

**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): November 21, 2022

**OPTEX SYSTEMS HOLDINGS, INC.**

(Exact Name of Registrant as Specified in Charter)

<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>000-54114</b> (Commission File Number)	<b>90-0609531</b> (IRS Employer Identification No.)
1420 Presidential Drive, Richardson, TX (Address of principal executive offices)		75081-2439 (Zip Code)

Registrant's telephone number, including area code: (972) 644-0722

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 DFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4 (c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
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 1.01 Entry Into a Material Definitive Agreement.**

On November 21, 2022, Optex Systems Holdings, Inc., a Delaware corporation (the "Company") and its subsidiary Optex Systems, Inc. ("Optex", and with the Company, the "Borrowers") issued an Amended and Restated Revolving Line of Credit Note (the "Line of Credit Note") to PNC Bank, National Association, successor to BBVA USA (the "Lender"), in connection with an increase of the Borrowers' revolving line of credit facility from \$1.125 million to \$2.0 million under the Borrowers' existing Amended and Restated Loan Agreement with the Lender (the "Loan Agreement"). The maturity date remains April 15, 2023. Obligations outstanding under the credit facility will accrue interest at a rate equal to the Lender's prime rate minus 0.25%.

The Line of Credit Note and Loan Agreement contain customary events of default and negative covenants, including but not limited to those governing indebtedness, liens, fundamental changes, investments, and restricted payments. The credit facility is secured by substantially all of the operating assets of the Borrowers as collateral. The Borrowers' obligations under the credit facility are subject to acceleration upon the occurrence of an event of default as defined in the Line of Credit Note.

The foregoing summary of the Line of Credit Note and the transactions contemplated thereby is qualified in its entirety by reference to the text of such note, a copy of which is attached hereto as Exhibit 10.1 and is incorporated by reference herein. The foregoing summary of the Loan Agreement and the transactions contemplated thereby is qualified in its entirety by reference to the text of such agreement, a copy of which is attached hereto as Exhibit 10.2 and is incorporated by reference herein.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

As described in Item 1.01 above, on November 21, 2022, the Company's existing revolving credit facility was amended and restated. The terms of the credit facility disclosed in Item 1.01 are incorporated herein by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On November 28, 2022, the Company entered into a new employment agreement with Danny Schoening. Pursuant to the agreement, which is dated as of December 1, 2022, Mr. Schoening will continue to serve as the Company's President and Chief Executive Officer through November 30, 2025. Mr. Schoening's base salary initially is \$304,912 per annum, and will be increased to \$314,060 on December 1, 2023 and \$323,481 on December 1, 2024. Mr. Schoening will be eligible for a performance bonus based on a one-year operating plan adopted by the Company's Board of Directors (the "Board"). The bonus will be based on financial and/or operating metrics decided annually

by the Board or the Compensation Committee and tied to such one-year plan. The target bonus will equate to 30% of Mr. Schoening's base salary. The Board will have discretion in good faith to alter the performance bonus upward or downward by 20%.

The updated employment agreement also served to amend Mr. Schoening's RSU Agreement, dated January 2, 2019, which had been previously amended as of December 1, 2021, by changing the third and final vesting date for the restricted stock units granted under such agreement from the "change of control date" to January 1, 2023.

The employment agreement events of termination consist of: (i) death or permanent disability of Mr. Schoening; (ii) termination by the Company for cause (including conviction of a felony, commission of fraudulent, illegal or dishonest acts, certain willful misconduct or gross negligence by Mr. Schoening, continued failure to perform material duties or cure material breach after written notice, violation of securities laws and material breach of the employment agreement), (iii) termination by the Company without cause and (iv) termination by Mr. Schoening for good reason (including continued breach by the Company of its material obligations under the agreement after written notice, the requirement for Mr. Schoening to move more than 100 miles away for his employment without consent, and merger or consolidation that results in more than 66% of the combined voting power of the Company's then outstanding securities or those of its successor changing ownership or a sale of all or substantially all of its assets, without the surviving entity assuming the obligations under the agreement). For a termination by the Company for cause or upon death or permanent disability of Mr. Schoening, Mr. Schoening will be paid accrued and unpaid salary and any bonus earned through the date of termination. For a termination by the Company without cause or by Mr. Schoening with good reason, Mr. Schoening will also be paid six months' base salary in effect.

The foregoing description of the employment agreement is only a summary, does not purport to be complete, and is qualified in its entirety by the terms of the agreement, which is filed as Exhibit 10.3 hereto and incorporated by reference herein.

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#### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

10.1 [Amended and Restated Line of Credit Note dated as of November 21, 2022 by and among Optex Systems Holdings, Inc., Optex Systems, Inc. and PNC Bank, National Association](#)

10.2 [Amended and Restated Loan Agreement dated as of April 12, 2022 by and among Optex Systems Holdings, Inc., Optex Systems, Inc., and PNC Bank, National Association\\*](#)

10.3 [Employment Agreement of Danny Schoening, dated December 1, 2022](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Previously filed

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#### SIGNATURES

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

Optex Systems Holdings, Inc.  
(Registrant)

By: /s/ Karen Hawkins

Karen Hawkins

Title: Chief Financial Officer

Date: November 28, 2022

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Amended and Restated  
Revolving Line of Credit Note



\$2,000,000.00

November 21, 2022

**FOR VALUE RECEIVED, OPTEX SYSTEMS HOLDINGS, INC.**, with an address at 1420 PRESIDENTIAL DRIVE, RICHARDSON, TEXAS 75081-2439, and **OPTEX SYSTEMS, INC.**, with an address at 1420 PRESIDENTIAL DRIVE, RICHARDSON, TEXAS 75081-2439 (individually and collectively, the “**Borrower**”), promises to pay to the order of **PNC BANK, NATIONAL ASSOCIATION** (the “**Bank**”), in lawful money of the United States of America in immediately available funds at its offices located at 8333 Douglas Ave, Dallas, Texas 75225, or at such other location as the Bank may designate from time to time, the principal sum of **\$2,000,000.00** (the “**Facility**”) or such lesser amount as may be advanced to or for the benefit of the Borrower hereunder, together with interest accruing on the outstanding principal balance from the date hereof, all as provided below.

**1. Revolving Line of Credit Advances.** This Note evidences a revolving line of credit. The Borrower may borrow, repay and reborrow hereunder and the Bank may advance and readvance under this Note from time to time (each an “advance” and together the “advances”) until the Expiration Date, subject to the terms and conditions of this Note and the Loan Documents (as defined below). The “**Expiration Date**” shall mean April 15, 2023, or such later date as may be designated by the Bank by written notice from the Bank to the Borrower. The Borrower acknowledges and agrees that in no event will the Bank be under any obligation to extend or renew the Facility or this Note beyond the Expiration Date. In no event shall the aggregate unpaid principal amount of advances under this Note exceed the face amount of this Note.

**2. Interest Rate and Payments.** Amounts outstanding under this Note will bear interest at a rate per annum which is equal to the sum of (A) the Base Rate (as defined below) minus (B) 25 basis points (0.25%). Accrued interest will be due and payable on the same day of each month, beginning with the payment due on December 15, 2022. The outstanding principal balance and any accrued but unpaid interest shall be due and payable on the Expiration Date.

**3. Certain Definitions.** If the following terms are used in this Note, such terms shall have the meanings set forth below:

“**Base Rate**” shall mean the Prime Rate; provided, however, if the Base Rate would be less than zero, then such rate shall be deemed to be zero. If and when the Base Rate changes, the rate of interest on this Note will change automatically without notice to the Borrower, effective on the date of any such change.

“**Bloomberg**” shall mean Bloomberg Index Services Limited (or a successor administrator).

“**BSBY**” shall mean the Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published by Bloomberg or another commercially available source providing such quotations as may be designated by the Bank from time to time.

“**BSBY Reserve Percentage**” shall mean, as of any day, the maximum effective percentage in effect on such day, if any, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to BSBY funding.

“**Business Day**” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Pittsburgh, Pennsylvania.

“**Daily BSBY Rate**” shall mean, for any day, the rate per annum determined by the Bank by dividing (the resulting quotient rounded upwards, at the Bank’s discretion, to the nearest 1/100th of 1%) (A) the Published Rate for such day, by (B) a number equal to 1.00 minus the BSBY Reserve Percentage; provided, however, if the Daily BSBY Rate determined as provided above would be less than zero, then such rate shall be deemed to be zero.

“**Default Rate**” shall mean the rate per annum equal to the lesser of (A) the sum of 3% plus the interest rate otherwise in effect from time to time under this Note and (B) the Maximum Rate.

“**Maximum Rate**” shall mean the maximum rate of interest allowed by applicable law. “**NYFRB**” shall mean the Federal Reserve Bank of New York.

“**Overnight Bank Funding Rate**” shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Bank for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrower.

“**Prime Rate**” shall mean the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers.

“**Published Rate**” shall mean the one-month Bloomberg Short-Term Bank Yield Index rate administered by Bloomberg and published by Bloomberg or another commercially available source providing such quotations as may be designated by the Bank from time to time.

**4. Advance Procedures.** If permitted by the Bank, a request for advance may be made by telephone or electronic mail, or delivered in accordance with the Bank’s security procedures through any automated platform or electronic service provided by the Bank, with such confirmation or verification (if any) as the Bank may require in its discretion from time to time. A request for advance by any Borrower shall be binding upon Borrower, jointly and severally. The Borrower authorizes the Bank to accept telephonic, email, automated and electronic requests for advances, and the Bank shall be entitled to rely upon the authority of any person providing such instructions. The Borrower hereby indemnifies and holds the Bank harmless from and against any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees and expenses) which may arise or be created by the acceptance of such telephonic, email, automated and electronic requests or by the making of such advances. The Bank will enter on its books and records, which entry when made will be presumed correct, the date and amount of each advance, as well as the date and amount of each payment made by the Borrower.

**5. Interest Calculation; Maximum Rate.** Interest will be calculated based on the actual number of days that principal is outstanding over a year of 360 days. In no event will

the rate of interest hereunder exceed the Maximum Rate. Regardless of any other provision of this Note or the other Loan Documents, if for any reason the effective interest rate should exceed the Maximum Rate, the effective interest rate shall be deemed reduced to, and shall be, the Maximum Rate, and (i) the amount which would be excessive interest shall be deemed applied to the reduction of the principal balance of this Note and not to the payment of interest, and (ii) if the loan evidenced by this Note has been or is thereby paid in full, the excess shall be returned to the party paying same, such application to the principal balance of this Note or the refunding of such excess to be a complete settlement and acquittance thereof.

**6. Other Payment Terms.** If any payment under this Note shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment. The Borrower hereby authorizes the Bank to charge the Borrower's deposit account at the Bank for any payment when due under this Note or any other Loan Document. Payments received will be applied to charges, fees and expenses (including attorneys' fees), accrued interest and principal in any order the Bank may choose, in its sole discretion.

**7. Late Payments; Default Rate.** If the Borrower fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of this Note within 15 calendar days of the date due and payable, the Borrower also shall pay to the Bank a late charge equal to the lesser of 5% of the amount of such payment or \$100.00 (the "Late Charge"). Such 15-day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Bank's option upon the occurrence of any Event of Default (as hereinafter defined) and during the continuance thereof, amounts outstanding under this Note shall bear interest at the Default Rate. The Default Rate shall continue to apply whether or not judgment shall be entered on this Note. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Bank's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Bank's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Bank may employ. In addition, the Default Rate reflects the increased credit risk to the Bank of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Bank, and that the actual harm incurred by the Bank cannot be estimated with certainty and without difficulty.

**8. Prepayment.** The indebtedness evidenced by this Note may be prepaid in whole or in part at any time without penalty.

**9. Increased Costs; Yield Protection.** On written demand, together with written evidence of the justification therefor, the Borrower agrees to pay the Bank all direct costs incurred, any losses suffered or payments made by the Bank as a result of any Change in Law (hereinafter defined), imposing any reserve, deposit, allocation of capital or similar requirement (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) on the Bank, its holding company or any of their respective assets relative to the Facility. "Change in Law" means the occurrence, after the date of this Note, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

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**10. Other Loan Documents.** This Note is issued in connection with a letter agreement or loan agreement between the Borrower and the Bank, dated on or before the date hereof, and the other agreements and documents executed and/or delivered in connection therewith or referred to therein, the terms of which are incorporated herein by reference (as amended, modified or renewed from time to time, collectively the "Loan Documents"), and is secured by the property (if any) described in the Loan Documents and by any and all mortgages, security agreements, assignments, loan agreements, pledge agreements and other documents or instruments evidencing a security interest or other lien in favor of the Bank and delivered by the Borrower or by any third party with reference to indebtedness of the Borrower, whether such documents were previously or are hereafter executed, and whether given expressly as security for payment of this Note or generally as security for any and all indebtedness of the Borrower to the Bank. Such documents may be executed contemporaneously with the execution of this Note, or they may be executed and delivered at another time. Collateral securing other obligations of the Borrower to the Bank may also secure this Note.

**11. Events of Default.** The occurrence of any of the following events will be deemed to be an "Event of Default" under this Note: (i) the nonpayment of any principal, interest or other indebtedness under this Note when due; (ii) the occurrence of any event of default or any default and the lapse of any notice or cure period, or any Obligor's failure to observe or perform any covenant or other agreement, under or contained in any Loan Document or any other document now or in the future evidencing or securing any debt, liability or obligation of any Obligor to the Bank; (iii) the filing by or against any Obligor of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against any Obligor, such proceeding is not dismissed or stayed within 30 days of the commencement thereof, provided that the Bank shall not be obligated to advance additional funds hereunder during such period); (iv) any assignment by any Obligor for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of any Obligor held by or deposited with the Bank; (v) a default with respect to any other indebtedness of any Obligor for borrowed money, if the effect of such default is to cause or permit the acceleration of such debt; (vi) the commencement of any foreclosure or forfeiture proceeding, execution or attachment against any collateral securing the obligations of any Obligor to the Bank; (vii) the entry of a final judgment against any Obligor and the failure of such Obligor to discharge the judgment within 10 days of the entry thereof; (viii) any change in any Obligor's business, assets, operations, financial condition or results of operations that has or could reasonably be expected to have any material adverse effect on any Obligor; (ix) any Obligor ceases doing business as a going concern; (x) any representation or warranty made by any Obligor to the Bank in any Loan Document or any other documents now or in the future evidencing or securing the obligations of any Obligor to the Bank, is false, erroneous or misleading in any material respect; (xi) if this Note or any guarantee executed by any Obligor is secured, the failure of any Obligor to provide the Bank with additional collateral if in the Bank's opinion at any time or times, the market value of any of the collateral securing this Note or any guarantee has depreciated below that required pursuant to the Loan Documents or, if no specific value is so required, then in an amount deemed material by the Bank; (xii) the revocation or attempted revocation, in whole or in part, of any guarantee by any Obligor; or (xiii) the death, incarceration, indictment or legal incompetency of any individual Obligor or, if any Obligor is a partnership or limited liability company, the death, incarceration, indictment or legal incompetency of any individual general partner or member. As used herein, the term "Obligor" means any Borrower and any guarantor of, or any pledgor, mortgagor or other person or entity providing collateral support for, the Borrower's obligations to the Bank existing on the date of this Note or arising in the future. Upon the occurrence of an Event of Default: (a) the Bank shall be under no further obligation to make advances hereunder; (b) if an Event of Default specified in clause (iii) or (iv) above shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (c) if any other Event of Default shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder, at the Bank's option and without demand or notice of any kind, may be accelerated and become immediately due and payable; (d) at the Bank's option, this Note will bear interest at the Default Rate from the date of the occurrence of the Event of Default; and (e) the Bank may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law.

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**12. Right of Setoff.** In addition to all liens upon and rights of setoff against the Borrower's money, securities or other property given to the Bank by law, the Bank shall have, with respect to the Borrower's obligations to the Bank under this Note and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and the Borrower hereby grants the Bank a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to the Bank, all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Bank or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to the Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of

Default hereunder without any action of the Bank, although the Bank may enter such setoff on its books and records at a later time.

**13. Anti-Money Laundering/International Trade Law Compliance.** The Borrower represents, warrants and covenants to the Bank, as of the date hereof, the date of each advance of proceeds under the Facility, the date of any renewal, extension or modification of the Facility, and at all times until the Facility has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of the Facility will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Jurisdiction or Sanctioned Person; (c) the funds used to repay the Facility are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws; and (e) no Collateral is or will become Embargoed Property. The Borrower covenants and agrees that (a) it shall immediately notify the Bank in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to the Bank, upon request by the Bank, the Borrower shall provide substitute Collateral acceptable to the Bank that is not Embargoed Property.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Collateral**” means any collateral securing any debt, liabilities or other obligations of any Obligor to the Bank; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means the Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of the Borrower acting in any capacity in connection with the Facility; “**Embargoed Property**” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by the Bank of any applicable Anti-Terrorism Law if the Bank were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; “**Reportable Compliance Event**” means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause the Bank to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the Facility to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property; “**Sanctioned Jurisdiction**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

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**14. Indemnity.** The Borrower agrees to indemnify each of the Bank, each legal entity, if any, who controls, is controlled by or is under common control with the Bank, and each of their respective directors, officers and employees (the “**Indemnified Parties**”), and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) (each, a “**Claim**”) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of the Borrower), in connection with or arising out of or relating to the matters referred to in this Note or in the other Loan Documents or the use of any advance hereunder, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by the Borrower, or (b) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any Claim that is determined by a court of competent jurisdiction in a final, non-appealable judgment to have been solely attributable to an Indemnified Party’s gross negligence or willful misconduct. The indemnity agreement contained in this paragraph shall survive the termination of this Note, payment of any advance hereunder and the assignment of any rights hereunder. The Borrower may participate at its expense in the defense of any such action or claim.

**15. Miscellaneous.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder (“**Notices**”) must be in writing (except as may be agreed otherwise above with respect to borrowing requests or as otherwise provided in this Note). Notices may be given in any manner to which the parties may agree. Without limiting the foregoing, first-class mail, postage prepaid, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. In addition, the parties agree that Notices may be sent electronically to any electronic address provided by a party from time to time or through an automated platform that the Bank provides to the Borrower. Notices may be sent to a party’s address as set forth above or to such other address as any party may give to the other for such purpose in accordance with this paragraph. Notices will be effective upon receipt. For purposes hereof, “receipt” shall mean: (i) for notices sent by U.S. mail, the third business day after the date such notice was sent; (ii) for notices delivered by hand or sent by overnight courier service, the date delivered; (iii) for notices sent by facsimile or electronic communication, the date when sent; and (iv) for notices sent by any other method, the date received. No delay or omission on the Bank’s part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Bank’s action or inaction impair any such right or power. The Bank’s rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Bank may have under other agreements, at law or in equity. Except as otherwise set forth in this Note, no modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Note will be effective unless made in a writing signed by the Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Notwithstanding the foregoing, the Bank may modify this Note for the purposes of completing missing content or correcting erroneous content, without the need for a written amendment, provided that the Bank shall send a copy of any such modification to the Borrower (which notice may be given by electronic mail). The Borrower agrees to pay on demand, to the extent permitted by law, all costs and expenses incurred by the Bank in the enforcement of its rights in this Note and in any security therefor, including without limitation reasonable fees and expenses of the Bank’s counsel. If any provision of this Note is found to be invalid, illegal or unenforceable in any respect by a court, all the other provisions of this Note will remain in full force and effect. The Borrower and all other makers and indorsers of this Note hereby forever waive presentment, protest, notice of dishonor, notice of non-payment, notice of intent to accelerate and notice of acceleration, and any other notice of any kind. The Borrower also waives all defenses based on suretyship or impairment of collateral. If this Note is executed by more than one Borrower, the obligations of such persons or entities hereunder will be joint and several. This Note shall bind the Borrower and its heirs, executors, administrators, successors and assigns, and the benefits hereof shall inure to the benefit of the Bank and its successors and assigns; provided, however, that the Borrower may not assign this Note in whole or in part without the Bank’s written consent and the Bank at any time may assign this Note in whole or in part.

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**16. Governing Law and Venue.** This Note has been delivered to and accepted by the Bank and will be deemed to be made in the State where the Bank’s office indicated above is located (the “**State**”). **THIS NOTE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE BANK AND THE BORROWER DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE, EXCLUDING ITS CONFLICT OF LAWS RULES, INCLUDING WITHOUT LIMITATION THE ELECTRONIC TRANSACTIONS ACT (OR EQUIVALENT) IN EFFECT IN THE STATE (OR, TO THE EXTENT CONTROLLING, THE LAWS OF THE UNITED STATES OF AMERICA, INCLUDING WITHOUT LIMITATION THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT).** The Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Bank’s office indicated above is located; provided that nothing contained in this Note will prevent the Bank from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Bank and the Borrower. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Note.

**17. Commercial Purpose.** The Borrower represents that the indebtedness evidenced by this Note is being incurred by the Borrower solely for the purpose of acquiring or carrying on a business, professional or commercial activity, and not for personal, family or household purposes.

**18. USA PATRIOT Act Notice.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when the Borrower opens an account, the Bank will ask for the business name, business address, taxpayer identifying number and other information that will allow the Bank to identify the Borrower, such as organizational documents. For some businesses and organizations, the Bank may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

**19. Representation by Counsel.** The Borrower hereby represents that it has been represented by competent counsel of its choice, or has knowingly waived its right to use and retain counsel, in the negotiation and execution of this Note and the other Loan Documents; that it has read and fully understood the terms hereof; that the Borrower and any retained counsel have been afforded an opportunity to review, negotiate and modify the terms of this Note and the other Loan Documents; and that it intends to be bound hereby. In accordance with the foregoing, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Note or any other Loan Document.

**20. Authorization to Obtain Credit Reports.** By signing below, each person, who is signing in his or her individual capacity, requests and provides written authorization to the Bank or its designee (and any assignee or potential assignee hereof) to obtain such individual's personal credit profile from one or more national credit bureaus. This authorization extends to obtaining a credit profile in (i) considering an application for credit that is evidenced, guaranteed or secured by this document, (ii) assessing creditworthiness and (iii) considering extensions of credit, including on an ongoing basis, as necessary for the purposes of (a) update, renewal or extension of such credit or additional credit, (b) reviewing, administering or collecting the resulting account and (c) reporting on the repayment and satisfaction of such credit obligations. By signing below, such individual further ratifies and confirms his or her prior requests and authorizations with respect to the matters set forth herein. For the avoidance of doubt, this provision does not apply to persons signing below in their capacities as officers or other authorized representatives of entities, organizations or governmental bodies.

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**21. Counterparts; Electronic Signatures and Records.** This Note and any other Loan Document may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Notwithstanding any other provision herein, the Borrower agrees that this Note, the Loan Documents, any amendments thereto, and any other information, notice, signature card, agreement or authorization related thereto (each, a "Communication") may, at the Bank's option, be in the form of an electronic record. Any Communication may, at the Bank's option, be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention.

**22. Automatic Payment.** If due to any act or omission of the Borrower or another Obligor the Bank cannot automatically deduct payments required under this Note or the other Loan Documents from a deposit account with the Bank (including due to the Borrower's revocation of its authorization to do so or failure to maintain such deposit account with the Bank or otherwise), the Bank may, at its option, upon 30 days' notice to the Borrower, increase the interest rate payable by the Borrower under this Note by 25 basis points (0.25%).

**23. Depository.** The Borrower will establish and maintain with the Bank the Borrower's primary depository accounts. If the Borrower fails to establish and/or maintain its primary depository accounts with the Bank, the Bank may, at its option, upon 30 days' notice to the Borrower, increase the interest rate payable by the Borrower under this Note by up to 100 basis points (1.00%). The Bank's right to increase the interest rate pursuant to this paragraph shall be in addition to any other rights or remedies the Bank may have under this Note, all of which are hereby reserved, and shall not constitute a waiver, release or limitation upon the Bank's exercise of any such rights or remedies.

**24. State-Specific Provisions.**

(a) **Additional Agreement regarding Indemnity.** The Borrower agrees that any undertaking to indemnify the Indemnified Parties made by the Borrower hereunder or under any other Loan Document with respect to any Claim is made WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OF ANY PARTY OR PARTIES, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE, except to the extent expressly provided otherwise.

**25. Amendment and Restatement.** This Note amends and restates, and is in substitution for, that certain Amended and Restated Revolving Line of Credit Note in the original principal amount of \$1,125,000.00 payable to the order of the Bank and dated April 12, 2022 (the "Existing Note"). However, without duplication, this Note shall in no way extinguish, cancel or satisfy Borrower's unconditional obligation to repay all indebtedness evidenced by the Existing Note or constitute a novation of the Existing Note. Nothing herein is intended to extinguish, cancel or impair the lien priority or effect of any security agreement, pledge agreement or mortgage with respect to any Obligor's obligations hereunder and under any other document relating hereto. Notwithstanding anything to the contrary herein, if any amount outstanding as of the date hereof under the Existing Note bears interest based on a rate that is reset at the end of a specified interest period, and such interest period commenced prior to the date hereof, such amount shall continue to bear interest based on such rate, and the terms of the Existing Note applicable to amounts bearing interest based on such rate shall continue to apply to such amount, until the end of the then-current interest period, after which the interest rate (and related provisions) as stated in this Note shall apply.

**26. WAIVER OF JURY TRIAL. THE BORROWER IRREVOCABLY WAIVES ANY AND ALL RIGHTS THE BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS NOTE, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS NOTE OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE BORROWER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

The Borrower acknowledges that it has read and understands all the provisions of this Note, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

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WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

**OPTEX SYSTEMS HOLDINGS, INC.**

By: /s/ Karen L. Hawkins

(SEAL)

Karen L. Hawkins, Chief Financial Officer

**OPTEX SYSTEMS, INC.**

By: /s/ Karen L. Hawkins

(SEAL)

Karen L. Hawkins, Chief Financial Officer



## EMPLOYMENT AGREEMENT

This Employment Agreement (this “*Agreement*”), by and between **Optex Systems Holdings, Inc.**, a Delaware corporation (the “*Company*”), and **Danny Schoening**, an individual (“*Executive*”), is dated as of December 1, 2022 (the “*Effective Date*”).

### RECITALS

**WHEREAS**, the Company is currently employing Executive as President and Chief Executive Officer pursuant to the terms of the Employment Agreement, originally effective as of April 1, 2008, between the Company and Executive, as amended and restated as of December 1, 2021 (as so amended and restated, the “*Original Employment Agreement*”);

**WHEREAS**, the Company desires to retain Executive as its President and Chief Executive Officer and to replace the Original Employment Agreement with this Agreement; and

**WHEREAS**, in connection therewith, the Company and Executive desire to enter into this Agreement.

### PART ONE – DEFINITIONS

**Definitions.** For purposes of this Agreement, the following definitions will be in effect:

“*Affiliates*” means all persons and entities directly or indirectly controlling, controlled by or under common control with the entity specified, where control may be by management authority, contract or equity interest.

“*Board*” means the Board of Directors of the Company or the Compensation Committee thereof (or any other committee subsequently granted authority by the Board), subject to Section 14 below.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury regulations and administrative guidance promulgated thereunder.

“*Company*” means, unless the context otherwise requires, Optex Systems Holdings, Inc., a Delaware corporation, and all of its subsidiaries.

“*Compensation Committee*” means the Compensation Committee of the Board.

“*Employment Period*” means the period beginning on the Effective Date and ending on November 30, 2025.

“*Good Reason*” means Executive terminates employment after (i) the Company has breached any of its material obligations hereunder and fails to cure such breach within 30 business days following receipt of written notice of such breach from Executive by Company, (ii) the Company requires the Executive, without his consent, to be based in any office or location more than 100 miles from the Company’s current location, or (iii) there is a merger or consolidation that results in more than 66% of the combined voting power of the then outstanding voting securities of the Company or its successor changing ownership or a sale of all or substantially all of the Company’s assets, and the obligations under this Agreement are not assumed by the surviving entity.

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“*Termination for Cause*” means termination because of Executive’s (i) conviction of, guilty plea to or confession of guilt of a felony, (ii) commission of fraudulent, illegal or dishonest acts, (iii) willful misconduct or gross negligence which reasonably could be expected to be materially injurious to the business, operations or reputation of the Company (monetarily or otherwise), either individually or in the aggregate, (iv) after a written warning and a reasonable opportunity to cure non-performance, failure to perform Executive’s material duties as assigned to Executive pursuant to the terms of this Agreement from time to time or failure to cure any other material breach of this Agreement, (v) any violation of any securities laws or regulations or laws or regulations of similar import with regard to the disclosure of information to the Company or discharge of duties with respect to the Company, or (vi) material breach of the Executive’s obligations hereunder.

### PART TWO - TERMS AND CONDITIONS OF EMPLOYMENT

The following terms and conditions will govern Executive’s employment with the Company throughout the Employment Period and will also, to the extent expressly indicated below, remain in effect following Executive’s cessation of employment with the Company.

**1. Employment and Duties.** During the Employment Period, Executive will serve as the President and Chief Executive Officer of Company and will report to the Board. Executive will have such duties and responsibilities as are commensurate with such position and such other duties and responsibilities commensurate with such position (including with the Company’s subsidiaries) as are from time to time assigned to Executive by the Board (or a committee thereof). During the Employment Period, Executive will devote his full business time, energy and skill to the performance of his duties and responsibilities hereunder, provided the foregoing will not prevent Executive from (a) serving as a non-executive director on the board of directors of non-profit organizations and other companies, (b) participating in charitable, civic, educational, professional, community or industry affairs, (c) managing his and his family’s personal investments, including in an advisory capacity related to current or potential investments or (d) such other activities approved by the Board from time to time; provided, that such activities individually or in the aggregate do not interfere or conflict with Executive’s duties and responsibilities hereunder, violate applicable law, or create a potential business or fiduciary conflict.

**2. Service as Director.** As of the Effective Date, Executive is serving as a member of the Company’s Board of Directors. For as long as Executive shall continue to serve as Chief Executive Officer, he shall make himself available to stand for re-election to such position at each annual meeting of the Company’s stockholders. Executive’s failure to be re-elected to the Board, in and of itself, shall not constitute a termination of this Agreement (and shall not constitute a Termination for Cause or a resignation by Executive for Good Reason, each as defined in this Agreement), nor shall it entitle Executive to any severance benefits. Pursuant to the Company’s policies and practices, for the duration of this Agreement, Executive will fulfill his duties as a director without additional compensation. This Agreement shall not in any way be construed or interpreted so as to affect adversely or otherwise impair the right of the Company or the stockholders to remove the Executive from the Board at any time in accordance with the provisions of applicable law.

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**3. Term.** The term of this Agreement shall run from the Effective Date through November 30, 2025 (such period, the “*Term*”), and may be terminated earlier as contemplated by Section 8.A. Termination of this Agreement due to its non-renewal shall not constitute a Termination for Cause or a resignation by Executive for Good Reason.

**4. Compensation; Additional Incentives.**



A. **Base Salary.** Executive's base salary (the "**Base Salary**") will be paid at the rate of \$25,409.33 monthly (\$304,912 annualized) during the Term. Executive's Base Salary may be increased by the Compensation Committee and/or Board in their sole discretion but shall not be decreased without Executive's consent. Executive's Base Salary will be paid at periodic intervals in accordance with the Company's normal payroll practices for salaried employees. Executive's base salary will increase to \$314,060.00 on December 1, 2023, and to \$323,481.00 on December 1, 2024.

B. **Performance Bonus Opportunities.** Executive will be eligible for a performance bonus (the "**Performance Bonus**"), which is based upon a one-year operating plan adopted by the Board. The bonus will be based on financial and/or operating metrics decided annually by the Board (so long as the Executive is not present at voting or deliberations on any such metrics) or the Compensation Committee and tied to such one-year plan. The target bonus will equate to 30% of Executive's Base Salary. The Board will have discretion to alter the Performance Bonus upward or downward by 20% based on its good faith discretion.

C. The Company may deduct and withhold, from the compensation payable and benefits provided to Executive hereunder, any and all applicable federal, state, local and other taxes and any other amounts required to be deducted or withheld by the Company under applicable statute or regulation.

D. To the extent that any compensation paid or payable pursuant to this Agreement is considered "incentive-based compensation" within the meaning and subject to the requirements of Section 10D of the Exchange Act, such compensation shall be subject to potential forfeiture or recovery by the Company in accordance with any compensation recovery policy adopted by the Board or any committee thereof in response to the requirements of Section 10D of the Exchange Act, Rule 10D-1 thereunder and any implementing rules and regulations thereunder adopted by any national securities exchange (if any) on which the Company's common stock is then listed. This Agreement may be unilaterally amended by the Company to comply with any such compensation recovery policy, and the Board or the Compensation Committee retains complete discretion on awarding a Performance Bonus.

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**5. Amendment of RSU Agreement.** The Company's Restricted Stock Unit (RSU) Agreement, dated January 2, 2019 and as amended as of December 1, 2021, with Executive (the "RSU Agreement") will, except as set forth below, continue for the Term of this Agreement (unless it expires prior to such date in accordance with its terms), and the entry into this Agreement shall not be considered a "termination" for purposes of the RSU Agreement. On the Effective Date, the RSU Agreement shall automatically and without any further action of any of the parties thereto be amended as follows:

A. Section 2.1 of the RSU Agreement shall be replaced in its entirety with the following:

"2.1. Unless sooner vested or terminated pursuant to this Agreement and the Plan, the Restricted Stock Units awarded to the Participant hereunder shall vest in accordance with the following schedule:

<u>DATE ON AND AFTER WHICH RSU IS VESTED</u>	<u>Portion Vested</u>
January 1, 2020	34%
January 1, 2021	33%
January 1, 2023	33%"

#### **6. Other Benefits.**

A. Executive will be entitled to reimbursement from the Company for customary, ordinary and necessary business expenses incurred by Executive in the performance of Executive's duties hereunder, provided that Executive's entitlement to such reimbursements shall be conditioned upon Executive's provision to the Company of vouchers, receipts and other substantiation of such expenses in accordance with Company policies and practices.

B. Company will pay for dues and fees required for any professional licenses maintained by Executive, membership in professional or industry associations, continuing education requirements associated with any professional license and conferences and seminars commonly attended by executives in similar companies.

C. During the Employment Period, Executive will be eligible to participate in any group life insurance plan, group medical and/or dental insurance plan, accidental death and dismemberment plan, short-term disability program and other employee benefit plans, including profit sharing plans, cafeteria benefit programs and stock purchase and option plans, which are made available to executives of the Company and for which Executive qualifies under the terms of such plan or plans.

D. Executive shall be entitled to 200 hours paid vacation each year and paid time off (PTO) in accordance with the Company's policies and practices as in effect from time to time.

#### **7. Executive Covenants.**

A. **Transition and Other Assistance.** During the 30 days following the termination of the Employment Period, Executive will take all actions the Company may reasonably request to maintain the Company's business, goodwill and business relationships and to assist with transition matters, all at Company expense. In addition, upon the receipt of notice from the Company (including outside counsel), during the Employment Period and thereafter, Executive will respond and provide information with regard to matters in which he has knowledge as a result of his employment with the Company, and will provide assistance to the Company and its representatives in the defense or prosecution of any claims that may be made by or against the Company, to the extent that such claims may relate to the period of Executive's employment with the Company, all at Company expense. During the Employment Period and thereafter, Executive shall promptly inform the Company if he becomes aware of any lawsuits involving such claims that may be filed or threatened against the Company. During the Employment Period and thereafter, Executive shall also promptly inform the Company (to the extent he is legally permitted to do so) if he is asked to assist in any investigation of the Company (or its actions), regardless of whether a lawsuit or other proceeding has then been filed against the Company with respect to such investigation, and will not do so unless legally required. The Company will pay Executive at a rate of \$250 per hour, plus reasonable expenses, in connection with any actions requested by the Company under this paragraph following any termination of Executive's employment, with such amounts being paid to Executive at periodic intervals in accordance with the Company's normal payroll practices for salaried employees. Executive's obligations under this paragraph shall be subject to the Company's reasonable cooperation in scheduling in light of Executive's other obligations.

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B. **Survival of Provisions.** The obligations contained in this Section 7 will survive the termination of Executive's employment with the Company and will be fully enforceable thereafter.

#### **8. Termination of Employment.**

A. **General.** Subject to Section 8.D., Executive's employment with the Company is "at-will" and may be terminated at any time by either Executive or the Company for any reason (or no reason) in accordance with this Agreement, which will also result in the Term ending, by the party seeking to terminate Executive's employment providing 30-days written notice of such termination to the other party.

**B. Death and Permanent Disability.** Upon termination of Executive's employment with the Company due to death or permanent disability during the Term, the employment relationship created pursuant to this Agreement will immediately terminate, the Term will end and amounts will only be payable under this Agreement as specified in this Section 8.B. Should Executive's employment with the Company terminate by reason of Executive's death or permanent disability during the Employment Period, Executive, or Executive's estate, shall be entitled to receive:

- a. the unpaid Base Salary earned by Executive pursuant to Section 4.A for services rendered through the date of Executive's death or permanent disability, as applicable, payable in accordance with the Company's normal payroll practices for terminated salaried employees;
- b. reimbursement of all expenses for which Executive is entitled to be reimbursed pursuant to Section 6, payable in accordance with the Company's normal reimbursement practices;
- c. the right to continue health care benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, COBRA or Executive subsidized, to the extent required and available by law and subject to the Company continuing to maintain a group health plan;
- d. the limited death, disability, and/or income continuation benefits provided under Section 6.C, if any, will be payable in accordance with the terms of the plans pursuant to which such limited death or disability benefits are provided.

Compensation and benefits provided pursuant to Section 8.B.a. through d. are collectively referred to as the "*Accrued Obligations.*"

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If Executive's death occurs before payment of any earned Performance Bonus, the applicable payments will be made to the Executive's estate. For purposes of this Agreement, Executive will be deemed "permanently disabled" if Executive is so characterized pursuant to the terms of the Company's disability policies or programs applicable to Executive from time to time, or if no such policy or program is applicable, if the Compensation Committee determines, in its sole discretion, that Executive is unable to perform the essential functions of Executive's duties for physical or mental reasons for ninety (90) days in any twelve-month period.

**C. Termination for Cause; Resignation without Good Reason.** The Company may at any time during the Employment Period, upon written notice summarizing with reasonable specificity the basis for the Termination for Cause, terminate Executive's employment hereunder for any act qualifying as a Termination for Cause. Such termination will be effective immediately upon such notice. Upon any Termination for Cause (or employee's resignation other than for Good Reason), Executive shall be solely entitled to receive:

- a. the unpaid Base Salary and Bonuses earned by Executive pursuant to Section 4 for services rendered through the date of termination, payable in accordance with the Company's normal payroll practices for terminated salaried employees;
- b. reimbursement of all expenses for which Executive is entitled to be reimbursed pursuant to Section 6, payable in accordance with the Company's normal reimbursement practices; and
- c. the right to continue health care benefits under the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended, COBRA or Executive subsidized, to the extent required and available by law and subject to the Company continuing to maintain a group health plan.

**D. Involuntary Termination Without Cause by the Company; Resignation by Executive for Good Reason.** The Company shall be entitled to terminate Executive with no notice, other than a Termination for Cause, and Executive shall be entitled to resign with or without Good Reason with 90 days' prior notice, in each case at any time; provided, however, that if Executive (1) is terminated by the Company other than in circumstances constituting a Termination for Cause, or (2) resigns for Good Reason, then Executive shall be solely entitled to receive:

- a. The Accrued Obligations through the date of termination, payable in accordance with the Company's payroll practices for terminated salaried employees;

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- b. Six months of Salary, payable in accordance with the Company's payroll practices for terminated salaried employees until this sum is satisfied;

For purposes of clarity, a termination of Executive's employment due to Executive's death or to Executive's permanent disability shall not be considered either a termination by the Company without cause or a resignation by Executive for Good Reason, and such termination shall not entitle Executive (or his heirs or representatives) to any compensation or benefits pursuant to this Section 8.D.

**E. Termination by Non-Renewal.** In the event the Company fails to renew Executive's employment before the expiration of this Agreement ("*Non-Renewal*"), Executive shall be entitled to receive:

- a. The Accrued Obligations through the date of termination, payable in accordance with the Company's normal payroll practices for terminated salaried employees.

**F. Omitted.**

**G. Release.** Notwithstanding anything contained herein, Executive's right to receive (or retain) the payments and benefits set forth in Section 8.D. or 8.E., as applicable, other than the Accrued Obligations through the date of termination, is conditioned on and subject to Executive's execution within twenty-one (21) days (or, to the extent required by applicable law, forty-five (45) days) following the termination date and non-revocation within seven (7) days thereafter of a general release of claims in a form provided by the Company.

**H. Non-Disparagement.** Executive will not disparage the Company or any of its directors, officers, agents or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the Company or any of its directors, officers, agents or employees.

**9. Section 409A of the Code.**

**A. General.** This Agreement shall be interpreted and applied in all circumstances in a manner that is consistent with the intent of the parties that, to the extent applicable, amounts earned and payable pursuant to this Agreement shall constitute short-term deferrals exempt from the application of Section 409A of the Code and, if not exempt, that amounts earned and payable pursuant to this Agreement shall not be subject to the premature income recognition or adverse tax provisions of Section 409A of the Code.

**B. Separation from Service.** References in this Agreement to "termination" of Executive's employment, "resignation" by Executive from employment and

similar terms shall, with respect to such events that will result in payments of compensation or benefits, mean for such purposes a “separation from service” as defined under Section 409A of the Code.

C. **Specified Executive.** In the event any one or more amounts payable under this Agreement constitute a “deferral of compensation” and become payable on account of the “separation from service” (as determined pursuant to Section 409A of the Code) of Executive and if as such date Executive is a “specified employee” (as determined pursuant to Section 409A of the Code), such amounts shall not be paid to Executive before the earlier of (i) the first day of the seventh calendar month beginning after the date of Executive’s “separation from service” or (ii) the date of Executive’s death following such “separation from service.” Where there is more than one such amount, each shall be considered a separate payment and all such amounts that would otherwise be payable prior to the date specified in the preceding sentence shall be accumulated (without interest) and paid together on the date specified in the preceding sentence.

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D. **Separate Payments.** For purposes of Section 409A of the Code, each payment or amount due under this Agreement shall be considered a separate payment, and Executive’s entitlement to a series of payments under this Agreement is to be treated as an entitlement to a series of separate payments.

E. **Reimbursements.** Any reimbursement to which Executive is entitled pursuant to this Agreement that would constitute nonqualified deferred compensation subject to Section 409A of the Code shall be subject to the following additional rules: (i) no reimbursement of any such expense shall affect Executive’s right to reimbursement of any other such expense in any other taxable year; (ii) reimbursement of the expense shall be made, if at all, not later than the end of the calendar year following the calendar year in which the expense was incurred; (iii) the right to reimbursement shall not be subject to liquidation or exchange for any other benefit; and (iv) the right to reimbursement of expenses incurred kind shall terminate one year after the end of the Employment Period.

**10. Section 280G of the Code.** Notwithstanding anything to the contrary contained herein (or any other agreement entered into by and between Executive and the Company or any incentive arrangement or plan offered by the Company), in the event that any amount or benefit paid or distributed to Executive pursuant to this Agreement, taken together with any amounts or benefits otherwise paid to Executive by the Company (collectively, the “**Covered Payments**”), would constitute an “excess parachute payment” as defined in Section 280G of the Code, and would thereby subject Executive to an excise tax under Section 4999 of the Code (an “**Excise Tax**”), the provisions of this Section 10 shall apply. If the aggregate present value (as determined for purposes of Section 280G of the Code) of the Covered Payments exceeds the amount which can be paid to Executive without Executive incurring an Excise Tax, then the amounts payable to Executive under this Agreement (or any other agreement by and between Executive and the Company or pursuant to any incentive arrangement or plan offered by the Company) shall be reduced (but not below zero) to the maximum amount which may be paid hereunder without Executive becoming subject to the Excise Tax (such reduced payments to be referred to as the “**Payment Cap**”). In the event Executive receives reduced payments and benefits as a result of application of this Section 10, Executive shall have the right to designate which of the payments and benefits otherwise set forth herein (or any other agreement between the Company and Executive or any incentive arrangement or plan offered by the Company) shall be received in connection with the application of the Payment Cap, subject to the following sentence. Reduction shall first be made from payments and benefits which are determined not to be nonqualified deferred compensation for purposes of Section 409A of the Code, and then shall be made (to the extent necessary) out of payments and benefits that are subject to Section 409A of the Code and that are due at the latest future date.

**11. No Guarantee of Tax Consequences.** The Board, the Compensation Committee, the Company and its Affiliates, officers and employees make no commitment or guarantee to Executive that any federal, state, local or other tax treatment will apply or be available to Executive or any other person eligible for compensation or benefits under this Agreement and assume no liability whatsoever for the tax consequences to Executive or to any other person eligible for compensation or benefits under this Agreement.

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**12. Controlling Law, Jurisdiction and Venue.** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement will be governed by and construed in accordance with the laws of the State of Texas, notwithstanding any Texas or other conflict-of-interest provisions to the contrary. Executive agrees that any and all claims arising between the parties out of this agreement shall be controlled by the laws of the State of Texas, as follows: any dispute, controversy arising out of, connected to, or relating to any matters herein of the transactions between Company and Executive, or this Agreement, which cannot be resolved by negotiation (including, without limitation, any dispute over the arbitrability of an issue), will be settled by binding arbitration in accordance with the J.A.M.S/ENDISPUTE Arbitration Rules and Procedures, as amended by this Agreement. Arbitration proceedings will be held in Dallas, Texas. Company and Executive agree that the prevailing party will be entitled to receive reasonable attorney fees. The parties agree that this provision and the Arbitrator’s authority to grant relief are subject to the United States Arbitration Act, 9 U.S.C. 1- 16 et seq. (“USAA”) and the provisions of this Agreement. The parties agree that the arbitrator have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event does the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The award may be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings will be governed by the USAA. Company and Executive irrevocably consent to the jurisdiction and venue of such arbitration and such courts.

**13. Entire Agreement; Severability.** This Agreement and the agreements referenced herein contain the entire agreement of the parties relating to the subject matter hereof, and supersede in their entirety any and all prior agreements, understandings or representations relating to the subject matter hereof. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The provisions of this Agreement shall be deemed severable and, if any provision is found to be illegal, invalid or unenforceable for any reason, (a) the provision will be amended automatically to the minimum extent necessary to cure the illegality or invalidity and permit enforcement and (b) the illegality, invalidity or unenforceability will not affect the legality, validity or enforceability of the other provisions hereof.

**14. Amendment; Committee Authority.** This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by or on behalf of each party hereto. All determinations and other actions required or permitted hereunder to be made by or on behalf of the Company or the Board may be made by either the Board (with Executive excluded from any voting or deliberations) or the Compensation Committee (or any other committee subsequently granted authority by the Board); provided that the actions of the Compensation Committee (or any other committee subsequently granted authority by the Board) shall be subject to the authority then vested in such committee by the Board, it being understood and agreed that as of the date of this Agreement the Compensation Committee has full authority, concurrent with the Board (so long as the Executive is not present at voting or deliberations on his compensation), to administer this Agreement; and provided, further, that a decision or action by the Compensation Committee (or any other committee subsequently granted authority by the Board) hereunder shall be subject to review or modification by the Board if the Board so chooses, so long as the Executive is not present at voting or deliberations on his compensation.

**15. Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

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**16. No Violation.** Executive represents and warrants that the execution and delivery of this Agreement and the performance of Executive’s services contemplated

hereby will not violate or result in a breach by Executive of, or constitute a default under, or conflict with: (i) any provision or restriction of any employment, consulting, or other similar agreement; (ii) any agreement by Executive with any third party not to compete with, solicit from, or otherwise disparage such third party; (iii) any provision or restriction of any agreement, contract, or instrument to which Executive is a party or by which Executive is bound; or (iv) any order, judgment, award, decree, law, rule, ordinance, or regulation or any other restriction of any kind or character to which Executive is subject or by which Executive is bound.

**17. Assignment.** Notwithstanding anything else herein, this Agreement is personal to Executive and neither this Agreement nor any rights hereunder may be assigned by Executive. The Company may assign this Agreement to an affiliate or to any acquirer of all or substantially all of the business and/or assets of the Company, in which case the term "Company" will mean such affiliate or acquirer. This Agreement will inure to the benefit of and be binding upon the personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and permitted assignees of the parties.

**18. Counterparts, Facsimile.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. To the maximum extent permitted by applicable law, this Agreement may be executed via facsimile.

**19. Notices.** Any notice required to be given under this Agreement shall be deemed sufficient, if in writing, and sent by certified mail, return receipt requested, via overnight courier, by or hand delivered to the Company at its corporate address, Attn: Chairman of the Compensation Committee and Chief Financial Officer, and to Executive at the most recent address reflected in the Company's employment records or e-mail.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement as of the Effective Date.

**Optex Systems Holdings, Inc.**, a Delaware corporation

By: /s/ Dale E. Lehmann

Name: Dale E. Lehmann

Title: Chair of Compensation Committee

Date: 11/28/2022

**EXECUTIVE**

By: /s/ Danny Schoening

Danny Schoening, an individual

Date: 11/22/2022

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