

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

PROSOMNUS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**Re: Docket No. 11**

**INTERIM ORDER AUTHORIZING PAYMENT OF PREPETITION  
OBLIGATIONS OWED TO CRITICAL VENDORS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an interim order (this “**Interim Order**”) authorizing the Debtors to pay, in their sole discretion, prepetition obligations owed to certain vendors, suppliers, service providers, and other similar parties and entities that are essential to maintaining the going concern value of the Debtors’ business (the “**Critical Vendors**” and the prepetition obligations owed to such Critical Vendors, the “**Critical Vendor Claims**”), all as more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to Bankruptcy Code sections 105(a), 363(b), and 503(b)(9), in the reasonable exercise of their business judgment, to pay some or all of the Critical Vendor Claims.
3. The Debtors' payment of Critical Vendor Claims shall not exceed \$750,000.00 in the aggregate during the period from the date of this Interim Order until the date that a final order is entered in this matter (during such period, the "**Critical Vendor Cap**"), unless otherwise ordered by the Court, as set forth herein.
4. The Debtors are authorized but not directed to pay the portion of prepetition claims owed to Critical Vendors that, in the Debtors' sole determination, is afforded administrative treatment under Bankruptcy Code section 503(b)(9), or any part thereof, in the ordinary course of the Debtors' business. Payment of such Critical Vendor Claims entitled to administrative priority under Bankruptcy Code section 503(b)(9) shall count towards the Critical Vendor Cap.
5. The Debtors are authorized to negotiate trade terms with any Critical Vendor, as a condition to payment of any Critical Vendor Claim, that vary from the Customary Trade Terms (the "**Negotiated Trade Terms**") to the extent the Debtors determine that such terms are necessary to procure essential goods or services or are otherwise in the best interests of the Debtors' estates.

6. A Critical Vendor's acceptance of payment is deemed to be acceptance of the terms of this Order, and if the Critical Vendor thereafter does not provide the Debtors with Customary Trade Terms or Negotiated Trade Terms during these Chapter 11 Cases, then any payments of prepetition claims made after the Petition Date may be deemed to be unauthorized postpetition transfers and therefore recoverable by the Debtors in these Chapter 11 Cases.

7. The Debtors, in their sole discretion, may require Critical Vendors (including Critical Vendors with claims under Bankruptcy Code section 503(b)(9)) to enter into an agreement (the "**Vendor Agreement**") including provisions substantially in the form attached hereto as Exhibit 1 as a condition to paying a Critical Vendor Claim. However, the Debtors' inability to enter into a Vendor Agreement shall not preclude them from paying a Critical Vendor Claim when, in their sole discretion, such payment is necessary to the Debtors' operations.

8. As a further condition of receiving payment on a Critical Vendor Claim, the Debtors are authorized, in their sole discretion, to require that such Critical Vendor agree to take whatever action is necessary to remove any trade liens at such Critical Vendor's sole cost and expense and waive any right to assert a trade lien on account of the paid Critical Vendor Claim.

9. In accordance with this Interim Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to receive, process, honor, and pay any and all checks, drafts, wires, and automated clearing house transfers issued, whether before or after the Petition Date, for payment of obligations described in the Motion to the extent that sufficient funds are on deposit in such amounts.

10. The Debtors are authorized to issue postpetition checks, or to affect postpetition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

11. If the Debtors, in their sole discretion, determine that a Critical Vendor has not complied with the terms and provisions of the Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of the Vendor Agreement, or on such terms as were individually agreed to between the Debtors and such Critical Vendor, the Debtors may terminate a Vendor Agreement, together with the other benefits to the Critical Vendor as contained in this Interim Order, provided, however, that the Vendor Agreement may be reinstated if (i) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor, (ii) the underlying default under the Vendor Agreement is fully cured by the Critical Vendor not later than five business days after the date the initial default occurred, or (iii) the Debtors, in their sole discretion, reach a subsequent agreement with the Critical Vendor.

12. If a Vendor Agreement is terminated as set forth above, or if a Critical Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Interim Order, then (i) the Debtors may, in their sole discretion, declare that the payment of the creditor's Critical Vendor Claim is a voidable postpetition transfer pursuant to Bankruptcy Code section 549(a) that the Debtors may recover in cash or in goods from such Critical Vendor, (ii) the creditor shall immediately return such payment in respect of a Critical Vendor Claim to the extent that the aggregate amount of such payment exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type

whatsoever, and (iii) the creditor's Critical Vendor Claim shall be reinstated in such an amount so as to restore the Debtors and the Critical Vendor to their original positions as if the Vendor Agreement had never been entered into and no payment of such Critical Vendor Claim had been made.

13. Notwithstanding anything to the contrary in this Interim Order, the Motion, or attachments, the priority status of a creditor's claim, including claims arising under Bankruptcy Code section 503(b)(9), shall not be affected by whether such creditor executes a Vendor Agreement, or provides services or goods to the Debtors under customary trade terms or otherwise.

14. Nothing contained in this Interim Order shall be deemed to constitute (i) a rejection, assumption, or postpetition reaffirmation of any executory contract or to require the Debtors to make any of the payments or to post any of the deposits authorized herein, (ii) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, or (iii) a waiver of any rights, claims, or defenses of the Debtors.

15. Nothing in this Interim Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of, priority of, or basis for any claims against the Debtors arising in connection with the Critical Vendor Claims.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

17. Notice of this Motion shall be deemed good and sufficient notice of such Motion under the circumstances and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

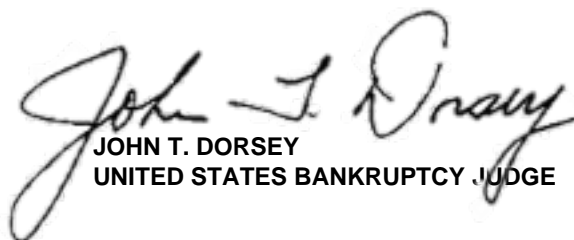
20. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on **June 5, 2024, at 10:00 a.m. Prevailing Eastern Time.**

21. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on the following parties **no later than 4:00 p.m. Prevailing Eastern Time on May 29, 2024**: (a) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Pryor Cashman LLP, 7 Times Square, 40th Floor, New York, New York 10036, Attn: Seth H. Lieberman (slieberman@pryorcashman.com); (e) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) and (f) the Office of the United States Trustee, 844 King Street,

Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie  
(jon.lipshie@usdoj.gov).

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

**Dated: May 9th, 2024**  
**Wilmington, Delaware**

  
**JOHN T. DORSEY**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit 1**

Vendor Agreement



**ProSomnus, Inc.**

\_\_\_\_\_, 2024

TO: [Critical Vendor]  
[Name]  
[Address]

Dear Valued Supplier:

As you are aware, ProSomnus, Inc. and certain of its affiliates (collectively, the “**Company**”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Cases**” and the “**Bankruptcy Court**,” respectively) on May 7, 2024 (the “**Petition Date**”). On the Petition Date, the Company requested the Bankruptcy Court’s authority to pay the prepetition claims of certain suppliers in recognition of the importance of the Company’s relationship with such suppliers and its desire that the Bankruptcy Cases have as little effect on the Company’s ongoing business operations as possible. On \_\_\_\_\_, the Bankruptcy Court entered an order (the “**Order**”) authorizing the Company, under certain conditions, to pay the prepetition claims of certain suppliers that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on account of prepetition claims, you must agree to continue to supply goods and services to the Company based on “Customary Trade Terms.” However, execution of this letter agreement is not a requirement for payment of claims arising under Bankruptcy Code section 503(b)(9), general unsecured claims under a chapter 11 plan, or as otherwise ordered by the Court. In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs), that were most favorable to the Company and in effect between you and the Company prior to the Petition Date, or such other trade terms as you and the Company agree.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, you and the Company both agree that:

1. The estimated accrued balance of the prepetition claim (net of any setoffs, credits, or discounts) that is due and owing is \$ \_\_\_\_\_ (the “**Claim**”).
2. The Debtors hereby agree to pay \$ \_\_\_\_\_ (the “**Vendor Claim**”) on account of the Claim, subject to the terms and conditions set forth in this agreement, it being understood that the remaining amount of your Claim shall be forever released and waived. If you have already filed a proof of claim with the Bankruptcy Court, you will take all necessary steps to withdraw the proof of claim.
3. Nothing herein waives the Company’s or your rights under Bankruptcy Code section 365.

4. You will provide Customary Trade Terms as follows (if more space is required, attach continuation pages), which credit terms shall be no less favorable than those in effect between you and the Company at any time during the one-year period immediately before the Petition Date.

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5. You will not demand a lump sum payment upon consummation of a plan of reorganization in the Bankruptcy Cases on account of any administrative expense priority claim that you assert, but instead agree that such claims will be paid in the ordinary course of business after consummation of a plan under applicable Customary Trade Terms.

6. Payment of your Vendor Claim in the manner set forth in the Order may only occur upon execution of this letter agreement by a duly authorized representative of your company and the return of this letter to the Company. The undersigned, a duly authorized representative of [Critical Vendor], has reviewed the terms and provisions of the Order and agrees that [Critical Vendor] is bound by such terms.

7. You will not separately seek payment for reclamation and similar claims outside of the terms of the Order unless your participation in the Vendor payment program authorized by the Order (the “**Vendor Payment Program**”) is terminated.

8. You will not file or otherwise assert against the Company, the estates, or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into prior to the Petition Date. Furthermore, you agree to take (at your own expense) all necessary steps to remove any such lien as soon as possible.

9. If either the Vendor Payment Program or your participation therein terminates as provided in the Order, or you later refuse to continue to supply goods to the Company on Customary Trade Terms during the pendency of the Bankruptcy Case, any payments you receive on account of your Vendor Claim (including claims arising under Bankruptcy Code section 503(b)(9)) will be deemed voidable postpetition transfers pursuant to Bankruptcy Code section 549(a). You will immediately repay to the Company any payments made to you on account of your Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever. Your Vendor Claim shall be reinstated in such an amount so as to restore the Company and you to the same positions as would have existed if payment of the Vendor Claim had not been made.

10. Any dispute with respect to this letter agreement, the Order, and/or your participation in the Vendor Payment Program shall be determined by the Bankruptcy Court.

11. You will keep the existence and the terms of this letter agreement confidential and will not disclose it to any person or entity without the prior written consent of the Company, other than as required by law to any court or governmental authority.

12. If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call.

Sincerely,

[Name of Applicable Debtor]

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

[Name]

[Title]

Agreed and Accepted by:  
[Vendor]

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024