

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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): May 5, 2025

ATOMERA INCORPORATED
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

001-37850
(Commission File Number)

30-0509586
(I.R.S. Employer Identification Number)

750 University Avenue, Suite 280
Los Gatos, California 95032
(Address of principal executive offices)

(408) 442-5248
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock: Par value \$0.001	ATOM	Nasdaq Capital Markets

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

Emerging growth company ☐

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

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

On May 5, 2025, we entered into an Amended and Restated Employment Agreement (“Restated Agreement”) with our President and Chief Executive Officer, Scott A. Bibaud. We had entered into an Employment Agreement (“Original Agreement”) with Mr. Bibaud dated March 3, 2025 and the Restated Agreement restates and thereby supersedes the Original Agreement.

The only substantive change to the Original Agreement made by way of the Restated Agreement is to delete Section 1.1(i)(v) from the Original Agreement. Pursuant to Section 1.1(i)(v) of the Original Agreement, a Change of Control (as defined in the Original Agreement and Restated Agreement, or the “Agreements”) of Atomera was included among those events that would constitute Good Reason (as defined in the Agreements). The practical effect of the deletion of Section 1.1(i)(v) is to change Mr. Bibaud’s severance payment upon a Change of Control from a so-called “single trigger” to a “double trigger.” In other words, whereas the Original Agreement provided that Mr. Bibaud would be entitled to a severance payment upon a Change of Control, pursuant to the Restated Agreement a Change of Control alone will not entitle Mr. Bibaud to a severance payment and, in the event of a Change of Control, Mr. Bibaud will only be entitled to a severance payment in the event he is terminated without Cause (as defined in the Agreements) or he resigns for Good Reason.

The foregoing discussion of the terms of Mr. Bibaud’s employment is not complete and is qualified in its entirety by reference to the full text of the Restated Agreement, a copy of which is filed herewith as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed with this report:

Exhibit Number	Exhibit Description
10.1	<u>Amended and Restated Employment Agreement dated May 5, 2025 between Registrant and Scott A. Bibaud</u>
104	Cover Page Interactive Data File (formatted in iXBRL, and included in exhibit 101).

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.

ATOMERA INCORPORATED

Dated: May 5, 2025

/s/ Francis B. Laurencio

Francis B. Laurencio,
Chief Financial Officer

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (“*Restated Agreement*”) is entered into on May 5, 2025, to effective as of March 3, 2025 (“*Effective Date*”), by and between Atomera Incorporated, a Delaware corporation (“*Company*”), and Scott A. Bibaud (“*Executive*”).

RECITALS

WHEREAS, Company and Executive previously entered into an Employment Agreement dated March 3, 2025 (“*Original Agreement*”) relating to the continued employment of Executive in an executive capacity on the terms and conditions and for the consideration set forth therein;

WHEREAS, Company and Executive desire to restate the Original Agreement in accordance with the terms and conditions set forth herein; and

WHEREAS, with effect from the Effective Date of this Restated Agreement, the Original Agreement shall terminate and be superseded by this Restated Agreement, as set forth below.

AGREEMENT

It is agreed as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 Definitions.

(a) “**Base Salary**” shall mean Executive's annualized base salary as set forth in Section 4.1.

(b) “**Board**” shall mean the board of directors of Company.

(c) “**Cause**” shall mean a finding by the Company that Executive (i) has engaged in gross negligence or willful misconduct in the performance of his duties at the Company, (ii) has materially breached this Restated Agreement or the Confidentiality Agreement, (iii) has willfully and materially breached a significant corporate policy or code of conduct established by Company, (iv) has engaged in willful misconduct that is materially injurious to Company and its subsidiaries taken as a whole (monetarily or otherwise), (v) has committed an act of fraud or embezzlement, (vi) has been convicted of (or pleaded no contest to) a criminal act involving fraud, dishonesty, or moral turpitude, or (vii) has been convicted for any violation of U.S. or foreign securities laws or has entered into a cease and desist order with the Securities and Exchange Commission alleging violation of U.S. or foreign securities laws.

(d) “**Change of Control**” shall have the meaning given to it in the Incentive Plan.

(e) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(f) “**Compensation Committee**” shall mean the Compensation Committee of the Board.

(g) **“Confidentiality Agreement”** shall mean that certain Employee Confidentiality and Assignment Agreement between Executive and the Company dated as of October 3, 2015.

(h) **“Disability”** shall mean that, as a result of Executive’s documented incapacity due to physical or mental illness, Executive shall have been absent from the full-time performance of his duties for six consecutive months and shall not have returned to full-time performance of his duties within 30 days after written notice of termination is given to Executive by Company (provided, however, that such notice may not be given prior to 30 days before the expiration of such six month period). Any determination of Disability shall be determined by an independent physician mutually acceptable to the Company and the Executive. Nothing in this Restated Agreement is intended to or shall be construed to waive Executive’s rights, if any, under existing law, including without limitation, the Family and Medical Leave Act, the California Fair Employment and Housing Act, and the Americans with Disabilities Act.

(i) **“Good Reason”** shall mean the occurrence of any one or more of the following:

- i. A diminution in Executive’s Annual Base Salary not in accordance with Section 4.1;
- ii. A material diminution in Executive’s title, authority, duties, or responsibilities from those applicable to him as of the Effective Date, including any change in title or a material change in the reporting structure so that Executive reports to someone other than the Board (or, in the event of a Change of Control, the board of directors or equivalent governing body of the ultimate parent company);
- iii. A material change in the geographic location at which Executive must perform services, which for purposes of this Restated Agreement includes only Company requiring Executive to involuntarily relocate to a geographic location other than the Place of Employment in Section 2.6; or
- iv. A material breach by Company of any provision of this Restated Agreement (including, without limitation, the requirements of Section 2.2, 4.1, 4.2, 4.3, or 4.4 of this Restated Agreement).

Notwithstanding the foregoing provisions of this Section 1.1(i) or any other provision in this Restated Agreement to the contrary, any assertion by Executive of a termination of employment for “Good Reason” shall not be effective unless all of the following conditions are satisfied: (1) any condition described in clauses (i) through (v) of this Section 1.1(i) giving rise to the Executive’s termination of employment must have arisen without Executive’s consent; (2) Executive must provide written notice to the Company of such condition in accordance with Section 7.1 within 30 days of the initial existence of the condition; (3) the condition specified in such notice must remain uncorrected for a period of 30 days following receipt of such notice by the Company; and (4) the date of Executive’s termination of employment must occur within ninety days following the initial existence of the condition specified in such notice.

(j) **“Incentive Plan”** shall mean the Atomera Incorporated 2023 Stock Incentive Plan, as amended, and any other incentive compensation plans duly adopted by the Board.

(k) **“Involuntary Termination”** shall mean any termination of Executive’s employment with Company which results from either:

- i. termination by the Company without Cause; or
- ii. A resignation by Executive for Good Reason;

Provided however, and for the avoidance of doubt, the term “Involuntary Termination” shall not include a termination for Cause or any termination as a result of death or Disability.

(l) **“Payment Date”** shall mean the later of (i) the date that is 30 days after Executive’s termination of employment with Company or (ii) the date upon which the Release described in Section 5.5 becomes irrevocable by Company.

1.2 Interpretations. In this Restated Agreement, unless a clear contrary intention appears, (a) the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Restated Agreement as a whole and not to any particular Article, Section, or other subdivision (b) reference to any Article or Section means such Article or Section hereof, (c) the word “including” (and with correlative mean, “include”) means including, without limiting the generality of any description preceding such term, and (d) where any provision of this Restated Agreement refers to action to be taken by either party, or which such party is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such party.

ARTICLE II

EMPLOYMENT AND DUTIES

2.1 Employment. Effective as of the Effective Date and continuing for the period of time set forth in Section 3.1 of this Restated Agreement, Executive’s employment by Company shall be subject to the terms and conditions of this Restated Agreement. As a condition of his continued employment, Executive confirms that he will continue to be bound by his obligations under the Confidentiality Agreement.

2.2 Positions. From and after the Effective Date, Company shall employ Executive in the position of President and Chief Executive Officer of the Company or in such other position or positions as the parties mutually may agree.

2.3 Duties and Services. Executive agrees to serve in the position referred to in Section 2.2 and to perform diligently and to the best of his abilities the duties and services appertaining to such office, as well as such additional duties and services appropriate to such offices which the parties mutually may agree upon from time to time. Executive in his capacity as CEO shall have all of the authorities, duties, and obligations of the CEO as provided under Section 3.8 of the Bylaws of the Company, as amended. Executive also agrees to serve, if elected, as an officer or director of any wholly-owned subsidiary or affiliate of Company so long as such service is commensurate with Executive’s duties and responsibilities to Company. Executive’s employment shall also be subject to the policies maintained and established by Company that are of general applicability to Company’s executive employees, as such policies may be amended from time to time.

2.4 Other Interests. Executive agrees, during the period of his employment by Company, to devote substantially all of his business time, energy, and best efforts to the business and affairs of Company and its affiliates and not to engage, directly or indirectly, in any other business or businesses, whether or not similar to that of Company, except as herein permitted or with the prior written consent of the Board. The foregoing notwithstanding, the parties recognize and agree that Executive may engage in passive personal investment and charitable activities and serve on corporate boards of directors that, in any case, do not conflict with the business and affairs of Company or interfere with Executive’s performance of his duties hereunder, which shall be at the sole determination of the Board.

2.5 Duty of Loyalty. Executive acknowledges and agrees that Executive owes a fiduciary duty of loyalty to act at all times in the best interests of Company. In keeping with such duty, Executive shall make full disclosure to Company of all business opportunities pertaining to Company's business and shall not appropriate for Executive's own benefit, or appropriate for the benefit of any third party, business opportunities concerning Company's business.

2.6 Place of Employment. Executive's primary place of employment hereunder shall be at Company's executive offices in or within greater San Jose, California metropolitan area or such other place in the San Francisco Bay area as the Company may determine from time-to-time.

ARTICLE III

TERM AND TERMINATION OF EMPLOYMENT

3.1 Term. The term of this Restated Agreement shall commence on the Effective Date and shall continue in full force and effect for an initial term of three (3) years from the Effective Date (the "Initial Term"). Upon the expiration of the Initial Term, this Restated Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"), unless sooner terminated pursuant to other provisions hereof.

3.2 Company's Right to Terminate. Notwithstanding the provisions of Section 3.1, Company shall have the right to terminate Executive's employment under this Restated Agreement at any time for any of the following reasons:

- (a) upon Executive's death;
- (b) upon Executive's Disability;
- (c) for Cause; or
- (d) at any time, for any other reason whatsoever, in the sole discretion of the Board.

Prior to terminating Executive for Cause, (i) Executive shall have been provided with fifteen (15) days prior written notice of the circumstances giving rise to Cause, (ii) Executive shall have fifteen (15) days to remedy the circumstances constituting Cause, if curable, (iii) Executive shall have had the opportunity to appear before the Board (without counsel) to discuss the circumstances constituting Cause, and (iv) at least two-thirds (2/3) of the members of the Board (excluding Executive) shall have affirmatively voted to terminate Executive for Cause.

3.3 Executive's Right to Terminate. Notwithstanding the provisions of Section 3.1, Executive shall have the right to terminate his employment under this Restated Agreement for any of the following reasons:

- (a) for Good Reason; or
- (b) at any time for any other reason whatsoever, in the sole discretion of Executive.

3.4 Notice of Termination. If Company desires to terminate Executive's employment hereunder at any time prior to expiration of the term of employment as provided in Section 3.1, it shall do so by giving a 30-day written notice to Executive that it has elected to terminate Executive's employment hereunder and stating the effective date and reason for such termination, provided that no such action shall alter or amend any other provisions hereof or rights arising hereunder. If Executive desires to terminate his employment hereunder at any time prior to expiration of the term of employment as provided in Section 3.1, he shall do so by giving a 30-day written notice to Company that he has elected to terminate his employment hereunder and stating the effective date and reason for such termination, provided that no such action shall alter or amend any other provisions hereof or rights arising hereunder.

3.5 Deemed Resignations. Unless otherwise agreed to in writing by Company and Executive prior to the termination of Executive's employment, any termination of Executive's employment shall constitute an automatic resignation of Executive as an officer of Company and each affiliate of Company and an automatic resignation of Executive from the Board (if applicable) and from the board of directors or similar governing body of any affiliate of Company and from the board of directors or similar governing body of any corporation, limited liability entity, or other entity in which Company or any affiliate holds an equity interest and with respect to which board or similar governing body Executive serves as Company's or such affiliate's designee or other representative. Executive agrees to execute such documents and take such other actions as the Company may request to reflect such resignation.

ARTICLE IV

COMPENSATION AND BENEFITS

4.1 Base Salary. Executive shall receive a base salary at the annualized rate of \$462,800 (the "*Base Salary*"). Executive's Base Salary shall be reviewed by the Compensation Committee on an annual basis, and, in the sole discretion of the Compensation Committee, such Base Salary may be increased, but not decreased (except (a) with the prior written consent of Executive, or (b) in connection with, and in an amount substantially proportionate to, reductions made by Company to the annualized base salaries of all other senior executives), effective as of any date determined by the Compensation Committee. Executive's Base Salary shall be paid in equal installments in accordance with Company's standard policy regarding payment of compensation to executives but no less frequently than monthly.

4.2 Annual Bonus. Executive shall be eligible for an annual bonus of up to 100% of Executive's Base Salary based on performance criteria set by the Compensation Committee and to otherwise participate in Company's annual bonus plan or plans applicable to Executive, all as approved from time to time by the Compensation Committee in amounts to be determined by the Compensation Committee based upon criteria established by the Compensation Committee. Executive's right to the annual bonus shall be conditioned on his continued active employment through the payment date of the bonus, provided that for purposes of Section 5.3(b) below Executive shall be deemed to have remained in the continued active employment of the Company through the later of his Involuntary Termination or the Change of Control.

4.3 Long-Term Incentive. Subject to the sole discretion of the Compensation Committee, Executive shall also be eligible for participation in the Incentive Plan or such other long-term incentive arrangement of Company as may from time to time be made available to other executive officers of Company. Any awards made under the Incentive Plan or such other arrangements shall be governed by Section 5.5 herein. However, shall there be any conflict between this Restated Agreement and the Incentive Plan, this Restated Agreement shall govern.

4.4 Other Perquisites. During his employment hereunder, Executive shall be afforded the following benefits as incidences of his employment:

(a) **Business and Entertainment Expenses.** Subject to Company's standard policies and procedures with respect to expense reimbursement as applied to its executive employees generally, Company shall reimburse Executive for, or pay on behalf of Executive, reasonable and appropriate expenses incurred by Executive for business-related purposes, including dues and fees to industry and professional organizations and costs of entertainment and business development. Company reserves the right to request valid documentation and receipts relating to such expenses.

(b) **Company Benefits.** Executive and, to the extent applicable, Executive's spouse or registered domestic partner, dependents, and beneficiaries, shall be allowed to participate in all benefits, plans, and programs, including improvements or modifications of the same, which are now, or may hereafter be, available to other executive employees of Company, subject to the eligibility requirements and other terms of such plans and programs. Such benefits, plans, and programs shall include, without limitation, any profit-sharing plan, thrift plan, health insurance or health care plan, life insurance, disability insurance, pension plan, supplemental retirement plan, vacation and sick leave plan, and the like which may be maintained by Company. Company shall not, however, by reason of this paragraph be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any such benefit plan or program, so long as such changes are similarly applicable to executive employees generally.

ARTICLE V

EFFECT OF TERMINATION ON COMPENSATION; ADDITIONAL PAYMENTS

5.1 Termination Other Than an Involuntary Termination. If Executive's employment hereunder shall terminate upon expiration of the term provided in Section 3.1 hereof or if Executive's employment hereunder shall terminate in any circumstances other than an Involuntary Termination, then Company shall continue to provide all compensation and benefits to Executive hereunder until the date of such termination of employment, and such compensation and benefits shall terminate contemporaneously with such termination of employment.

5.2 Involuntary Termination. Subject to the provisions of Sections 5.3 and 5.4 hereof, if Executive's termination of employment hereunder shall be an Involuntary Termination, then Company shall provide to Executive the following severance benefits (the "Severance Benefits"):

(a) Company shall pay Executive a lump sum cash payment in an amount equal to eighteen (18) months of Executive's Base Salary, less applicable taxes and withholdings.

(b) Accelerate eighteen (18) months vesting of options or other types of equity granted to Executive;

(c) During the portion, if any, of the twelve (12)-month period commencing on the date of such Involuntary Termination that Executive is eligible to elect and elects to continue coverage for himself and his eligible dependents under Company's or a subsidiary's group health plans, as applicable, under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and/or sections 601 through 608 of the Employee Retirement Income Security Act of 1974, as amended, Company shall promptly reimburse Executive on a monthly basis for the difference between the amount Executive pays to effect and continue such coverage and the employee contribution amount that active senior executive employees of Company pay for the same or similar coverage under such group health plans; provided, however, that such reimbursement shall cease to be effective if and to the extent Executive becomes eligible to receive medical and/or dental coverage from a subsequent employer (and any such eligibility shall be promptly reported to Company in writing by Executive).

5.3 Change of Control. Notwithstanding Section 5.2 above, and subject to Section 5.4 hereof, in the event of Executive's Involuntary Termination during the period ("*Relevant Period*") beginning three months prior to the effective time of a Change of Control and ending on the 12-month anniversary of the effective time of a Change of Control, the Company shall provide to Executive Severance Benefits consisting of:

(a) A lump sum cash payment in an amount equal to eighteen (18) months of Executive's Base Salary, less applicable taxes and withholdings and any amounts previously paid pursuant to Section 5.2(a);

(b) A lump sum cash payment in the amount of a pro rata portion of the maximum annual bonus Executive was eligible to earn, but which has not been paid, pursuant to Section 4.2 for the periods prior to the Involuntary Termination calculated as if such bonus was earned and payable as of the later of the Involuntary Termination or the Change of Control;

(c) The benefits set forth in Section 5.2(b) for a period of twelve (12) months from the date of Involuntary Termination; and

(d) The immediate acceleration of vesting, or lapse of all risk of forfeiture, of all outstanding equity awards, including the reinstitution of any equity awards that expired unvested due to an Involuntary Termination occurring during the Relevant Period and prior to the Change of Control. For the sake of clarity, this will confirm the agreement of the parties that this Section 5.3(d) shall effectively amend and control all awards granted to the Executive under the Incentive Plans outstanding as of the Effective Date or which may be granted subsequent to the Effective Date. In addition, the Company undertakes to include in all awards granted after the Effective Date a provision acknowledging the acceleration of vesting upon a Change of Control as set forth herein.

5.4 Release and Full Settlement. As a condition to the receipt of any severance compensation and benefits under this Restated Agreement, Executive must first execute a release and agreement, which, at a minimum, (a) shall release and discharge Company and its affiliates, and their officers, directors, employees, and agents, from any and all claims or causes of action of any kind or character, including all claims or causes of action arising out of Executive's employment with Company or its affiliates or the termination of such employment, and (b) must be effective and irrevocable within 55 days after the termination of Executive's employment. If Executive is entitled to and receives the benefits provided hereunder, performance of the obligations of Company hereunder will constitute full settlement of all claims that Executive might otherwise assert against Company on account of Executive's termination of employment.

5.5 Payments Subject to Section 409A of the Code.

(a) Subject to this Section 5.5, any severance payments that may be due under the Restated Agreement shall begin only upon the date of the Executive's "separation from service" (determined as set forth below) which occurs on or after the termination of Executive's employment.

(b) The determination of whether and when Executive's separation from service from the Company has occurred shall be made in a manner consistent with and based on the presumptions set forth in Treasury Regulation Section 1.409A-1(h). Solely for purposes of this Section 5.5(b), "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(c) It is intended that each installment of the severance payments under the Restated Agreement provided under shall be treated as a separate "payment" for purposes of Section 409A of the Code. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments except to the extent specifically permitted or required by Section 409A of the Code.

(d) Notwithstanding the foregoing provisions of this Article 5, if the payment of any severance compensation or severance benefits under this Restated Agreement would be subject to additional taxes and interest under Section 409A of the Code because the timing of such payment is not delayed as provided in Section 409A(a)(2)(B) of the Code, then any such payments that Executive (or Executive's estate) would otherwise be entitled to during the first eighteen (18) months following the date of Executive's termination of employment shall be accumulated and paid on the date that is eighteen (18) months after the date of Executive's termination of employment (or if such payment date does not fall on a business day of Company, the next following business day of Company), or such earlier date upon which such amount can be paid under Section 409A of the Code without being subject to such additional taxes and interest. Executive hereby agrees to be bound by Company's determination of its "specified employees" (as such term is defined in Section 409A of the Code) in accordance with any of the methods permitted under the regulations issued under Section 409A of the Code.

5.6 280G Best Results. In the event that any payments or benefits provided to the Executive under this Restated Agreement or otherwise (i) constitute "parachute payments" within the meaning of Section 280G of the Code, and (ii) would be subject to the excise tax imposed by Section 4999 of the Code, then such payments or benefits shall be either (a) reduced (but not below zero) so that the aggregate present value of such payments and benefits received by the Executive is \$1.00 less than the amount which would otherwise cause the Executive to incur an excise tax under Section 4999 of the Code, or (b) paid in full, whichever results in the Executive's receipt, on an after-tax basis, of the greater amount of such payments and benefits, notwithstanding that all or some portion of such payments and benefits may be subject to the excise tax. The determination of which alternative results in the better after-tax position for the Executive shall be made by a nationally recognized accounting firm selected by the Company.

5.7 Other Benefits. This Restated Agreement governs the rights and obligations of Executive and Company with respect to the matters set forth herein, including, without limitation, Executive's Base Salary, certain perquisites of employment, and payments upon termination of employment. Except as expressly provided herein, Executive's rights and obligations both during the term of his employment and thereafter, with respect to stock options, restricted stock, incentive and deferred compensation, life insurance policies insuring the life of Executive, and other benefits under the plans and programs maintained by Company shall be governed by the separate agreements, plans and other documents and instruments governing such matters.

ARTICLE VI

DISPUTE RESOLUTION

6.1 General. Executive and Company explicitly recognize that no provision of this Article VI shall prevent either party from seeking to resolve any dispute arising under the Confidentiality Agreement.

6.2 Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Restated Agreement and/or the Employee's employment with the Company and/or the termination of such employment promptly by negotiations between Executive and an executive officer of Company who has authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten days after the effective date of such notice, Executive and an executive officer of Company shall meet at a mutually acceptable time and place within the San Jose, California metropolitan area, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 30 days of the disputing party's notice, or if the parties fail to meet within ten days, either party may initiate arbitration of the controversy or claim as provided in Section 6.3 below. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section 6.2 shall be treated as compromise and settlement negotiations for the purposes of the federal and state rules of evidence and procedure.

6.3 Arbitration. Company and Executive agree that after efforts to negotiate any dispute in accordance with Section 6.2 have failed, then either party may by written notice (the "*Notice*") demand arbitration of the dispute as set out below, and each party hereto expressly agrees to submit to, and be bound by, such arbitration. Any such arbitration shall be governed by and enforceable under the Federal Arbitration Act ("*FAA*").

(a) Each party will, within ten business days of the Notice, nominate an arbitrator, who shall be a non-neutral arbitrator. Each nominated arbitrator must be someone experienced in dispute resolution and of good character without moral turpitude and not within the employ or direct or indirect influence of the nominating party. The two nominated arbitrators will, within ten business days of nomination, agree upon a third arbitrator, who shall be neutral. If the two appointed arbitrators cannot agree on a third arbitrator within such period, the parties may seek such an appointment through any permitted court proceeding or by the American Arbitration Association ("*AAA*"). The three arbitrators will set the rules and timing of the arbitration, but will generally follow the rules of the AAA and this Restated Agreement where same are applicable and shall provide for a reasoned opinion.

(b) The arbitration hearing will in no event take place more than 180 days after the appointment of the third arbitrator.

(c) The arbitration will take place in the San Francisco, California metropolitan area unless otherwise unanimously agreed to by the parties.

(d) The results of the arbitration and the decision of the arbitrators will be final and binding on the parties, and each party agrees and acknowledges that these results shall be enforceable in a court of law.

(e) All administrative costs and expenses of the mediation and arbitration shall be borne by the Company. Such costs and expenses do not include attorney's fees, expert witness fees or other party generated expenses, provided that, nothing in this Section shall be interpreted to (i) affect Executive's statutory rights to exclusively recover attorneys' fees under applicable laws when Executive is the prevailing party of a claim providing statutory attorneys' fees, or (ii) shift Executive's exclusive statutory right to recover attorneys' fees under applicable laws to the Company.

(f) This agreement to arbitrate applies, but shall not be limited, to the following:

i. Any claim alleging unlawful discrimination, harassment, or retaliation on any basis protected by any applicable federal, state, or local law (for the avoidance of doubt, nothing herein prevents Employee from filing, cooperating with, or participating in any proceeding before the EEOC or other federal or state fair employment practices agency (except that Employee acknowledges that he/she may not be able to recover any monetary benefits in connection with any such claim, charge or proceeding));

ii. Any claim for wages, bonuses, severance, incentive compensation or other equity, employee benefits or other compensation, whether pursuant to contract, state wage and hour laws (including without limitation M.G.L. c. 149, § 148 *et. seq.*), the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, as amended, California Labor Code (including, without limitation, Executive's individual claims for relief under the California Private Attorneys' General Act ("*PAGA*") including with respect to whether Executive is an aggrieved employee as used in PAGA), and the IWC Wage Orders or any other law concerning wages, compensation or employee benefits.

iii. Any claim under any statute, law, or ordinance not expressly set forth above.

iv. Any claim arising out of any and all common law claims, including, but not limited to, tort claims, wrongful discharge claims, contract claims, defamation claims and unfair business practices claims; and

v. Any claim relating to the interpretation, existence, validity, scope, or enforceability of this Section, including, but not limited to, any claim that all or any part of this Section is void or voidable and any other challenge by Employee to the arbitrability of any dispute under this Restated Agreement (but not including a dispute about the class action waiver set forth below).

(g) Notwithstanding anything set forth in Section 6.3(f) above, this agreement to arbitrate does not apply to (i) claims or issues arising from performance of services on any federal government contract, any claim for workers' compensation or employment benefits; (ii) claims for vested benefits under a plan fund or program covered by the Employee Retirement Income Security Act of 1974, as amended, (iii) claims by whistleblowers arising pursuant to the Sarbanes-Oxley Act and alleging unlawful retaliation or seeking relief pursuant to that Act; (iv) sexual assault or sexual harassment disputes, unless the Executive explicitly and in writing agrees, post-dispute, to arbitrate such dispute, and waives the right to file that same claim(s) in court; (v) non-individualized (i.e., representative) PAGA claims (to the extent the Executive can bring them); (vi) any non-individualized PAGA claims brought on a representative basis by Executive concerning alleged California Labor Code violations toward alleged "aggrieved employees" other than Executive that may be pursued only in court, and not in arbitration); (vii) claims that are expressly prohibited by applicable law from being subject to arbitration, provided such law is not preempted by the FAA; and (viii) petitions to a court of competent jurisdiction for provisional remedies (as described in California Code of Civil Procedure section 1281.8) related to a dispute subject to arbitration where such provisional relief would be otherwise authorized by law (including where an award to which a party may be entitled to in arbitration may be rendered ineffectual without such provisional relief). In addition, nothing in this Restated Agreement prohibits (x) Executive from engaging in concerted activities under Section 7 of the National Labor Relations Act filing an unfair labor practice charge with the National Labor Relations Board, (y) Executive from making a report to or filing a claim or charge with a government agency, including, but not limited to, the California Civil Rights Department or the Equal Employment Opportunity Commission, or a charge or complaint of retaliation under the Sarbanes-Oxley Act or Dodd-Frank Act with the Department of Labor or U.S. Securities and Exchange Commission, respectively, or a similar administrative charge, claim, or complaint with any federal, state or local government agency, office or official ("*Government Complaint*"), or (z) any such agency from investigating a Government Complaint or from pursuing legal action on Executive's behalf (to the extent permitted by applicable law). Executive may pursue legal action against the Company before an administrative adjudicative body only to the extent that applicable law requires such an action to proceed despite the existence of an enforceable agreement to arbitrate under the FAA. Notwithstanding the foregoing, for clarity, nothing in this Restated Agreement prevents Executive from receiving a bounty or similar award for providing information to a government agency (such as the U.S. Securities and Exchange Commission). Additionally, nothing in this Restated Agreement precludes or excuses a Party from exhausting administrative remedies where required by law before making a Claim in arbitration.

(h) To the fullest extent permitted by law, the Parties agree that any dispute shall be brought on an individual basis only, and not on a class, collective or representative basis (with an exception being a PAGA representative action – meaning seeking recovery for alleged violations to persons other than the named plaintiff), and Executive shall not assert or participate in such class, representative or collective action against the Company in any forum (with an exception being a PAGA representative action seeking relief for alleged violations to persons other than the named plaintiff, which may be brought in court as permitted by applicable law). In addition, the arbitrator shall not have the authority or jurisdiction to hear any claim in arbitration as a class, collective or representative action or to join or consolidate claims of different parties, or concerning claimed wrongdoing toward different parties, into one proceeding, nor to award relief to, on behalf of, concerning, or affecting any person who is not a party to the proceeding. For the avoidance of doubt, PAGA claims concerning alleged individualized California Labor Code violations towards Executive are subject to individual arbitration. If either Party pursues or asserts a civil action in court involving claims which are not arbitrable and also pursues arbitrable claims hereunder, litigation of the non-arbitrable claims shall be stayed pending the outcome of the arbitration of the arbitrable claims.

(i) Executive understands that this Restated Agreement requires disputes that involve the matters subject to the Restated Agreement and/or Executive's employment or termination, except those set forth in Section 6.3(g) above, be submitted to arbitration pursuant to this Section 6.3 rather than to a judge or jury in court.

ARTICLE VII

MISCELLANEOUS

7.1 Notices. Any and all notices and other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto prior to 6:30 p.m. (Eastern time) on any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States ("*Business Day*"), (b) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Business Day or later than 6:30 p.m. (Eastern time) on any Business Day, (c) the 2nd Business Day following the date of mailing, if sent by U.S. national recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be set forth on the signature pages attached hereto. All notices and demands to Executive or the Company may be given to them at the following address:

If to Executive: 101 Kennedy Court
Los Gatos, CA 95032

If to Company Atomera Incorporated
750 University Avenue
Suite 280
Los Gatos, CA 95032

Such parties may designate in writing from time to time such other place or places that such notices and demands may be given.

7.2 Applicable Law; Submission to Jurisdiction.

(a) This Restated Agreement is entered into under, and shall be governed for all purposes by, the laws of the State of California, without regard to conflict of law principals thereof.

(b) With respect to any claim or dispute related to or arising under this Restated Agreement that is not subject to arbitration, the parties hereto hereby consent to the exclusive jurisdiction, forum, and venue of the state or federal (to the extent federal jurisdiction exists) courts located in the State of California.

7.3 No Waiver. No failure by either party hereto at any time to give notice of any breach by the other party of or to require compliance with, any condition or provision of this Restated Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.4 Severability. Any provision in this Restated Agreement which is prohibited or unenforceable in any jurisdiction by reason of applicable law shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provisions hereof, and any such prohibition or enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.5 Counterparts. This Restated Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same agreement.

7.6 Withholding of Taxes and Other Employee Deductions. Company may withhold from any benefits and payments made pursuant to this Restated Agreement all federal, state, city, and other taxes as may be required pursuant to any law or governmental regulation or ruling and all other customary employee deductions made with respect to Company's employees generally.

7.7 Headings. The Section headings have been inserted for purposes of convenience and shall not be used for interpretive purposes.

7.8 Gender and Plurals. Wherever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural and conversely.

7.9 Assignment. This Restated Agreement shall be binding upon and inure to the benefit of Company and any successor of Company, by merger or otherwise. This Restated Agreement shall also be binding upon and inure to the benefit of Executive and his heirs, representative and assigns. If Executive shall die prior to full payment of amounts due pursuant to this Restated Agreement, such amounts shall continue to be payable pursuant to the terms of this Restated Agreement. Executive shall not have any right to pledge, hypothecate, anticipate, or assign any portion of this Restated Agreement or any of the rights hereunder, except by will or the laws of descent and distribution.

7.10 Survival of Terms. Termination of this Restated Agreement shall not affect any right or obligation of any party which is accrued or vested prior to such termination. The provisions of Article I, Section 3.5 and Articles IV through VII shall survive the termination of this Restated Agreement and shall be binding upon Executive and his or her legal representatives, successors, and assigns following such termination.

7.11 Entire Agreement. The parties agree that the Original Agreement shall terminate concurrent with the execution of this Restated Agreement, provided that all obligations, rights and claims existing under the Original Agreement immediately prior to the execution of this Restated Agreement shall survive pursuant to the terms and conditions of this Restated Agreement. This Restated Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof and contains all of the covenants, promises, representations, warranties, and agreements between the parties with respect to such subject matter. Without limiting the scope of the preceding sentence, all understandings and agreements preceding the date of execution of this Restated Agreement and relating to the subject matter hereof are hereby null and void and of no further force and effect, including, without limitation, all prior employment and severance agreements, if any, by and between Company and Executive, including the Original Agreement. Any modification of this Restated Agreement will be effective only if it is in writing and signed by the party to be charged.

7.12 Expenses. Company shall reimburse Executive for his reasonable fees and expenses incurred by him incident to the negotiation, preparation and execution of this Restated Agreement.

7.13 Clawback Provision. Notwithstanding any other provisions in this Restated Agreement to the contrary, any incentive-based or other compensation paid to Executive under this Restated Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement). The Company will make any determination for clawback or recovery in its sole discretion and in accordance with any applicable law or regulation.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have entered into this Restated Agreement as of the date first written above.

“COMPANY”

Atomera Incorporated
A Delaware corporation

By: /s/ John D. Gerber
Name: John D. Gerber
Title: Chairman of the Board of Directors
Date: May 5, 2025

“EXECUTIVE”

Scott A. Bibaud

/s/ Scott A. Bibaud

Date: May 5, 2025