

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report

(Date of earliest event reported): February 24, 2025

Aeluma, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

000-56218

(Commission File Number)

85-2807351

(IRS Employer
Identification No.)

27 Castilian Drive
Goleta, California

(Address of principal executive offices)

93117

(Zip Code)

805-351-2707

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Securities registered pursuant to Section 12(b) of the Act: none.

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

Emerging growth company

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

Item 5.02: Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

As permitted by Aeluma, Inc.'s (the "Company"), Bylaws, the Company's Board of Directors approved an increase in the number of directors from four (4) to five (5) members and increased Class II of the Board from one (1) to two (2) members; on February 24, 2025, the Board elected Michael Byron (the "New Director") to fill the vacancy. The New Director will be a Class II Director with a term expiring at the Company's 2026 annual meeting of stockholders. In connection with his service as a director, the Company and Mr. Byron will enter into a Director's Agreement, as well as an Indemnification Agreement that contractually obligates the Company to indemnify, and to advance expenses on behalf of, Mr. Byron as permitted by the Indemnification Agreement and applicable law. In connection with his appointment to the Board, Mr. Byron was granted a stock option to purchase 45,833 shares of common stock (the "Option"), of which 833 shares vest on February 28, 2025, and 15,000 shares each vesting on May 31, 2025, August 31, 2025, and November 30, 2025, respectively, provided Mr. Byron continues in service to the Company on each such date. The Option has an exercise price equal to the fair market value at the time of grant. The Option also contains an acceleration provision whereby upon the occurrence of a change in control, the vesting schedule of the Option shall be accelerated so that 100% of unvested shares shall vest immediately. Copies of the Director's Agreement, Indemnification Agreement and Form of Non-Qualified Option to Purchase Common Stock are attached as Exhibits 10.1, 10.2 and 10.3, respectively, to this report and incorporated herein by reference.

Michael Byron retired as Vice President of Finance Operations & Systems at NVIDIA in December 2024. He joined NVIDIA in 2002 and held various finance leadership positions over 22 years. Before serving as Vice President of Finance Operations & Systems he served as Vice President & Chief Accounting Officer from 2011 to 2019. Prior to NVIDIA, Mr. Byron held finance and accounting roles at public technology companies and spent eight years as an auditor at Deloitte. He holds a Bachelor's degree in Business Economics from UC Santa Barbara and became a Certified Public Accountant in 1990. In addition to his corporate experience, Mr. Byron serves as a Trustee of the UC Santa Barbara Foundation and advises the Dean's Investment Group. The Board believes Mr. Byron is qualified to be a director because of his knowledge of technical accounting, compliance issues, and business experience.

There is no arrangement or understanding between the New Director and any other person pursuant to which Mr. Byron was selected as a director. There have been no transactions involving the New Director that would be required to be disclosed by Item 404(a) of Regulation S-K.

The Board has determined that the New Director is "independent" as defined by applicable rules of The Nasdaq Stock Market LLC and the U.S. Securities and Exchange Commission (the "SEC") applicable to Board service.

Item 7.01. Regulation FD Disclosure

On February 24, 2025, the Company issued a press release announcing the addition of Mr. Byron to the Board. A copy of the press release is attached as Exhibit 99.1 hereto and is incorporated herein by reference.

This information (including Exhibit 99.1) is being furnished under Item 7.01 hereof and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and such information shall not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 9.01: Financial Statements and Exhibits

(d) Exhibits

Exhibit Number	Exhibit
10.1	Director Agreement dated February 24, 2025
10.2	Indemnification Agreement dated February 24, 2025
10.3	Form of Non-Qualified Option to Purchase Common Stock
99.1	Press Release dated February 24, 2025
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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SIGNATURE

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

AELUMA, INC.

Date: February 26, 2025

By: /s/ Jonathan Klamkin
Jonathan Klamkin
President, Chief Executive Officer, and Director

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DIRECTOR AGREEMENT

THIS AGREEMENT (The “**Agreement**”) is effective as of the 24 day of February, 2025 (the “**Effective Date**”), and is by and between AELUMA, INC., a Delaware corporation (hereinafter referred to as the “**Company**”), and Michael Byron (hereinafter referred to as the “**Director**”).

BACKGROUND

The Company’s Board of Directors (the “**Board**”) and the Director desire to memorialize the role of the Director and to have the Director perform the duties required of such position in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration for the above recited promises and the mutual promises contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Company and the Director hereby agree as follows:

1. **DUTIES.** The Company requires that the Director be available to perform the duties of a director customarily related to this function and as may be required by the Company’s constituent instruments, including its certificate of incorporation, bylaws and its corporate governance and board committee charters, each as amended or modified from time to time, and by applicable law, including by Delaware’s General Corporation Law (the “**DGCL**”) and such other services mutually agreed to by the Director and the Company.

The Director agrees to devote as much time as is reasonably necessary to perform the duties as the Director of the Company, including duties as a member of any committees as the Director may hereafter be appointed to by the Board. Furthermore, the Director shall make reasonable business efforts to attend all Board meetings.

The Director will perform such duties described herein in accordance with the general fiduciary duty of directors arising under the DGCL.

“**Duties**” mean all services and responsibilities included or contemplated by this Section 1.

2. **TERM.** The term of this Agreement shall be from the Effective Date through November 30, 2025 (the “**Term**”), unless terminated as provided for in this Section 2. This Agreement shall terminate upon the earlier of the following:
- a. Removal of the Director as a director of the Company, upon proper stockholder action in accordance with the ByLaws and Certificate of Incorporation of the Company and applicable law;
 - b. Resignation of the Director as a director of the Company upon written notice to the Board; or
 - c. Director’s failure to be reelected by the Company’s stockholders at a meeting duly called for such purpose.
3. **COMPENSATION.** While this Agreement is in effect, the Director shall perform duties as a Director and/or a member of the committees of the Board, be compensated for such and be reimbursed expenses in accordance with the Schedule A attached to this Agreement, subject to the following:
- a. The Director is solely responsible for taxes arising out of any compensation paid by the Company to the Director under this Agreement, and the Director understands that he will be issued a U.S. Treasury form 1099 for any compensation paid to him by the Company. The Director acknowledges and agrees that because he is not an employee of the Company the Company will not withhold any amounts for taxes from any of his payments under the Agreement.
 - b. The Company may offset any and all monies payable to the Director to the extent of any undisputed monies owing to the Company from the Director.
4. **CONFIDENTIALITY.** The Company and the Director each acknowledge that the Director shall necessarily be obtaining access to certain confidential information concerning the Company and its affairs, including, but not limited to business methods, information systems, financial data and strategic plans which are unique assets of the Company (“**Confidential Information**”). The Director will comply with his fiduciary duties with respect to such information.
5. **INDEPENDENCE.** The Director acknowledges that his/her appointment hereunder is contingent upon the Board’s determination that he/she is “independent” with respect to the Company, in accordance with the listing requirements of the Nasdaq and NYSE stock exchanges, and that his/her appointment may be terminated by the Company in the event that the Director does not maintain such independence standard.
6. **TERMINATION.** The Director may terminate this Agreement at any time upon written notice, and the Company shall be obligated to pay to the Director the compensation and expenses due up to the date of the termination. Nothing contained herein or omitted herefrom shall prevent the stockholder(s) of the Company from removing the Director in accordance with the Company’s Bylaws.

7. **INDEMNIFICATION.** The Company shall indemnify, defend and hold harmless the Director, to the full extent allowed by the law of the State of Delaware and as provided by, or granted pursuant to, any charter provision, bylaw provision, agreement with Director (“**Indemnification Agreement**”), vote of stockholders or disinterested directors or otherwise, for all actions in the Director’s official capacity. In addition, the Company shall use its best efforts to purchase and maintain a customary directors’ and officers’ liability insurance policy (or policies) during the term of this Agreement and thereafter.
8. **NOTICE.** Any and all notices referred to herein shall be sufficient if furnished in writing at the addresses specified on the signature page hereto or, if to the Company, to the Company’s address as specified in filings made by the Company with the U.S. Securities and Exchange Commission.
9. **GOVERNING LAW.** This Agreement shall be interpreted in accordance with, and the rights of the parties hereto shall be determined by, the laws of the State of Delaware without reference to that state’s conflicts of laws principles.

10. **ASSIGNMENT.** The rights and benefits of the Company under this Agreement shall be transferable, and all the covenants and agreements hereunder shall inure to the benefit of, and be enforceable by or against, its successors and assigns. The duties and obligations of the Director under this Agreement are personal and therefore the Director may not assign any right or duty under this Agreement without the prior written consent of the Company.

11. **GENERAL.**

- a. **SEVERABILITY.** If any provision of this Agreement shall be declared invalid or illegal, for any reason whatsoever, then, notwithstanding such invalidity or illegality, such invalid or illegal provision shall be replaced with a valid and legal provision that as closely as possible reflects the parties' intent, and the remaining terms and provisions of this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.
- b. **EFFECT OF WAIVER.** The waiver by either party of the breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach thereof.
- c. **ARTICLE HEADINGS.** The article headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- d. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument. Facsimile or electronic (including by DocuSign) execution and delivery of this Agreement is legal, valid and binding for all purposes.
- e. **ENTIRE AGREEMENT; AMENDMENT.** Except as provided elsewhere herein, this Agreement, the Indemnification Agreement, the Company's Certificate of Incorporation, the Company's Bylaws and the plan and agreements governing the equity compensation provided for herein, set forth the entire agreement of the parties with respect to its and their subject matter and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party to this Agreement with respect to such subject matter. The terms set forth in this Agreement shall not be changed, altered, modified or amended, except by a written agreement that (i) explicitly states the intent of the parties hereto to supplement the terms herein and (ii) is signed by both parties hereto.

[Remainder of Page Left Blank Intentionally]

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of February 10, 2025.

AELUMA, INC

By: _____

Name: Jonathan Klamkin

Title: Chief Executive Officer

DIRECTOR:

Michael Byron

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SCHEDULE A

I **POSITION:** DIRECTOR.

II. **COMPENSATION:**

FEES. For all Duties rendered by the Director pursuant to this Agreement, both during and outside of normal working hours, including but not limited to, making reasonable business efforts to (i) attend all required meetings of the Board or applicable committees thereof, executive sessions of the Directors, (ii) review filing reports and other corporate documents as requested by the Company, and (iii) provide comments as to business matters as requested by the Company, the Company agrees to compensate the Director as set forth herein.

STOCK. The Director shall be granted a total amount of 45,833 stock options to purchase the Company's Common Stock (the "Option"), which shall vest in accordance with the following schedule:

- 833 stock options shall vest on February 28, 2025; and
- 15,000 stock options shall vest each on May 31, 2025; August 31, 2025; and November 30, 2025.

If Director resigns or is otherwise terminated in accordance with the terms of this Agreement and/or the Company's certificate of incorporation or Bylaws, any unvested options shall be immediately cancelled and Director will have 90 days to exercise any vested options.

The exercise price per share of the Option will be determined by the Board or Committee when the Option is granted, and shall be equal to 100% of the Closing Price on the date of grant of such Option. The Option will be subject to the terms and conditions under the Company's 2021 Equity Incentive Plan (the "Plan").

The Option is not transferable to another party and Director will be subject to all the SEC reporting requirements associated with the grant, exercise and sale of this equity compensation.

Additional compensation for serving on the Company's committees is payable as follows, if applicable:

- Service on **audit committee:** 8,350 stock options per year (16,700 stock options per year for the chair of such committee) – vesting in equal quarterly increments

- Service on **compensation committee**: 6,263 stock options per year (12,525 stock options per year for the chair of such committee) – vesting in equal quarterly increments
- Service on **nominating/governance committee**: 5,010 stock options per year (10,020 stock options per year for the chair of such committee) – vesting in equal quarterly increments

All options, unless otherwise specified, will have an exercise price equal to the fair market value at the time of issuance.

EXPENSES. During the term of the Director's service as a director of the Company, the Company shall promptly reimburse the Director for all expenses incurred by him/her in connection with attending (a) all meetings of the Board or applicable committees thereof, (b) executive sessions of the Directors, (c) stockholder meetings, and (d) such other Company business as director is requested to perform, as a director or a member of any committee of the Board, provided that any such expenses over \$1,000.00 shall be approved by the Company in writing in advance. In addition, the Director shall rely on the Company to arrange all hotel accommodations in connection with any such meetings the Director must attend. The amount of such expenses eligible for reimbursement by the Company during a calendar year shall not affect such expenses eligible for reimbursement by the Company in any other calendar year, and the reimbursement of any such eligible expenses shall be made within thirty days after the reimbursement request and associated receipts have been submitted to the Company.

NO OTHER BENEFITS OR COMPENSATION. The Director acknowledges and agrees that he is not granted or entitled to any other benefits or compensation from the Company for services provided under this Agreement except expressly provided for in this Schedule A.

AELUMA, INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this “*Agreement*”) is dated as of February 24, and is between Aeluma, Inc., a Delaware corporation (the “*Company*”), and Michael Byron (“*Indemnitee*”).

RECITALS

A. Indemnitee’s service to the Company substantially benefits the Company.

B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided directors’ and officers’ liability insurance and rights to reimbursement of expenses and indemnification to protect them against the risks of claims and actions against them arising out of their status as directors and officers and service in those capacities.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

E. This Agreement is a supplement to and in furtherance of the rights to indemnification and advancement of expenses provided in the Company’s governing documents, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. Definitions.

(a) A “*Change in Control*” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party.* Any Person (as defined below) becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities other than through an acquisition of securities of the Company by the Company; provided, however, that the foregoing shall not apply to any Person who or which is the Beneficial Owner, directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities as of immediately prior to the date of this Agreement;

(ii) *Change in Board Composition.* During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company’s board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv)) whose election by the board of directors or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company’s board of directors;

(iii) *Corporate Transactions.* The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the Surviving Entity) more than 50% of the combined voting power of the voting securities of the Surviving Entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body (or otherwise direct the management and policies) of such Surviving Entity;

(iv) *Liquidation.* The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets; and

(v) *Other Events.* Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) “*Beneficial Owner*” shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; provided, however, that “*Beneficial Owner*” shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company’s board of directors approving a sale of securities by the Company to such Person.

(2) “*Person*” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; provided, however, that “*Person*” shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(3) “*Surviving Entity*” shall mean the surviving or resulting entity in a merger or consolidation or any entity that controls, directly or indirectly, such surviving or resulting entity.

(b) “*Corporate Status*” describes the status of a person who is or was a director, trustee, general partner, manager, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise.

(c) “*DGCL*” means the General Corporation Law of the State of Delaware.

(d) “*Disinterested Director*” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) “**Enterprise**” means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary.

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(f) “**Expenses**” include all reasonable and actually incurred attorneys’ fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “**Independent Counsel**” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnities under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “**Independent Counsel**” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “**Proceeding**” means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, audit, administrative hearing or proceeding, whether brought by or in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee’s part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement. Reference to “**other enterprises**” shall include employee benefit plans; references to “**fines**” shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to “**servicing at the request of the Company**” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Company**” as referred to in this Agreement.

2. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

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3. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith. For purposes of this section, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

5. Indemnification for Expenses of a Witness. To the extent that Indemnitee is, by reason of his or her Corporate Status, (x) a witness in any Proceeding to which Indemnitee is not a party or (y) was made (or asked) to respond to discovery requests in any such Proceeding, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith.

6. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

(b) For purposes of Section 6(a), the meaning of the phrase “**to the fullest extent permitted by applicable law**” shall include, but not be limited to:

(i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

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(ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which (and solely to the extent that) payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, in either case as required under any clawback or compensation recovery policy adopted by the Company, applicable securities exchange and association listing requirements including, without limitation, those adopted in accordance with Rule 10D-1 under the Securities Exchange Act of 1934, as amended, and/or the Securities Exchange Act of 1934, as amended (including, without limitation, any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "*Sarbanes-Oxley Act*"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company's board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8. **Advances of Expenses.** The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final disposition, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 60 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses, provided that Indemnitee may redact therefrom any references to legal work performed at the direction of or for the benefit of Indemnitee or to expenditure made by or on behalf of Indemnitee if Indemnitee determines that the disclosure thereof would jeopardize any privilege accorded to Indemnitee by applicable law). Advances shall be unsecured and interest free and made without regard to Indemnitee's ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company pursuant to this Agreement. Notwithstanding the foregoing, this Section 8 shall constitute such an undertaking on the part of Indemnitee providing that Indemnitee undertakes to repay the amounts advanced (without interest) by the Company pursuant to this Section 8, if and only to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company therefor under this Agreement. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company and to any action initiated pursuant to Section 12(d).

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9. **Procedures for Notification and Defense of Claim.**

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The written notification to the Company shall include, in reasonable detail, a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights, except to the extent that such failure or delay actually and materially prejudices the Company.

(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect that may be applicable to the Proceeding, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) Other than in connection with any Proceeding brought by or in the right of the Company, (i) the Company shall be entitled to participate in the Proceeding at its own expense and (ii) Indemnitee shall consult with the Company and consider in good faith the advisability and appropriateness of joint representation in the event that either the Company or other indemnitees in addition to Indemnitee require representation in connection with any Proceeding.

(d) Indemnitee shall not enter into any settlement in connection with a Proceeding (or any part thereof) without providing at least three days' prior written notice to the Company of Indemnitee's intention to settle the Proceeding.

(e) The Company shall not settle any Proceeding (or any part thereof) in a manner that imposes any Expense, judgment, fine, penalty, liability or limitation on Indemnitee in respect of which Indemnitee is not fully indemnified hereunder or that requires an admission of fault or wrongdoing on the part of Indemnitee without Indemnitee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

10. **Procedures upon Application for Indemnification.**

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and as is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such failure is prejudicial.

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(b) Upon written request by Indemnitee for indemnification pursuant to Section 10 (a), a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which

shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's board of directors, by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel.

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11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea *of nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

12. Remedies of Indemnitee.

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); *provided, however*, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

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(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a

misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 90 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

14. Non-exclusivity. The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

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15. [Reserved.]

16. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

17. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

18. Subrogation. In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

19. Services to the Company. Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position; *provided* that Indemnitee shall continue to enjoy the benefits of this Agreement with respect to any continuing or subsequent such positions and with respect to Indemnitee's services in such position prior to resignation therefrom. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

20. Duration. This Agreement shall continue until and terminate upon the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto.

21. Successors. This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor, by purchase, merger, consolidation or otherwise, to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

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22. Severability. Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

23. **Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Company's certificate of incorporation and bylaws and applicable law.

25. **Modification and Waiver.** No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

26. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee's address, facsimile number or electronic mail address as shown on the signature page of this Agreement or in the Company's records, as may be updated in accordance with the provisions hereof; or

(b) if to the Company, to the attention of the Chief Executive Officer of the Company at [insert Company address], or at such other current address as the Company shall have furnished to Indemnitee, with a copy (which shall not constitute notice) to [insert Company counsel contact].

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Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent *via* a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), (ii) if sent *via* mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent *via* facsimile, upon confirmation of facsimile transfer or, if sent *via* electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day.

27. **Applicable Law and Consent to Jurisdiction.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, Cogency Global Inc., 850 New Burton Road, Suite 201, in the City of Dover, County of Kent, Delaware 19904, as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

28. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

29. **Captions.** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

(signature page follows)

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The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

Aeluma, Inc.

(Signature)

(Print name)

(Title)

Michael Byron

(Signature)

(Print name)

(Street address)

(City, State and ZIP)

(Signature page to Indemnification Agreement)

NON-QUALIFIED STOCK
OPTION TO PURCHASE
COMMON STOCK
OF
AELUMA, INC.

DATE OF GRANT ("Grant Date"): _____

EXPIRATION DATE: _____

Aeluma, Inc. (the "Company"), hereby grants

_____ (the "Optionee"), a director of the Company,

an opportunity to purchase shares of the Company's Common Stock, par value of \$0.0001 per share ("Common Stock"), on the terms and subject to the conditions hereinafter in connection with the Company's 2021 Equity Incentive Plan (the "Plan").

The Company's board of directors, referred to as the Board, which administers the Plan, has determined that it would be to the advantage and best interests of the Company and its shareholders to grant the options provided for in this agreement, pursuant to that certain director agreement between the Company and Optionee dated as of _____, (the "Director Agreement"), to the Optionee in recognition of services rendered by the Optionee to the Company and to give the Optionee additional incentive in furthering the business success of the Company.

Now, therefore, in consideration of the promises and the mutual covenants contained in this agreement, the parties agree as follows:

1. **Grant of Option.** The Company hereby grants to the optionee's compensation, the right and option (hereinafter called the "Option"), to purchase all or any part of an aggregate of _____ shares of the Common Stock (the "Option Shares"), such number being subject to adjustment as provided in paragraph 9 hereof) on the terms and conditions set forth herein and in the Plan.

2. **Exercise Price.** The exercise price of the shares of the Common Stock covered by the Option shall be \$ _____ per share.

3. **Term of Option.** Except as provided in paragraphs 8 and 9 hereof, and as provided per the Director Agreement, the term of this Option shall expire on _____.

4. **Vesting.** The Options shall vest as follows*:

- _____ stock options shall vest on _____; and
- _____ stock options shall vest each on _____, _____; _____; and _____.

* If Optionee resigns or is otherwise terminated in accordance with the terms of the Director Agreement, and/or the Company's bylaws, Optionee shall not have any rights to any unvested options, which the Company will immediately cancel upon such resignation or termination; Optionee shall have a period of ninety (90) calendar days from the date of such resignation or termination to exercise any options that have vested as of such date.

5. **Exercise of Option.** The Option is not exercisable as of the Grant Date. After the Grant Date, to the extent not previously exercised, and subject to termination or acceleration as provided herein, the Option shall vest and become exercisable to the extent it becomes vested, according to the vesting schedule set forth in Section 4 above, provided that (except as set forth in Section 7 below) the Optionee remains a director of the Company or continues providing services to the Company and does not experience a termination of employment or service. The vesting period and/or exercisability of an Option may be adjusted by the Company's Board of Directors or the committee responsible for managing the Company's Plan to reflect the decreased level of employment or service during any period in which the Optionee is on an approved leave of absence. The Options or such portion of them as is applicable, may be exercised beginning on the date on which they vest. The Optionee shall not have any rights of a stockholder with respect to the shares covered by the Option except to the extent that one or more certificates for such shares shall be delivered to him or her upon the due exercise of the Option.

6. **Transferability.** The Option shall be transferable; provided, however, that the transferee must agree in writing to be bound by the terms of this Option and the Plan at the time of the transfer.

7. **Death of Optionee and Transfer of Option.** If the Optionee shall die while in the employ of the Company or a subsidiary or within a period of three months after the termination of his or her employment with the Company and all subsidiaries, and shall not have fully exercised the Option, such Option may be exercised, subject to the condition that no option shall be exercisable after the expiration of ten years from the date it is granted, to the extent that the Optionee's right to exercise such option has been accrued pursuant to the terms of the Option at the time of his or her death and had not been previously exercised, at any time within three months after the Optionee's death, by the executors or administrators of the Optionee or by any person or persons who shall have acquired the option directly from the Optionee by bequest or inheritance.

8. **Changes in Capital Structure.** If all or any portion of the Option shall be exercised subsequent to any stock dividend, stock split-up, recapitalization, reclassification, merger, consolidation, combination or exchange of shares, separation, reorganization, or liquidation occurring after the date hereof, as a result of which shares of the Common Stock, or shares of Common Stock shall be changed into the same or a different number of shares of the same or another class of classes, the person or persons so exercising the option shall receive, for the aggregate price paid upon such exercise, the aggregate number and class of shares which, if shares of Common Stock (as authorized at the date hereof) had been purchased at the date hereof for the same aggregate price (on the basis of price per share set forth in paragraph 2 hereof) and had not been disposed of, such person or persons would be holding at the time of such exercise as a result of such purchase and all such stock dividends, stock split-ups, recapitalization, mergers, consolidations, combinations or exchanges of shares, separations, reorganizations or liquidations; provided, however, that no fractional share shall be issued upon any such exercise, and any aggregate price paid shall be appropriately reduced on account of any fractional share not issued.

(a) **Exercise Method.** Subject to the terms and conditions of this Option, the Option may be exercised by a duly executed facsimile copy of Note of Exercise Form annexed hereto ("Notice of Exercise Form") to the Company's Treasurer presented any time prior to the termination of this Option. The exercise date will be the date of the Notice of Exercise Form to the Treasurer. Such notice shall state the election to exercise the Option and the number of shares in respect of which it is being exercised and shall be signed by the person or persons so exercising the Option. The Company shall have received payment of an amount of consideration equal to the Exercise Price in effect on the date of such exercise multiplied by the number of shares of Option Stock with respect to which this Option is then being exercised, payable at the Optionee's election by certified or official bank check or money order payable to the order of the Company, (ii) by "cashless exercise" in accordance with provisions of subsection (b) of this Section 9, or (iii) by a combination of the foregoing methods of payment selected by the Optionee. If someone other than the Optionee is exercising the Option pursuant to the provisions providing for the contingency of death of the Optionee, such notice shall be accompanied by the appropriate proof of right of such person or persons to exercise the Option.

(b) **Cashless Exercise.** Notwithstanding any provision herein to the contrary, if the Per Share Market Value of one (1) share of Common Stock is greater than the Exercise Price (at the date of calculation as set forth below), in lieu of exercising this Option by payment of cash, the Optionee may exercise this Option by a cashless exercise ("Cashless Exercise") by surrender of this Option at the principal office of the Company together with the properly endorsed Notice of Exercise, in which event the Issuer shall issue to the Optionee a number of shares of Common Stock computed using the following formula:

$$X = Y - \frac{(A)(Y)}{B}$$

Where X = the number of shares of Common Stock to be issued to the Optionee.

Y = the number of shares of Common Stock purchasable upon exercise of all of the Option or, if only a portion of the Option is being exercised, the portion of the Option being exercised.

A = the Exercise Price.

B = the Per Share Market Value of one share of Common Stock.

10. **Restrictions on Issuance of Shares.** The Company shall at all times during the term of the Option reserve and keep available such number of shares of Common Stock as will be sufficient to satisfy the requirements of this Option. The Company shall pay all original issue and transfer taxes with respect to the issuance and transfer of shares pursuant thereto and all other fees and expenses necessarily incurred by the Company in connection therewith; and it will from time to time use its best efforts to comply with all laws and regulations which, in the opinion of counsel for the Company, shall be applicable thereto. Delivery of these certificates of shares may be deferred by the Company in order to comply with any and all applicable law, regulation or requirement of any regulatory body. The Company shall not be obligated to sell or issue any shares pursuant to this Option unless the shares, with respect to which the Option is being exercised are at the time effectively registered or exempt from registration under the Securities Act of 1933, as amended. If required, the Optionee shall represent that any stock acquired by him or her under this Option shall be purchased for investment and not with the intention of reselling the same. In connection with the foregoing, the Optionee consents to the Company legending certificate for said shares and marking the stock transfer books to indicate this investment intent and the restriction on transfer contemplated hereby.

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11. **Reacquisition, Replacement and Re-issuance of Options.** The Committee, with or without the consent of the Optionee, may at any time cause the Company to reacquire and cancel any outstanding and unexercised Option, or any portion thereof. In such event, the Company shall pay to such Optionee an amount in cash equal to the excess (if any) of (i) the fair market value of the shares of stock subject to such Option, or portion thereof, at the time of reacquisition, over (ii) the option price of such Option or portion thereof. The Company may withhold from any such payment applicable taxes and other amounts. In the event that the exercise price of such Option, or portion thereof, exceeds the fair market value of the shares of stock to such Option, or portion thereof, at the time of reacquisition, such Option may be reacquired and canceled by the Company without payment therefor.

12. **Option Subject to All of the Plan Terms.** This agreement and the Options shall be subject to the Plan, the terms of which are hereby incorporated herein by reference, and in the event of any conflict or inconsistency between the Plan and this Agreement, shall be governed by the Plan.

13. **Voluntary Surrender of Options.** The Committee may permit the voluntary surrender of all portion of any Option to be conditioned upon the granting to the Optionee of a new option for the same or different number of shares of stock as the Option surrendered, or may require such voluntary surrender as a condition to a grant of a new option to such Optionee. Such new Option shall be exercisable at the price, during the period and in accordance with any other terms or conditions specified by the Committee at the time the new Option is granted, all determined in accordance with the provisions of the Plan without regards to the price, period of exercise, or any other terms or conditions of the Option surrendered.

14. **Disclaimer.** The Company will **not** advise Optionee as to the tax consequences resulting from the execution of the designated options. It is solely the responsibility of the Optionee to consult with the Optionee's tax and/or financial advisors regarding any financial or tax liabilities that may result due to the execution of the designated options.

15. **Acceleration Provisions.** Upon the occurrence of a Change in Control (as defined below), the vesting schedule of the Options shall be accelerated so that 100% of unvested options shall vest immediately. For purposes of this Agreement, "Change in Control" shall mean the sale of all or substantially all of the capital stock (other than the issuance by the Company of capital stock to one or more venture capitalists or other institutional investors pursuant to an equity financing (including a debt financing that is convertible into equity) of the Company approved by a majority of the Board of Directors of the Company, assets or business of the Company, by merger, consolidation, sale of assets or otherwise (other than a transaction in which all or substantially all of the individuals and entities who were beneficial owners of the capital stock of the Company immediately prior to such transaction beneficially own, directly or indirectly, more than 50% of the outstanding securities entitled to vote generally in the election of directors of the resulting, surviving or acquiring corporation in such transaction).

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IN WITNESS WHEREOF, the Company has executed this Option as of the date of Grant set forth above.

AELUMA, INC.

Jonathan Klamkin,
Chief Executive Officer

EXERCISE FORM

AELUMA, INC.

The undersigned _____, pursuant to the provisions of the Option, hereby elects to purchase _____ shares of Common Stock (the "Warrant Shares") of Aeluma, Inc. covered by the accompanying Option.

Dated: _____

Signature _____

Address _____

Number of shares of Common Stock beneficially owned or deemed beneficially owned by the Optionee on the date of Exercise: _____

The undersigned intends that payment of the Warrant Price shall be made as (check one):

Cash Exercise _____

Cashless Exercise _____

If the Optionee has elected a Cash Exercise, the Optionee shall pay the sum of \$_____ by certified or official bank check (or via wire transfer) to the Company in accordance with the terms of the Option.

If the Optionee has elected a Cashless Exercise, a certificate shall be issued to the Optionee for the number of shares equal to the whole number portion of the product of the calculation set forth below, which is _____. The Company shall pay a cash adjustment in respect of the fractional portion of the product of the calculation set forth below in an amount equal to the product of the fractional portion of such product and the Per Share Market Value on the date of exercise, which product is _____.

$$X = Y - \frac{(A)(Y)}{B}$$

Where X = the number of shares of Common Stock to be issued to the Optionee.

Y = the number of shares of Common Stock purchasable upon exercise of all of the Option or, if only a portion of the Option is being exercised, the portion of the Option being exercised.

A = the Exercise Price.

B = the Per Share Market Value of one share of Common Stock.

The certificate(s) representing the Option Shares shall be delivered by

- (a) certified mail to the above address, or
- (b) certified mail to the prime broker of the Holder at

Name: _____
Address: _____
Attention: _____
Tel. No.: _____

- (c) electronically (DWAC Instructions: _____), or
- (d) other (specify) _____

If the number of Option Shares shall not be all the Option Shares purchasable upon exercise of the Option, that a new Option for the balance of the Option Shares purchasable upon exercise of this Option be registered in the name of the undersigned Optionee or the undersigned's Assignee as below indicated and delivered to the address stated below.

Dated: _____

Note: The signature must correspond with the name of the Optionee as written on the first page of the Option in every particular, without alteration or enlargement or any change whatever, unless the Option has been assigned.

Signature: _____

Name (please print)

Address

Email

Federal Identification or SSN.

Assignee:

Signature: _____

Name (please print)

Address

Email

Federal Identification or SSN



Aeluma Appoints Former NVIDIA Finance Leader Mike Byron to Board of Directors

Addition of semiconductor finance and operations veteran poises Aeluma to scale its technology to meet AI and quantum computing demands

GOLETA, CA – February 24, 2025 – Aeluma, Inc. (OTCQB:ALMU), a semiconductor company specializing in high performance, scalable technologies for mobile, automotive, AI, defense and aerospace, communication and quantum computing, today announced the appointment of Mike Byron to its Board of Directors. Byron, an accomplished NVIDIA finance executive with over 30 years of experience, recently retired as Vice President of Finance Operations & Systems at NVIDIA, where he played a key role in the company’s growth from a rising GPU innovator to a global semiconductor leader.

“Mike’s extensive experience in semiconductor finance and operational strategy comes at a pivotal time for Aeluma as we strive to accelerate growth and scale our technology for broader adoption,” said Jonathan Klamkin, Ph.D., Founder and CEO of Aeluma. “His tenure at NVIDIA, where he helped navigate one of the most remarkable growth trajectories in the semiconductor industry, will be invaluable as we work to expand our footprint in AI, quantum computing, and defense applications.”

Byron brings deep expertise in financial operations, accounting, and scaling technology companies. He joined NVIDIA in 2002 and held various finance leadership positions over 22 years, most recently serving as Vice President of Finance Operations & Systems and before that as Vice President & Chief Accounting Officer from 2011 to 2019. Prior to NVIDIA, Byron held finance and accounting roles at public technology companies and spent eight years as an auditor at Deloitte. He holds a Bachelor’s degree in Business Economics from UC Santa Barbara and became a Certified Public Accountant in 1990. In addition to his corporate leadership, Byron serves as a Trustee of the UC Santa Barbara Foundation and advises the Dean’s Investment Group, reflecting his commitment to fostering financial and technological innovation.

“Aeluma is at the forefront of semiconductor innovation, integrating high-performance materials with scalable silicon manufacturing to address the unprecedented demands of AI and quantum computing,” said Byron. “As computing power requirements surge to enable next-generation AI models and quantum applications, Aeluma’s advanced semiconductor solutions are positioned to deliver the performance and scalability these technologies require. I look forward to working with Dr. Klamkin, the leadership team, and the Board to support Aeluma’s continued impact on high-performance computing and emerging applications.”

Aeluma continues to gain momentum as a key player in U.S.-based semiconductor innovation, strengthening its advanced manufacturing capabilities and expanding strategic partnerships with NASA, the Department of Defense, and the Department of Energy. By leveraging its proprietary platform, Aeluma is delivering high-performance semiconductor solutions engineered to support the next generation of AI, quantum computing, and advanced computing applications, where scalability and efficiency are more critical than ever.

About Aeluma, Inc.

Aeluma (www.aeluma.com) develops novel optoelectronics for sensing and communication applications. Aeluma has pioneered a technique to manufacture semiconductor chips using high-performance compound semiconductor materials on large-diameter substrates that are commonly used for mass-market microelectronics. The technology has the potential to enhance performance and scale manufacturing, both of which are critical for emerging applications. Aeluma is developing a streamlined business model from its headquarters in Santa Barbara, California that has a state-of-the-art manufacturing cleanroom. Its transformative semiconductor chip technology may impact a variety of markets including automotive LiDAR, mobile, defense & aerospace, AR/VR, AI, quantum, and communication. Aeluma differentiates itself with unique semiconductor manufacturing capability, proprietary technology, the ability to perform rapid prototyping, and a broad set of product offerings.

Forward-Looking Statements

All statements in this press release that are not historical are forward-looking statements, including, among other things, statements relating to the Company’s expectations regarding its market position and market opportunity, expectations and plans as to its product development, manufacturing and sales, and relations with its partners and investors. These statements are not historical facts but rather are based on the Company’s current expectations, estimates, and projections regarding its business, operations and other similar or related factors. Words such as “may,” “will,” “could,” “would,” “should,” “anticipate,” “predict,” “potential,” “continue,” “expect,” “intend,” “plan,” “project,” “believe,” “estimate,” and other similar or related expressions are used to identify these forward-looking statements, although not all forward-looking statements contain these words. You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties, and assumptions that are difficult or impossible to predict and, in some cases, beyond the Company’s control. Actual results may differ materially from those in the forward-looking statements as a result of a number of factors, including those described in the Company’s filings with the Securities and Exchange Commission. The Company undertakes no obligation to revise or update information in this release to reflect events or circumstances in the future, even if new information becomes available.

Company

Aeluma, Inc.
 (805) 351-2707
info@aeluma.com

Investor Contact:

Bishop IR
 Mike Bishop
 (415) 894-9633
ir@aeluma.com