bad faith. To secure the payment obligations of the Company in this Section 7.7, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee except such money or property held in trust to pay the principal of, interest and premium, if any, on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(4) or 6.1(5) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.7, the term "**Trustee**" shall include any trustee appointed pursuant to this ARTICLE 7.

7.8 Replacement of Trustee

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company in writing at least 90 days in advance of such resignation.

The Holders of a majority in principal amount of the outstanding Securities of any Series may remove the Trustee with respect to that Series by notifying the removed Trustee in writing and may appoint a successor Trustee with respect to that Series with the consent of the Company,

which consent shall not be unreasonably withheld. The Company may remove the Trustee with respect to that Series at its election if:

- (1) the Trustee fails to comply with, or ceases to be eligible under, Section 7.10;
 - (2) the Trustee is adjudged a bankrupt or an insolvent, or an order for relief is entered with respect to the Trustee, under any Bankruptcy Law;
 - (3) a Custodian or other public officer takes charge of the Trustee or its property; or
 - (4) the Trustee otherwise becomes incapable of acting.
- (5) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee, with respect to any Series of Securities for any reason, the Company shall promptly appoint, by Board Resolution, a successor Trustee.

If a successor Trustee with respect to the Securities of one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the outstanding Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee with respect to the Securities of one or more Series fails to comply with Section 7.10, any Securityholder of the applicable Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately following such delivery, (i) the retiring Trustee with respect to one or more Series shall, subject to its rights under Section 7.7, transfer all property held by it as Trustee with respect to such Series to the successor Trustee, (ii) the resignation or removal of the retiring Trustee shall become effective and (iii) the successor Trustee with respect to such Series shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee with respect to the Securities of one or more Series shall mail notice of its succession to each Securityholder of such Series.

7.9 Successor Trustee by Consolidation, Merger or Conversion

If the Trustee, or any Agent, consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another corporation, subject to Section 7.10, the successor corporation without any further act shall be the successor Trustee or Agent, as the case may be.

7.10 Eligibility; Disqualification

This Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a)(1), (2) and (5) in every respect. The Trustee (or in the case of a Trustee that is a Person included in a bank holding company system, the related bank holding company) shall

have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA Section 310(b), including the provision in Section 310(b)(1). In addition, if the Trustee is a Person included in a bank holding company system, the Trustee, independently of such bank holding company, shall meet the capital requirements of TIA Section 310(a)(2). If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.10, it shall resign immediately in the manner and with the effect specified in this ARTICLE 7.

7.11 Preferential Collection of Claims Against Company

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

7.12 Paying Agents

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.12:

(1) that it will hold all sums held by it as agent for the payment of the principal of, or interest or premium, if any, on, the Securities (whether such sums have been paid to it by the Company or by any obligor on the Securities) in trust for the benefit of Holders of the Securities or the Trustee;

(2) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and

(3) that it will give the Trustee written notice within three Business Days after any failure of the Company (or by any obligor on the Securities) in the payment of any installment of the principal of, or interest or premium, if any, on, the Securities when the same shall be due and payable.

ARTICLE 8 AMENDMENTS, SUPPLEMENTS AND WAIVERS

8.1 Without Consent of Holders

The Company, when authorized by a Board Resolution, and the Trustee may amend or supplement this Indenture or the Securities of one or more Series without notice to or consent of any Securityholder:

- (1) to comply with Section 5.1;
- (2) to provide for certificated Securities in addition to uncertificated Securities;
- (3) to comply with any requirements of the SEC under the TIA;

(4) to cure any ambiguity, defect or inconsistency, or to make any other change herein or in the Securities that does not materially and adversely affect the rights of any Securityholder;

(5) to provide for the issuance of, and establish the form and terms and conditions of, Securities of any Series as permitted by this Indenture; or

(6) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series, and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee.

The Trustee is hereby authorized to join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture, and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects its own rights, duties or immunities under this Indenture.

8.2 With Consent of Holders

(a) The Company, when authorized by a Board Resolution, and the Trustee may amend or supplement this Indenture or the Securities of one or more Series with the written consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Securities of such Series affected by such amendment or supplement without notice to any Securityholder. The Holders of not less than a majority in aggregate principal amount of the outstanding Securities of each such Series affected by such amendment or supplement may waive compliance by the Company in a particular instance with any provision of this Indenture or the Securities of such Series without notice to any Securityholder. Subject to Section 8.4, without the consent of each Securityholder affected, however, an amendment, supplement or waiver may not:

(1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver to this Indenture or the Securities;

(2) reduce the rate of, or change the time for payment of, interest on any Security;

(3) reduce the principal, or change the Stated Maturity, of any Security, or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;

(4) make any Security payable in money other than that stated in the Security;

(5) change the amount or time of any payment required by the Securities, or reduce the premium payable upon any redemption of the Securities, or change the time before which no such redemption may be made;

(6) waive a Default or Event of Default in the payment of the principal of, or interest or premium, if any, on, any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);

(7) waive a redemption payment with respect to any Security, or change any of the provisions with respect to the redemption of any Securities;

(8) make any changes in Section 6.6 or this Section 8.2, except to increase any percentage of Securities the Holders of which must consent to any matter; or

(9) take any other action otherwise prohibited by this Indenture to be taken without the consent of each Holder affected thereby.

(b) Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Securityholders as aforesaid and of the documents described in Section 8.6, the Trustee shall join with the Company in the execution of such supplemental indenture, unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this section to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment or supplement under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing the amendment or supplement. Any failure of the Company to mail any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any supplemental indenture.

8.3 Compliance With Trust Indenture Act

Every amendment to, or supplement of, this Indenture or the Securities shall comply with the TIA as then in effect.

8.4 Revocation and Effect of Consents

Until an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Security is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Security or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security. Any such Holder or subsequent Holder, however, may revoke the consent as to his Security or portion of a Security, if the Trustee receives the notice of revocation before the date the amendment, supplement, waiver or other action becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver, which record date shall be at least 30 days prior to the first solicitation of such consent. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement or waiver, or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, supplement, waiver or other action becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (1) through (9) of Section 8.2. In that case, the amendment, supplement, waiver or other action shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; PROVIDED, that any such waiver shall not impair or affect the right of any Holder to receive payment of the principal of, and interest and premium, if any, on, a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

8.5 Notation On or Exchange of Securities

If an amendment, supplement or waiver changes the terms of a Security of any Series, the Trustee may request the Holder of such Security to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on such Security about the changed terms and return it to the Holder. Alternatively, the Company, in exchange for such Security, may issue, and the Trustee shall authenticate, a new security that reflects the changed terms. Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

8.6 Trustee To Sign Amendments, Etc

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this ARTICLE 8 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.1, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture. The Company may not sign an amendment or supplement until the Board of Directors of the Company approves it.

ARTICLE 9 DISCHARGE OF INDENTURE; DEFEASANCE

9.1 Discharge of Indenture

The Company may terminate its obligations under the Securities of any Series and this Indenture with respect to such Series, except the obligations referred to in the last paragraph of this Section 9.1, if there shall have been canceled by the Trustee, or delivered to the Trustee for cancellation, all Securities of such Series theretofore authenticated and delivered (other than any

Securities of such Series that are asserted to have been destroyed, lost or stolen and that shall have been replaced as provided in Section 2.8) and the Company has paid all sums payable by it hereunder or deposited all required sums with the Trustee.

After such delivery the Trustee upon request shall acknowledge in a writing prepared by or on behalf of the Company the discharge of the Company's obligations under the Securities of such Series and this Indenture, except for those surviving obligations specified below.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company in Sections 7.7, 9.5 and 9.6 shall survive.

9.2 Legal Defeasance

The Company may at its option, by Board Resolution, be discharged from its obligations with respect to the Securities of any Series on the date upon which the conditions set forth in Section 9.4 below are satisfied (hereinafter, "**Legal Defeasance**"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Securities of such Series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall, subject to Section 9.6, execute proper instruments acknowledging the same, as are delivered to it by the Company), except for the following, which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Securities of such Series to receive solely from the trust funds described in Section 9.4 and as more fully set forth in such section, payments in respect of the principal of, and interest and premium, if any, on, the Securities of such Series when such payments are due, (B) the Company's obligations with respect to the Securities of such Series under Sections 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder (including claims of, or payments to, the Trustee under or pursuant to Section 7.7) and (D) this ARTICLE 9. Subject to compliance with this ARTICLE 9, the Company may exercise its option under this Section 9.2 with respect to the Securities of any Series notwithstanding the prior exercise of its option under Section 9.3 below with respect to the Securities of such Series.

9.3 Covenant Defeasance

At the option of the Company, pursuant to a Board Resolution, the Company shall be released from its obligations with respect to the outstanding Securities of any Series under Sections 4.2 through 4.5, inclusive, and Section 5.1, with respect to the outstanding Securities of such Series, on and after the date the conditions set forth in Section 9.4 are satisfied (hereinafter, "**Covenant Defeasance**"). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified section or portion thereof, whether directly or indirectly by reason of any reference elsewhere herein to any such specified Section or portion thereof or by reason of any reference in any such specified section or portion thereof to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of any Series shall be unaffected thereby.

9.4 Conditions to Legal Defeasance or Covenant Defeasance

The following shall be the conditions to application of Section 9.2 or Section 9.3 to the outstanding Securities of a Series:

(1) the Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.10 who shall agree to comply with the provisions of this ARTICLE 9 applicable to it) as funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (A) money in an amount, or (B) U.S. Government Obligations or Foreign Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of, and accrued interest and premium, if any, on, the outstanding Securities of such Series at the Stated Maturity of such principal, interest or premium, if any, or on dates for payment and redemption of such principal, interest and premium, if any, selected in accordance with the terms of this Indenture and of the Securities of such Series;

(2) no Event of Default or Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit, or shall have occurred and be continuing at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period under any Bankruptcy Law applicable to the Company in respect of such deposit as specified in the Opinion of Counsel identified in paragraph (8) below (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(3) such Legal Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest for purposes of the TIA with respect to any securities of the Company;

(4) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute default under, any other agreement or instrument to which the Company is a party or by which it is bound;

(5) the Company shall have delivered to the Trustee an Opinion of Counsel stating that, as a result of such Legal Defeasance or Covenant Defeasance, neither the trust nor the Trustee will be required to register as an investment company under the Investment Company Act of 1940, as amended;

(6) in the case of an election under Section 9.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling to the effect that or (ii) there has been a change in any applicable Federal income tax law with the effect that, and such opinion shall confirm that, the Holders of the outstanding Securities of such Series or Persons in

their positions will not recognize income, gain or loss for Federal income tax purposes solely as a result of such Legal Defeasance and will be subject to Federal income tax on the same amounts, in the same manner, including as a result of prepayment, and at the same times as would have been the case if such Legal Defeasance had not occurred;

(7) in the case of an election under Section 9.3, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the outstanding Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance, and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(8) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this ARTICLE 9 relating to either the Legal Defeasance under Section 9.2 or the Covenant Defeasance under Section 9.3 (as the case may be) have been complied with;

(9) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit under clause (1) was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(10) the Company shall have paid, or duly provided for payment under terms mutually satisfactory to the Company and the Trustee, all amounts then due to the Trustee pursuant to Section 7.7.

9.5 Deposited Money And U.S. And Foreign Government Obligations To Be Held In Trust; Other Miscellaneous Provisions

All money, U.S. Government Obligations and Foreign Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 9.4 in respect of the outstanding Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal, accrued interest and premium, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations and Foreign Government Obligations deposited pursuant to Section 9.4 or the principal, interest and premium, if any, received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this ARTICLE 9 to the contrary notwithstanding, but subject to payment of any of its outstanding fees and expenses, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee as provided in Section 9.4 which, in the opinion of a nationally-recognized firm of independent public accountants expressed in a written certification

thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

9.6 Reinstatement

If the Trustee or Paying Agent is unable to apply any money, U.S. Government Obligations or Foreign Government Obligations in accordance with Sections 9.1, 9.2, 9.3 or 9.4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this ARTICLE 9 until such time as the Trustee or Paying Agent is permitted to apply all such money, U.S. Government Obligations or Foreign Government Obligations, as the case may be, in accordance with Sections 9.1, 9.2, 9.3 or 9.4; PROVIDED, HOWEVER, that if the Company has made any payment of principal of, or accrued interest or premium, if any, on, any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee or Paying Agent.

9.7 Moneys Held by Paying Agent

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee, or, if sufficient moneys have been deposited pursuant to Section 9.1, to the Company, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

9.8 Moneys Held by Trustee

Any moneys deposited with the Trustee or any Paying Agent or then held by the Company in trust for the payment of the principal of, or interest or premium, if any, on, any Security that are not applied but remain unclaimed by the Holder of such Security for two years after the date upon which the principal of, or interest or premium, if any, on, such Security shall have respectively become due and payable shall be repaid to the Company upon Company Request, or if such moneys are then held by the Company in trust, such moneys shall be released from such trust; and the Holder of such Security entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; PROVIDED, HOWEVER, that the Trustee or any such Paying Agent, before being required to make any such repayment, may, at the expense of the Company, either mail to each Securityholder affected, at the address shown in the register of the Securities maintained by the Registrar, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Company. After payment to the Company or the release of any money held in trust by the

Company, Securityholders entitled to the money must look only to the Company for payment as general creditors, unless applicable abandoned property law designates another Person.

ARTICLE 10
MISCELLANEOUS

10.1 Trust Indenture Act Controls

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control. If any provision of this Indenture modifies or excludes any provision of the TIA which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

10.2 Notices

Any notice or communication shall be given in writing and delivered in Person, sent by facsimile (and receipt confirmed by telephone or electronic transmission report), delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

If to the Company:

OptiNose, Inc.
1020 Stony Hill Road, Suite 300
Yardley, Pennsylvania 19067
Attn: Chief Legal Officer
Facsimile: (267) 395-2119

Copy to:

Hogan Lovells US LLP
1735 Market Street, 23rd Floor Philadelphia, PA 19103-2799
Fax: 267-675-4601
Attention: Steven J. Abrams, Esq.

If to the Trustee:

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication to the Company or the Trustee shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is confirmed by telephone or electronic transmission report, if sent by facsimile; and three Business Days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee).

Any notice or communication mailed to a Securityholder shall be mailed to such Securityholder by first-class mail, postage prepaid, at such Securityholder's address shown on the register kept by the Registrar.

Failure to mail, or any defect in, a notice or communication to a Securityholder shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it shall be deemed duly given, three Business Days after such mailing, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

In the case of Global Securities, notices or communications to be given to Securityholders shall be given to the Depository, in accordance with its applicable policies as in effect from time to time.

In addition to the manner provided for in the foregoing provisions, notices or communications to Securityholders shall be given by the Company by release made to Reuters Economic Services and Bloomberg Business News.

10.3 Communications by Holders With Other Holders

Securityholders of any Series may communicate pursuant to TIA Section 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or any other Series. The Company, the Trustee, the Registrar and any other Person shall have the protection of TIA Section 312(c).

10.4 Certificate and Opinion as to Conditions Precedent

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

10.5 Statement Required in Certificate and Opinion

Each certificate and opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 4.4) shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, it or he has made such examination or investigation as is necessary to enable it or him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with.

10.6 Rules by Trustee and Agents

The Trustee may make reasonable rules for action by or at meetings of Securityholders. The Registrar and Paying Agent may make reasonable rules for their functions.

10.7 Business Days; Legal Holidays; Place of Payment

A “**Business Day**” is a day that is not a Legal Holiday. A “**Legal Holiday**” is a Saturday, a Sunday, a federally-recognized holiday or a day on which banking institutions are not authorized or required by law, regulation or executive order to be open in the State of New York.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. “**Place of Payment**” means the place or places where the principal of, and interest and premium, if any, on, the Securities of a Series are payable as specified as contemplated by Section 2.2. If the regular record date is a Legal Holiday, the record date shall not be affected.

10.8 Governing Law

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.9 No Adverse Interpretation of Other Agreements

This Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Company or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

A director, officer, employee, stockholder or incorporator, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture. Each Securityholder by accepting a Security waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Securities.

10.10 Successors

All covenants and agreements of the Company in this Indenture and the Securities shall bind the Company’s successors and assigns, whether so expressed or not. All agreements of the Trustee, any additional trustee and any Paying Agents in this Indenture shall bind their respective successors and assigns.

10.11 Multiple Counterparts

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement.

10.12 Table of Contents, Headings, Etc

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

10.13 Severability

Each provision of this Indenture shall be considered separable, and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and a Holder shall have no claim therefor against any party hereto.

10.14 Securities in a Foreign Currency or in Euros

Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.2 with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars (including Euros), then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 10.5, "**Market Exchange Rate**" shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York; PROVIDED, HOWEVER, in the case of Euros, Market Exchange Rate shall mean the rate of exchange determined by the Commission of the European Union (or any successor thereto) as published in the Official Journal of the European Union (such publication or any successor publication, the "**Journal**"). If such Market Exchange Rate is not available for any reason with respect to such currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or, in the case of Euros, the rate of exchange as published in the Journal, as of the most recent available date, or quotations or, in the case of Euros, rates of exchange from one or more major banks in New York City or in the country of issue of the currency in question or, in the case of Euros, in Luxembourg or such other quotations or, in the case of Euros, rates of exchange as the Trustee, upon consultation with the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in the Trustee's sole discretion, and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Holders.

10.15 Judgment Currency

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or interest or premium, if any, or other amount on, the Securities of any Series (the "**Required Currency**") into a currency in which a judgment will be rendered (the "**Judgment Currency**"), the rate of exchange used shall be the rate at which, in accordance with normal banking procedures, the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a Business Day, in which instance, the rate of exchange used shall be the rate at which, in accordance with normal banking procedures, the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)) in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

10.16 Force Majeure

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Trustee shall use reasonable best efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

10.17 U.S.A. Patriot Act

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE 11 SINKING FUNDS

11.1 Applicability of Article

The provisions of this Article shall be applicable to any sinking fund for the retirement of the Securities of a Series if so provided by the terms of such Securities pursuant to Section 2.2 and except as otherwise permitted or required by any form of Security of such Series issued pursuant to this Indenture. The minimum amount of any sinking fund payment provided for by the terms of the Securities of any Series is herein referred to as a “mandatory sinking fund payment” and any other amount provided for by the terms of Securities of such Series is herein referred to as a “optional sinking fund payment.” If provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 11.2. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of the Securities of such Series.

11.2 Satisfaction of Sinking Fund Payments with Securities

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any Series to be made pursuant to the terms of such Securities (1) deliver outstanding Securities of such Series to which such sinking fund payment is applicable (other than any of such Securities previously called for mandatory sinking fund redemption) and (2) apply as credit Securities of such Series to which such sinking fund payment is applicable and which have been repurchased by the Company or redeemed either at the election of the Company pursuant to the terms of such Series of Securities (except pursuant to any mandatory sinking fund) or through the application of permitted optional sinking fund payments or other optional redemptions pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received by the Trustee, together with an Officers’ Certificate with respect thereto, not later than 15 days prior to the date on which the Trustee begins the process of selecting Securities for redemption, and shall be credited for such purpose by the Trustee at the price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities in lieu of cash payments pursuant to this Section 11.2, the principal amount of Securities of such Series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such Series for redemption, except upon receipt of a Company Order that such action be taken, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall from time to time upon receipt of a Company Order pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that Series purchased by the Company having an unpaid principal amount equal to the cash payment required to be released to the Company.

11.3 Redemption of Securities for Sinking Fund

Not less than 45 days (unless otherwise indicated in the Board Resolution, supplemental indenture hereto or Officers’ Certificate in respect of a particular Series of Securities) prior to

each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that Series pursuant to the terms of that Series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that Series pursuant to Section 11.2, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days (unless otherwise indicated in the Board Resolution, Officers' Certificate or supplemental indenture in respect of a particular Series of Securities) before each such sinking fund payment date the Securities to be redeemed upon such sinking fund payment date will be selected in the manner specified in Section 3.2 and the Company shall send or cause to be sent a notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in and in accordance with Section 3.3. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.4, 3.5 and 3.6.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

OPTINOSE, INC.

By: _____
Name: _____
Title: _____

[Name of Trustee]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

August 10, 2023

Board of Directors
OptiNose, Inc.
1020 Stony Hill Road, Suite 300
Yardley, PA 19067

Ladies and Gentlemen:

We are acting as counsel to OptiNose, Inc., a Delaware corporation (the “**Company**”), in connection with its registration statement on Form S-3 (the “**Registration Statement**”), filed with the Securities and Exchange Commission on the date hereof, relating to the proposed public offering by the Company of up to \$200,000,000 in aggregate amount of one or more series of the following securities of the Company: (i) shares of common stock, \$0.001 par value per share (the “**Common Shares**”); (ii) shares of preferred stock, \$0.001 par value per share (the “**Preferred Shares**”); (iii) debt securities (the “**Debt Securities**”); (iv) warrants to purchase Debt Securities, Common Shares and/or Preferred Shares (the “**Warrants**”); and (v) units consisting of any combination of the foregoing (the “**Units**” and, together with the Common Shares, the Preferred Shares, the Warrants and the Debt Securities, the “**Securities**”), all of which may be sold from time to time and on a delayed or continuous basis, as set forth in the prospectus which forms a part of the Registration Statement, and as to be set forth in one or more supplements to the prospectus.

We have also acted as counsel to the Company in connection with the issuance and sale of up to \$50,000,000 of Common Shares (the “**ATM Shares**”), from time to time and at various prices in an “at-the-market” offering pursuant to the terms of the Open Market Sale AgreementSM dated August 11, 2021 (the “**Sale Agreement**”), by and between the Company and Jefferies LLC as placement agent (the “**Agent**”). The offering of the ATM Shares by the Company is being made pursuant to the Registration Statement including a base prospectus (the “**Base Prospectus**”) that forms a part thereof and a prospectus supplement (the “**Prospectus Supplement**”) and together with the Base Prospectus, the “**Prospectus**”).

This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the filing of the Registration Statement and the Prospectus.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). As to all matters of fact, we have relied on the representations and statements of fact made in the documents so

reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

For purposes of this opinion letter, we have assumed that: (i) the issuance, sale, amount and terms of any Securities of the Company to be offered from time to time will have been duly authorized and established by proper action of the board of directors of the Company or a duly authorized committee of such board ("**Board Action**") consistent with the procedures and terms described in the Registration Statement and in accordance with the Company's charter and bylaws and applicable Delaware corporate law, in a manner that does not violate any law, government or court-imposed order or restriction or agreement or instrument then binding on the Company or otherwise impair the legal or binding nature of the obligations represented by the applicable Securities; (ii) at the time of offer, issuance and sale of any Securities, the Registration Statement will have been declared effective under the Securities Act of 1933, as amended (the "**Act**"), and no stop order suspending its effectiveness will have been issued and remain in effect; (iii) any Debt Securities will be issued pursuant to an indenture substantially in the form of such indenture filed as Exhibit 4.12 to the Registration Statement, with items shown in such exhibit as subject to completion completed in a satisfactory manner; (iv) the indenture under which any Debt Securities are issued will be qualified under the Trust Indenture Act of 1939, as amended; (v) any Warrants will be issued under one or more warrant agreements, each to be between the Company and a financial institution identified therein as a warrant agent; (vi) any Units will be issued under one or more unit agreements; (vii) prior to any issuance of Preferred Shares, appropriate amendments to the articles of incorporation will be accepted for record by the Secretary of State of the State of Delaware; (viii) if being sold by the Company, the Securities will be delivered against payment of valid consideration therefor and in accordance with the terms of the applicable Board Action authorizing such sale and any applicable underwriting agreement or purchase agreement and as contemplated by the Registration Statement and/or the applicable prospectus supplement; and (ix) the Company will remain a Delaware corporation.

To the extent that the obligations of the Company with respect to the Securities may be dependent upon such matters, we assume for purposes of this opinion that the other party under the indenture for any Debt Securities, under the warrant agreement for any Warrants and under the unit agreement for any Units, namely, the trustee, the warrant agent or the unit agent, respectively, is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; that such other party is duly qualified to engage in the activities contemplated by such indenture, warrant agreement or unit agreement, as applicable; that such indenture, warrant agreement or unit agreement, as applicable, has been duly authorized, executed and delivered by the other party and constitutes the legal, valid and binding obligation of the other party enforceable against the other party in accordance with its terms; that such other party is in compliance with respect to performance of its obligations under such indenture, warrant agreement or unit agreement, as applicable, with all applicable laws, rules and regulations; and that such other party has the requisite organizational and legal power and authority to perform its obligations under such indenture, warrant agreement or unit agreement, as applicable.

This opinion letter is based as to matters of law solely on the applicable provisions of the following, as currently in effect: (i) the Delaware General Corporation Law, as amended, and (ii) as to the opinions given in paragraphs (c), (d) and (e), the laws of the State of New York (but not including any laws, statutes, ordinances, administrative decisions, rules or regulations of any political subdivision

below the state level). We express no opinion herein as to any other statutes, rules or regulations (and in particular, we express no opinion as to any effect that such other statutes, rules or regulations may have on the opinions expressed herein). As used herein, the term "Delaware General Corporation Law, as amended" includes the statutory provisions contained therein, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting these laws.

Based upon, subject to and limited by the foregoing, we are of the opinion that:

(a) The Common Shares (including any Common Shares duly issued as part of any Units or upon the exchange or conversion of Debt Securities or Preferred Shares that are exchangeable for or convertible into Common Shares or upon the exercise of Warrants and receipt by the Company of any additional consideration payable upon such conversion, exchange or exercise), upon due execution and delivery on behalf of the Company of certificates for Common Shares, will be validly issued, fully paid and nonassessable.

(b) The Preferred Shares (including any Preferred Shares duly issued as part of any Units or upon the exercise of Warrants and receipt by the Company of any additional consideration payable upon such exercise), upon due execution and delivery on behalf of the Company of certificates therefor, will be validly issued, fully paid and nonassessable.

(c) The Warrants, upon due execution and delivery of a warrant agreement relating thereto on behalf of the Company and the warrant agent named therein and due authentication of the Warrants by such warrant agent, and upon due execution and delivery of the Warrants on behalf of the Company, will constitute valid and binding obligations of the Company.

(d) The Debt Securities (including any Debt Securities duly issued as part of any Units or upon the exercise of Warrants), upon due execution and delivery of an indenture relating thereto on behalf of the Company and the trustee named therein, and upon authentication by such trustee and due execution and delivery on behalf of the Company in accordance with the indenture and any supplemental indenture relating thereto, will constitute valid and binding obligations of the Company.

(e) The Units, upon due execution and delivery of a unit agreement relating thereto on behalf of the Company and the unit agent named therein, upon due authentication of the Units by such unit agent and upon due execution and delivery of the underlying Securities that are components of the Units in accordance with the applicable unit agreement and the applicable indenture (in the case of underlying Debt Securities), certificates of designation (in the case of underlying Preferred Shares), or warrant agreement (in the case of underlying Warrants), will constitute valid and binding obligations of the Company.

(f) Following (i) the issuance of the ATM Shares pursuant to the terms of the Sale Agreement, which such issuance shall not exceed the Maximum Program Amount (as defined in the Sale Agreement) and (ii) the receipt by the Company of the consideration for the ATM Shares as specified in the resolutions of the Board of Directors or the Pricing Committee of the Board of Directors, the ATM Shares will be validly issued, fully paid, and nonassessable.

The opinions expressed in Paragraphs (c), (d) and (e) above with respect to the valid and binding nature of obligations may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights (including, without limitation, the effect of statutory and other law regarding fraudulent conveyances, fraudulent transfers and preferential transfers) and by the exercise of judicial discretion and the application of principles of equity, good faith, fair dealing, reasonableness, conscionability and materiality (regardless of whether the Securities are considered in a proceeding in equity or at law).

This opinion letter has been prepared for use in connection with the filing by the Company of the Registration Statement and Prospectus on the date hereof, and in connection with the offer and sale

of the ATM Shares, and speaks as of the date hereof. We assume no obligation to advise of any changes in the foregoing subsequent to the effective date of the Registration Statement.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement filed on the date hereof and to the reference to this firm under the caption "Legal Matters" in the Prospectus constituting a part of the Registration Statement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Act.

Very truly yours,

/s/ Hogan Lovells US LLP

Hogan Lovells US LLP

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of OptiNose, Inc. for the registration of common stock, preferred stock, warrants, debt securities and units and to the incorporation by reference therein of our report dated March 7, 2023, with respect to the consolidated financial statements of OptiNose, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2022, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
August 10, 2023