

**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): January 8, 2025

VROOM, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-39315
(Commission
File Number)

90-1112566
(I.R.S. Employer
Identification No.)

4700 Mercantile Dr.
Fort Worth, TX 76137
(Address of principal executive offices) (Zip Code)
(518) 535-9125
(Registrant's telephone number, include area code)
3600 W Sam Houston Pkwy S, Floor 4
Houston, Texas 77042
(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, \$0.001 par value per share | VRMMQ | OTC 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.

Introductory Note

As previously disclosed, on November 13, 2024, Vroom, Inc. (the “Company” or “Vroom”, and in the context of the Prepackaged Chapter 11 Case, the “Debtor”) commenced a voluntary proceeding (the “Prepackaged Chapter 11 Case”) under Chapter 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) under the name *In re Vroom, Inc.*, Case No. 24-90571 (CML).

On January 8, 2025, the Bankruptcy Court entered an order (a) approving the Debtor’s disclosure statement, (b) confirming the Prepackaged Plan of Reorganization of Vroom, Inc. under Chapter 11 of the Bankruptcy Code (the “Plan”), and (c) granting related relief (the “Confirmation Order”).

On January 14, 2025 (the “Effective Date”), the conditions to the effectiveness of the Plan were satisfied or waived and the Plan became effective. The Company emerged from the Prepackaged Chapter 11 Case on January 14, 2025. A copy of the Plan, the Confirmation Order and notice of effective date may be found at <http://www.veritaglobal.net>.

Item 1.01. Entry into a Material Definitive Agreement.

Warrant Agreement

On the Effective Date, the Company entered into a warrant agreement (the “Warrant Agreement”) with Equiniti Trust Company LLC, as warrant agent. In accordance with the Plan and pursuant to the Warrant Agreement, on the Effective Date, the Company issued warrants (the “Warrants”) to purchase an aggregate of 364,516 shares of the Company’s new common stock, par value \$0.001 per share (the “New Common Stock”), at an exercise price of \$60.95 per share, to stockholders of the Company in accordance with the Prepackaged Chapter 11 Case. Each Warrant will be immediately exercisable upon the issuance date and will expire five years from the issuance date. The Warrants, in addition to the New Common Stock, are subject to dilution on account of a management incentive plan to be adopted by the Company’s board of directors (the “Board”).

The foregoing description of the Warrant Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of such agreement, which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

Convertible Notes

On June 18, 2021, the Company issued \$625.0 million aggregate principal amount of 0.75% unsecured Convertible Senior Notes due 2026 (the “Notes”), including \$75.0 million aggregate principal amount of such notes pursuant to the exercise in full of the over-allotment option granted to the initial purchasers. The Notes were issued pursuant to an indenture (the “Indenture”), between the Company and U.S. Bank National Association, as trustee. The material terms of the Indenture were previously described in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on June 21, 2021 and are incorporated by reference herein. On the Effective Date, by operation of the Plan, all outstanding obligations under the Notes and the Indenture were terminated. At termination, approximately \$290.5 million in aggregate principal amount of the Notes remained outstanding.

Item 1.03. Bankruptcy or Receivership.

The information set forth in the Introductory Note and Items 1.01, 1.02 and 3.02 of this Current Report on Form 8-K is incorporated herein by reference.

The material terms of the restructuring that are set forth in the Plan as confirmed by the Bankruptcy Court were previously described under “Restructuring Support Agreement” in *Part II, Item 5. Other Information, (a) Disclosure in lieu of reporting on a Current Report on Form 8-K* in the Company’s Quarterly Report on Form 10-Q for the period ended September 30, 2024 (File No. 001-39315), filed by the Company on November 12, 2024, which description is incorporated herein by reference. This summary describes only certain material provisions of the Plan, does not purport

to be complete and is qualified in its entirety by reference to the Plan, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated into this Item 1.03 by reference. Capitalized terms used but not defined herein have the meanings ascribed to them in the Plan.

Immediately prior to the Effective Date, there were 1,822,577 outstanding shares of the Company's common stock, \$0.001 par value per share (the "Common Stock"). As described further in Item 5.03 of this Current Report on Form 8-K, pursuant to and in accordance with the authority granted to the Company under Section 303 of the General Corporation Law of the State of Delaware (the "DGCL") and in accordance with the Plan, as confirmed by the Bankruptcy Court under Chapter 11 of the Bankruptcy Code, the Company has adopted an Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") to, among other changes to the Company's prior amended and restated certificate of incorporation, effect an automatic conversion of the Common Stock at a ratio of 1-for-5 (the "Bankruptcy Emergence Issuance Adjustment"). The Certificate of Incorporation became effective as of its filing with the Office of the Secretary of State of the State of Delaware on January 14, 2025, and the Bankruptcy Emergence Issuance Adjustment took effect as of 5:00 p.m. Eastern Time on January 14, 2025 (the "Adjustment Effective Time"). As a result of the Bankruptcy Emergence Issuance Adjustment and the issuance of shares of Common Stock pursuant to the Plan, there were approximately 5,163,109 outstanding shares of New Common Stock as of the Adjustment Effective Time.

Information regarding the Company's assets and liabilities of as the most recent practicable date prior to the entry of the Confirmation Order is hereby incorporated by reference to the Company's Quarterly Report on Form 10-Q for the period ended September 30, 2024, filed with the Securities and Exchange Commission on November 12, 2024.

Item 3.02. Unregistered Sales of Equity Securities.

Upon the effectiveness of the Plan on the Effective Date, all previously issued and outstanding equity interests in the Company were cancelled and extinguished. Holders of outstanding equity awards will receive adjusted awards exchangeable into New Common Stock on the same terms and conditions and covering the same number of shares as their existing equity awards, as adjusted to give effect to the Bankruptcy Emergence Issuance Adjustment, with the governing equity award agreements continuing in effect under the Company's existing equity incentive plans.

On the Effective Date, in connection with the Company's emergence from Chapter 11, the Company issued an aggregate of approximately (i) 5,163,109 shares of New Common Stock and (ii) 364,516 Warrants in accordance with the terms of the Plan and certain other agreements.

The issuance of the shares of New Common Stock, including the issuance of New Common Stock upon exercise of the Warrants, was or will be exempt, as the case may be, from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 1145 of the Bankruptcy Code (which generally exempts from such registration requirements the issuance of securities under a plan of reorganization) and Section 4(a)(2), Regulation D and/or Regulations S, as applicable.

The information contained in Item 1.01 of this Current Report on Form 8-K under the sub-heading "Warrant Agreement" is incorporated by reference into this Item 3.02.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and Items 1.01, 3.02 and 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.01 Changes in Control of Registrant.

On the Effective Date, all previously issued and outstanding equity interests in the Company were cancelled and extinguished. Pursuant to the Plan, holders of the Convertible Notes received 92.94% of the New Common Stock.

The information set forth in the Introductory Note of this Current Report on Form 8-K is 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.

Appointment of Director

On January 14, 2025 and pursuant to the terms of the Plan, as confirmed by the Bankruptcy Court under Chapter 11 of the Bankruptcy Code, Matthew Pietroforte, was appointed as a member of the Board.

Mr. Pietroforte is eligible to participate in the Company's standard compensation program for non-employee directors, as previously disclosed in the Company's proxy statement filed with the SEC on April 24, 2024. Payments under the policy were suspended in April 2024 but may be reinstated.

Mr. Pietroforte will also enter into the Company's standard indemnification agreement for directors and officers.

There are no other arrangements or understandings between Mr. Pietroforte and any other persons pursuant to which he was appointed as a member of the Board. Mr. Pietroforte does not have any family relationship with any director or executive officer of the Company. There is no relationship between Mr. Pietroforte and the Company that would require disclosure pursuant to Item 404(a) of Regulation S-K.

2020 Incentive Award Plan

Pursuant to the Plan, the Company's existing 2020 Incentive Award Plan (as amended from time to time, the "2020 Plan"), was amended to increase the number of shares reserved for issuance under the 2020 Plan to account for the proposed post-emergence management incentive program, which accounts for 15% of the fully-diluted shares of New Common Stock as of immediately following the Effective Date, inclusive of the Warrants, the management incentive program and the converted existing equity awards: 10% will be allocated for awards of restricted stock units and 5% will be allocated for awards of stock options.

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On January 14, 2025, pursuant to and in accordance with the authority granted to the Company under Section 303 of the DGCL and in accordance with the Plan, as confirmed by the Bankruptcy Court under Chapter 11 of the Bankruptcy Code, the Board adopted (i) the Company's Certificate of Incorporation to, among other changes to the Company's prior amended and restated certificate of incorporation, effect the Bankruptcy Emergence Issuance Adjustment and (ii) the Amended and Restated Bylaws (the "Bylaws"). The Certificate of Incorporation was effective as of its filing with the Office of the Secretary of State of the State of Delaware on January 14, 2025, the Bankruptcy Emergence Issuance Adjustment was effective as of the Adjustment Effective Time, and the Bylaws were effective as of the Effective Date. Set forth below are the principal changes to the Certificate of Incorporation and Bylaws.

Capital Stock. The Company's authorized capital stock consists of 255,000,000 shares, consisting of (i) 250,000,000 shares of Common Stock, \$0.001 par value per share; and (ii) 5,000,000 shares of Preferred Stock, \$0.001 par value per share.

Amendments. The Certificate of Incorporation and the Bylaws grant stockholders of the Company the power to (i) alter, amend, change or repeal any provision of the Certificate of Incorporation and (ii) adopt, amend, alter or repeal the Bylaws, in each case, by the affirmative vote of the holders of a majority of the voting power of the stock outstanding and entitled to vote thereon, subject to certain ownership limits by the Company's significant stockholder, Mudrick Capital Management, L.P. and its affiliates (collectively, the "Significant Stockholder").

Voting. The Certificate of Incorporation and the Bylaws provide that any and all actions required or permitted to be taken by the stockholders of the Company may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing are signed by holders of at least the minimum number of votes necessary to take such action at a meeting, subject to certain ownership limits by the Significant Stockholder.

Board of Directors. The Certificate of Incorporation and the Bylaws grant stockholders of the Company the power to (i) remove the entire Board or any individual director, with or without cause and (ii) fill any vacancy or newly created

directorship in the Board, in each case, by the affirmative vote of the holders of a majority of the voting power of the stock outstanding and entitled to vote thereon, subject to certain ownership limits by the Significant Stockholder.

Limitation of Liability and Indemnification of Officers. The Certificate of Incorporation provides that no senior officers shall be personally liable to the Company or the shareholders for monetary damages for breach of fiduciary duty as an officer to the fullest extent permitted by the DGCL.

Special Stockholder Meetings. The Certificate of Incorporation provides that the Secretary of the Corporation may request a special meeting at the request of the holders of at least a majority of the outstanding shares of capital stock of the Corporation, subject to certain ownership limits by the Significant Stockholder.

Corporate Opportunities. The Certificate of Incorporation provides that, to the fullest extent permitted by law, the Company will renounce any interest or expectancy in any business opportunity, transaction or matter in which the Significant Stockholder, any of its officers, directors, partners or employees and any portfolio company in which any of the foregoing have an equity interest (other than the Company) (each, a “Specified Party”) participates or seeks or desires to participate, and each such Specified Party with have no duty to present such corporate opportunity to the Company.

The foregoing summary of each of the Certificate of Incorporation and Bylaws does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Certificate of Incorporation and the Bylaws, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On January 14, 2025, the Company issued a press release announcing the Company’s emergence from the Prepackaged Chapter 11 Case. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibit 99.1, shall be deemed to be “furnished” and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that Section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit No. | Description |
|--------------------|-----------------------------------------------------------------------------------------------------------------------|
| 2.1 | Prepackaged Plan of Reorganization for Vroom, Inc. Under Chapter 11 of the Bankruptcy Code. |
| 3.1 | Amended and Restated Certificate of Incorporation of Vroom, Inc. |
| 3.2 | Amended and Restated Bylaws of Vroom, Inc. |
| 10.1 | Warrant Agreement, dated as of January 14, 2025, between Vroom, Inc. and Equiniti Trust Company, LLC. |
| 99.1 | Press release, dated January 14, 2025 |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this Current Report on Form 8-K that do not relate to matters of historical fact should be considered forward-looking statements, including without limitation statements regarding the Prepackaged Chapter 11 Case, the effectiveness of the Plan, the issuance of the Warrants, the termination of the Indenture, the cancellation and extinguishment of all of the Company’s outstanding equity, the issuance of the New Common Stock, the appointment of the new director, the impact of the change in control, and the timing of any of the foregoing. These statements are based on management’s current assumptions and are neither promises nor guarantees,

but involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Factors that could cause actual results to differ materially from the forward-looking statements in this press release include: the Company is subject to risks and uncertainties associated with the Prepackaged Chapter 11 Case; trading in our securities is highly speculative and poses substantial risks; the holders of our prior Common Stock will be diluted; following the effectiveness of the Plan, certain holders of claims or causes of action relating to the Notes, if they choose to act together, will have the ability to significantly influence all matters submitted to stockholders of the reorganized company for approval; our business could suffer from a long and protracted restructuring; as a result of the Prepackaged Chapter 11 Case, our historical financial information will not be indicative of our future performance; the Company is subject to claims that will not be discharged in the Prepackaged Chapter 11 Case, which could have a material adverse effect on our financial condition and results of operations; the Prepackaged Chapter 11 Case has consumed and may continue to consume a substantial portion of the time and attention of our management, which may have an adverse effect on our business and results of operations, and the Company may experience increased levels of employee attrition; upon our emergence from bankruptcy, the composition of our Board is expected to change; the Prepackaged Chapter 11 Case has raised substantial doubt regarding our ability to continue as a going concern; our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could materially adversely affect our business, financial condition and results of operations and impair our ability to satisfy our debt obligations; the Company may be unable to satisfy a continued listing rule from the Nasdaq Stock Market LLC (“Nasdaq”), and if the Company is delisted, the Company may not be able to satisfy an initial listing rule from Nasdaq or another national securities exchange; our tax attributes and future tax deductions may be reduced or significantly limited as a result of the consummation of the Plan and any restructuring or reorganization in connection therewith; there are risks associated with the discontinuance of our ecommerce operations and wind-down of our used vehicle dealership business; the Company may not generate sufficient liquidity to operate our business; as well as the other important risks and uncertainties identified under the heading “Risk Factors” in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, as updated by the Quarterly Report on Form 10-Q for the period ended September 30, 2024, which is available on our Investor Relations website at ir.vroom.com and on the SEC website at www.sec.gov. All forward-looking statements reflect our beliefs and assumptions only as of the date of this press release. The Company undertakes no obligation to update forward-looking statements to reflect future events or circumstances.

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.

Date: January 15, 2025

VROOM, INC.

By: /s/ Thomas H. Shortt

Thomas H. Shortt

Chief Executive Officer

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VROOM, INC.,

Debtor.^[1]

§
§
§
§
§
§
§

Chapter 11

Case No. 24-90571 (CML)

**PREPACKAGED PLAN OF REORGANIZATION FOR
VROOM, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Porter Hedges LLP |
| John F. Higgins Eric M. English M. Shane Johnson 1000 Main St., 36 th Floor Houston, TX 77002 Telephone: (713) 226-6000 |
| Proposed Counsel for the Debtor and Debtor in Possession |

Dated: November 12, 2024

¹ The Debtor in this case, along with the last four digits of the Debtor's federal tax identification numbers, is Vroom, Inc. (2566). The Debtor's address is 3600 West Sam Houston Pkwy S., Floor 4, Houston, Texas 77042.

THE CHAPTER 11 CASE HAS NOT BEEN COMMENCED AT THIS TIME. THIS PREPACKAGED PLAN OF REORGANIZATION, AND THE SOLICITATION MATERIALS ACCOMPANYING THIS PLAN, HAVE NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. UPON COMMENCEMENT OF THE CHAPTER 11 CASE, THE DEBTOR EXPECTS TO SEEK PROMPTLY AN ORDER OF THE BANKRUPTCY COURT (1) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT, (2) APPROVING THE SOLICITATION OF VOTES AS HAVING BEEN IN COMPLIANCE WITH SECTIONS 1125 AND 1126(b) OF THE BANKRUPTCY CODE; AND (3) CONFIRMING THIS PLAN PURSUANT TO SECTION 1129 OF THE BANKRUPTCY CODE.

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EXHIBITS

Exhibit A Restructuring Support Agreement

PREPACKAGED PLAN OF REORGANIZATION FOR VROOM, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Vroom, Inc. (the “*Debtor*”) proposes the following prepackaged plan of reorganization (this “*Plan*”) for the treatment of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, the Debtor. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, and projections, and for a summary and analysis of this Plan, the treatment provided for herein and certain related matters. There also are other agreements and documents, which shall be Filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement. The Plan Supplement Documents (as defined below) are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019 and the terms and conditions set forth in this Plan, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

I.

RULES OF INTERPRETATION, COMPUTATION OF TIME AND DEFINED TERMS

A. *Rules of Interpretation*

For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) except as otherwise provided herein, any reference herein to a contract, lease, instrument, release, or other agreement or document shall mean as it may be amended, modified or supplemented from time to time (in accordance with the Restructuring Support Agreement and this Plan, in each case, to the extent applicable); (c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; *provided*, that nothing in this clause (c) shall affect any party's consent rights over the Definitive Documents (as defined in the Restructuring Support Agreement) or any amendments thereto, as provided for in the Restructuring Support Agreement; (d) any reference to an Entity as a Holder of a Claim or an Equity Interest includes that Entity's successors and assigns; (e) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections hereof or hereto; (f) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan; (i) references to a specific article, section, or subsection of any statute, rule, or regulation expressly referenced herein shall, unless otherwise specified, include any amendments to or successor provisions of such article, section, or subsection in effect as of the date of this Plan; (j) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (k) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; (l) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (m) any reference in this Plan to "\$" or "dollars" shall mean U.S. dollars; and (n) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Case, unless otherwise stated. Except as otherwise specifically provided in this Plan to the contrary, references in this Plan to "the Debtor" or to "the Reorganized Debtor" shall mean "the Debtor and the Reorganized Debtor", as applicable, to the extent the context requires.

B. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Unless otherwise specified herein, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter.

C. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

"510(b) Claim" means any Claim subject to section 510(b) of the Bankruptcy Code. For the avoidance of doubt, 510(b) Claims include the Existing Securities Litigation Claims.

"Administrative Claim" means a Claim for costs and expenses of administration of the Chapter 11 Case that are Allowed under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred on or after the Petition Date and

through the Effective Date of preserving the Estate and operating the businesses of the Debtor; (b) Professional Fee Claims and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under sections 328, 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred on or after the Petition Date and through the Effective Date; and (c) all fees and charges assessed against the Estate under section 1930, chapter 123, of title 28, United States Code.

“**Affiliate**” shall, with respect to an Entity, have the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity were a debtor in a case under the Bankruptcy Code.

“**Allowed**” means, with respect to a Claim or Equity Interest (a) any Claim or Equity Interest as to which no objection to allowance has been interposed (either in the Bankruptcy Court or in the ordinary course of business) on or before the applicable time period fixed by applicable non-bankruptcy law or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has been determined by a Final Order, either before or after the Effective Date, to the extent such objection is determined in favor of the respective Holder; (b) any Claim or Equity Interest as to which the liability of the Debtor and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, either before or after the Effective Date; or (c) any Claim or Equity Interest expressly deemed Allowed by this Plan.

“**Alternate/Supplemental Distribution Process**” means alternate, additional or supplemental procedures in consultation with the Unsecured Notes Indenture Trustee in its capacity as Distribution Agent, to make distributions to Holders of Unsecured Notes and to eliminate such Unsecured Notes, including all book entry positions relating thereto, from DTC’s books and records.

“**Avoidance Actions**” means any and all actual or potential Claims and Causes of Action to avoid or recover a transfer of property or an obligation incurred by the Debtor arising under chapter 5 of the Bankruptcy Code, including sections 502(d), 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code and applicable non-bankruptcy law.

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division, or any other court having jurisdiction over the Chapter 11 Case.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Case.

“**Business Day**” means any day, other than a Saturday, Sunday, “legal holiday” (as such term is defined in Bankruptcy Rule 9006(a)), or any other day on which commercial banks are required or authorized by law or executive order to be closed for commercial business with the public in New York City, New York.

“**Cash**” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“**Causes of Action**” means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee, expense, damage, interest, judgment, cost, account, defense, remedy, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively (including any alter

ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law (including under any state or federal securities laws). For the avoidance of doubt, Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; and (f) any Avoidance Actions.

“**Chapter 11 Case**” means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court.

“**Claim**” means any “claim” as defined in section 101(5) of the Bankruptcy Code. Except where otherwise provided in context, “Claim” refers to such a claim against the Debtor.

“**Claims Register**” means the official register of Claims maintained by the Solicitation Agent.

“**Class**” means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

“**Collateral**” means any property or interest in property of the Debtor’s Estate that is subject to a valid and enforceable Lien to secure a Claim.

“**Combined Hearing**” means the combined hearing to be held by the Bankruptcy Court pursuant to sections 105(d)(2)(B)(vi) and 1128 of the Bankruptcy Code to consider (a) final approval of the Disclosure Statement under sections 1125 and 1126(b) of the Bankruptcy Code and (b) confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

“**Combined Order**” means the order of the Bankruptcy Court (a) approving the Disclosure Statement as containing adequate information as required by the Bankruptcy Code and (b) confirming this Plan pursuant to sections 1125, 1126(b) and 1129 of the Bankruptcy Code.

“**Confirmation**” means the Bankruptcy Court’s entry of the Combined Order on the docket of the Chapter 11 Case.

“**Confirmation Date**” means the date upon which Confirmation occurs.

“**Consenting Equity Interest Holders**” means the Holders of Existing Equity Interests that are party to the Restructuring Support Agreement as “Consenting Equity Interest Holders” thereunder.

“**Consenting Noteholders**” means the Holders of Unsecured Notes Claims that are party to the Restructuring Support Agreement as “Consenting Noteholders” thereunder.

“**Consenting Stakeholders**” means, collectively, the Consenting Equity Interest Holders and the Consenting Noteholders.

“**Consummation**” means the occurrence of the Effective Date.

“**Cure Claim**” means a Claim (unless waived or modified by the applicable counterparty) based upon the Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by the Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

“**D&O Liability Insurance Policies**” means all insurance policies (including, without limitation, the D&O Tail, any general liability policies, any errors and omissions policies, and, in each case, any agreements, documents, or instruments related thereto) in effect as of the Petition Date and providing coverage for liability of the Debtor’s directors, managers, and officers.

“**D&O Tail**” means that certain directors’ and officers’ liability insurance policy tail endorsement purchased by the Debtor.

“**Debtor**” means Vroom, Inc., as the debtor and debtor in possession in the Chapter 11 Case.

“**Debtor Release**” has the meaning set forth in Article X.B hereof.

“**Disclosure Statement**” means the *Disclosure Statement for the Prepackaged Plan of Reorganization for Vroom, Inc. Under Chapter 11 of The Bankruptcy Code*, dated as of November 12, 2024 (as amended, supplemented, or modified from time to time).

“**Disputed**” means any Claim, Equity Interest, or any portion thereof, that has not been Allowed, but has not been disallowed pursuant to this Plan or a Final Order of the Bankruptcy Court or other court of competent jurisdiction.

“**Distribution Agent**” means the Reorganized Debtor or any party designated by the Reorganized Debtor to serve as distribution agent under this Plan. For purposes of distributions under this Plan to Holders of Allowed Unsecured Notes Claims, the Unsecured Notes Indenture Trustee will be and shall act as the Distribution Agent.

“**Distribution Record Date**” means, other than with respect to publicly held securities, the date for determining which Holders of Claims or Equity Interests are eligible to receive distributions under this Plan, which date shall be the Effective Date, subject to Article VII.E of this Plan. For the avoidance of doubt, the Distribution Record Date shall not apply to publicly traded securities, which shall receive distributions, if any, in accordance with the applicable procedures of DTC.

“**DTC**” means The Depository Trust Company.

“**Effective Date**” means the first Business Day on which the conditions specified in Article IX of this Plan have been satisfied or waived in accordance with the terms of Article IX.

“**Entity**” means an “entity” as defined in section 101(15) of the Bankruptcy Code.

“**Equity Interest**” means any Equity Security or other ownership interest in the Debtor.

“**Equity Security**” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

“**ESO Grants**” means stock options to purchase New Common Stock to be granted to management employees of the Reorganized Debtor under the MIP, which shall (a) constitute (on an as-converted to common stock basis) five percent (5%) of the Fully-Diluted New Common Stock as of immediately following the Effective Date; (b) be allocated in good faith by the New Board in consultation with the Reorganized Debtor’s chief executive officer; and (c) otherwise be consistent with the MIP Term Sheet.

“**Estate**” means the estate of the Debtor created under section 541 of the Bankruptcy Code.

“**Exculpated Party**” means the Debtor.

“**Exculpation**” means the exculpation provision set forth in Article X.E hereof.

“**Executory Contract**” means a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code, including any modifications, amendments, addenda, or supplements thereto or restatements thereof.

“**Existing Equity Awards**” means options or restricted stock units representing rights to purchase or acquire Equity Securities of the Debtor in existence immediately before the Effective Date in an aggregate amount equivalent to no more than 135,000 shares of common stock of the Debtor underlying restricted stock units and 25,911 shares of common stock of the Debtor underlying stock options, as of September 30, 2024, with a weighted average exercise price of \$514.33.

“**Existing Equity Interest**” means any Equity Security or other ownership interest in the Debtor as in existence immediately before the Effective Date, but excluding any Existing Equity Awards.

“**Existing Securities Litigation Claims**” means any Claims against the Debtor in the following matters: (a) *In re Vroom, Inc. Securities Litigation*, 21-cv-2477-PGG (S.D.N.Y. Mar. 22, 2021); (b) *In re Vroom, Inc. Shareholder Derivative Litigation*, 21-cv-6933-PGG (S.D.N.Y. Apr. 17, 2021); (c) *Godlu v. Vroom, Inc.*, 22-cv-00569-MN (D. Del. Apr. 28, 2022); and (d) *Hudda v. Vroom, Inc.*, 24-cv-00449-MN (D. Del. Apr. 15, 2024).

“**Federal Judgment Rate**” means the federal judgment rate in effect pursuant to 28 U.S.C. § 1961 as of the Petition Date, compounded annually.

“**File**” or “**Filed**” or “**Filing**” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

“**Final Order**” means as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, which (a) has not been reversed, stayed, modified, or amended, including any order subject to appeal but for which no stay of such order has been entered, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, reconsideration or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, reconsideration or rehearing has been timely taken, or (b) as to which any appeal that has been taken or any petition for certiorari or motion for reargument, reconsideration or rehearing that has been or may be filed has been withdrawn with prejudice, resolved by the highest court to which the order or judgment was appealed or from which certiorari could be sought, or any request for new trial, reargument, reconsideration or rehearing has been denied, resulted in no stay pending appeal or modification of such order, or has otherwise been dismissed with prejudice; *provided*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under rules 59 or 60 of the Federal Rules of Civil Procedure or any analogous Bankruptcy Rule (or any analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code has been or may be filed with respect to such order or judgment.

“**Fully-Diluted New Common Stock**” means, collectively, (a) the New Common Stock issued on the Effective Date; (b) the New Warrants; (c) the MIP Equity; and (d) the Post-Effective Date Equity Awards, in each case, on an as-converted-to-common-stock basis.

“**General Unsecured Claim**” means any Unsecured Claim against the Debtor that is not an Administrative Claim, a Priority Tax Claim, a Restructuring Expense, a Cure Claim, an Other Priority Claim, an Unsecured Notes Claim, a 510(b) Claim, or an Intercompany Claim. For the avoidance of doubt, General Unsecured Claims include (a) Claims resulting from the rejection of Executory Contracts and Unexpired Leases and (b) Claims resulting from litigation against the Debtor (other than 510(b) Claims).

“**Governmental Unit**” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

“**Holder**” means any Entity that is the record or beneficial owner of any Claim or Equity Interest, including any nominees, investment managers, investment advisors, sub-advisors, or managers of funds or discretionary accounts that hold, or trustees of trusts that hold, any Claim or Equity Interest.

“**Impaired**” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.

“**Indemnification Provisions**” means the Debtor’s indemnification obligations to the Indemnified Parties in effect as of the Petition Date, howsoever documented, whether in the Debtor’s bylaws, certificate of incorporation, other organizational documents, board resolutions, indemnification agreements, employment contracts, or as provided in and by applicable law or otherwise.

“**Indemnified Parties**” means any of the Debtor’s current and former directors, officers, managers, members, employees, accountants, investment bankers, attorneys, and other professionals of the Debtor, each of the foregoing solely in their capacity as such.

“**Insurance Contract**” means all insurance policies and all surety bonds and related agreements of indemnity that have been issued at any time to, or provide coverage to, the Debtor and all agreements, documents, or instruments relating thereto.

“**Intercompany Claim**” means any Claim against the Debtor held by a non-Debtor Affiliate, other than an Administrative Claim.

“**Judicial Code**” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

“**Lien**” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any property or asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such property or asset.

“**Litigation Claims**” means the claims, rights of action, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtor or the Estate may hold against any Person or Entity, including, without limitation, the Causes of Action of the Debtor or the Estate, in each case solely to the extent of the Debtor’s or its Estate’s interest therein. A non-exclusive list of the Litigation Claims held by the Debtor as of the Effective Date will be Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against the Debtor as of the Effective Date. For the avoidance of doubt, “Litigation Claims” shall exclude any Claims or Causes of Action subject to the Debtor Release set forth in Article X.B hereof.

“**Local Rules**” means the Bankruptcy Local Rules for the Southern District of Texas and the Procedures for Complex Cases in the Southern District of Texas.

“**MIP**” means a post-emergence equity-based management incentive plan implemented by amending and restating the Vroom, Inc. 2020 Incentive Award Plan, which shall be comprised of the RSU Awards and the ESO Grants.

“**MIP Equity**” means, collectively, the RSU Awards and the ESO Grants.

“**MIP Term Sheet**” means the term sheet governing the MIP, attached as Annex A to the Restructuring Term Sheet.

“**Mudrick**” means Mudrick Capital Management, L.P. on behalf of its funds and/or accounts in their capacities as Holders of Unsecured Notes Claims.

“**Mudrick Advisors**” means Wachtell Lipton Rosen & Katz, McGuireWoods LLP and such other professional advisors as are retained by Mudrick with the prior written consent of the Debtor, in each case, in such advisor’s capacity as an advisor to Mudrick.

“**New Board**” means the new board of directors of the Reorganized Debtor, as further described in the New Governance Documents, whose appointment and powers shall be as set forth in the New Governance Documents. The members of the New Board shall be acceptable to the Required Consenting Noteholders in their discretion and Filed with the Plan Supplement or a supplement thereto and in any event identified prior to the Effective Date.

“**New Common Stock**” means the new common stock to be issued by the Reorganized Debtor on the Effective Date.

“**New Governance Documents**” means any organizational or constitutional documents, including charters, bylaws, operating agreements, option agreements, shareholder agreement, registration rights agreements or other governance documents, in each case, relating to the Reorganized Debtor.

“**New Warrants**” means the warrants to purchase shares of New Common Stock to be issued in accordance with this Plan pursuant to section 1145 of the Bankruptcy Code. The New Warrants will be subject to the terms and conditions set forth in the New Warrants Agreement and shall: (a) be for the purchase of an aggregate of 1,808,243 shares of New Common Stock, equal to the number of existing outstanding shares of common stock of the Debtor immediately prior to the Effective Date; (b) have an exercise price equal to the Strike Price; (c) expire on the fifth anniversary of the Effective Date; (d) contain customary anti-dilution protection for stock splits, stock dividends, and similar events but will not have Black-Scholes protections; and (e) be freely transferable, subject to applicable securities laws.

“**New Warrants Agreement**” means the agreement governing the New Warrants to be entered into between the Debtor or Reorganized Debtor, as applicable, and a warrant agent on or prior to the Effective Date.

“**New Warrants Documents**” means, collectively, the New Warrants Agreement and a form of the New Warrants.

“**Non-Voting Classes**” means, collectively, Classes 1, 2, 4, 5, and 6.

“**Notice**” has the meaning set forth in Article XII.K of this Plan.

“**Other Priority Claim**” means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim, a Cure Claim, or a Priority Tax Claim.

“**Person**” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, firm, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, association, trust, government, governmental agency or other Entity, whether acting in an individual, fiduciary, or other capacity, or other Entity or organization.

“**Petition Date**” means the date on which the Debtor commences the Chapter 11 Case.

“**Plan**” means this *Prepackaged Plan of Reorganization for Vroom, Inc Under Chapter 11 of the Bankruptcy Code*, dated as of the date hereof, including the exhibits and all supplements, appendices, and schedules thereto (including, without limitation, the Plan Supplement Documents), either in its present form or as the same may be amended, supplemented, or modified from time to time.

“**Plan Securities**” means, collectively, the New Common Stock, the Post-Effective Date Equity Awards, and the New Warrants.

“Plan Supplement” means, collectively, the compilation of the Plan Supplement Documents, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, supplemented, or modified from time to time.

“Plan Supplement Documents” means, collectively, documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents, and instruments referred to in the Plan Supplement, ancillary or otherwise, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, supplemented, or modified from time to time. The Plan Supplement Documents will include, without limitation, the following documents: the Restructuring Transaction Steps Memorandum (if applicable), the New Governance Documents (including, but not limited to, the charter and bylaws for the Reorganized Debtor), the New Warrants Documents, certain documents governing the MIP, the Schedule of Retained Causes of Action, the identity of the members of the New Board and any officers of the Reorganized Debtor, and the Schedule of Rejected Executory Contracts and Unexpired Leases.

“Post-Effective Date Equity Awards” means new equity awards convertible into New Common Stock on the same terms and conditions, and for the same number of units, applicable to the Existing Equity Awards in respect of the Existing Equity Interests as of immediately prior to the Effective Date.

“Priority Tax Claim” means any Unsecured Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“Pro Rata” means, with respect to any Allowed Claim or Allowed Equity Interest of a particular Class, (a) the proportion that such Allowed Claim or Allowed Equity Interest bears to the aggregate amount of Allowed Claims or Allowed Equity Interests in such Class or (b) a proportionate allocation.

“Professional” means any Person or Entity retained by the Debtor in the Chapter 11 Case pursuant to section 327, 328, or 363 of the Bankruptcy Code (other than an ordinary course professional).

“Professional Fee Claim” means a Claim for accrued professional compensation under sections 328, 330, 331, or 503 of the Bankruptcy Code for compensation for services rendered or reimbursement of costs, expenses or other charges incurred on or after the Petition Date and prior to and including the Effective Date.

“Professional Fee Escrow Account” means a separate escrow account established, maintained, and funded by the Reorganized Debtor with Cash on the Effective Date in an amount equal to the Professional Fee Reserve Amount, as set forth in Article V.O.

“Professional Fee Reserve Amount” means the aggregate amount of Professional Fee Claims and other unpaid fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtor prior to and as of the Effective Date.

“Proof of Claim” means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

“Release Opt-Out Form” means the form to be provided to Holders of Claims in Non-Voting Classes through which such Holders may elect to affirmatively opt out of the Third-Party Release.

“Released Parties” means collectively: (a) the Debtor; (b) the Reorganized Debtor; (c) the Debtor’s current and former officers, directors, and managers; (d) the Consenting Stakeholders; (e) the Unsecured Notes Indenture Trustee; and (f) with respect to each of the foregoing Entities in clauses (a) through (e), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, participants, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals,

shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, underwriters of any securities issued by the Debtor, consultants, representatives, and other professionals; *provided*, that any Entity that would otherwise be a “Released Party” that votes to reject this Plan, objects to this Plan, or objects to or opts out of the Third-Party Release contained herein, shall not be a “Released Party.”

“**Releases**” means, collectively, the Debtor Release and the Third-Party Release.

“**Releasing Party**” means collectively: (a) the Released Parties; (b) all Holders of Claims and Equity Interests that vote to accept this Plan; (c) all Holders of Claims and Equity Interests that abstain from voting on this Plan and who do not affirmatively opt out of the releases provided by this Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in this Plan; (d) all Holders of Claims and Equity Interests that (i) vote to reject this Plan or (ii) are presumed to accept this Plan and who do not affirmatively opt out of the releases provided by this Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in this Plan in accordance with the procedures set forth in the Solicitation Procedures Order; and (e) with respect to the Debtor, the Reorganized Debtor, and each of the foregoing Entities in clauses (a) through (d), such Entity and its current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, underwriters of any securities issued by the Debtor, consultants, representatives, and other professionals, each in their capacity as such collectively.

“**Reorganized Debtor**” means the Debtor, as reorganized pursuant to and under this Plan or any successor thereto on or after the Effective Date, and its successors.

“**Representatives**” means, with respect to a Person, such Person’s current and former (a) officers, (b) directors, (c) managers, (d) principals, (e) members, (f) employees, (g) agents, (h) advisory board members, (i) financial advisors, (j) partners, (k) attorneys, (l) accountants, (m) investment bankers, (n) consultants, (o) representatives, and (p) other professionals, each in their capacity as such.

“**Required Consenting Noteholders**” has the meaning set forth in the Restructuring Support Agreement.

“**Restructuring Documents**” means collectively, the documents and agreements (and the exhibits, schedules, annexes, and supplements thereto) necessary to implement, or entered into in connection with, this Plan, including, without limitation, the Plan Supplement Documents, the New Governance Documents, the New Warrants Documents, and any other “Definitive Documents” (as defined in the Restructuring Support Agreement).

“**Restructuring Expenses**” means (a) the reasonable and documented fees and expenses of the Mudrick Advisors, in each case payable in accordance with the terms hereof, any applicable engagement letters with the Debtor, the Restructuring Support Agreement and/or the Unsecured Notes Documents, as applicable and (b) the Unsecured Notes Indenture Trustee Fees and Expenses.

“**Restructuring Support Agreement**” means that certain Restructuring Support Agreement, dated as of November 12, 2024, by and among the Debtor, the Consenting Stakeholders, and any other parties thereto (as amended, supplemented, or modified from time to time), attached as Exhibit A to this Plan.

“**Restructuring Term Sheet**” means the term sheet attached as Exhibit 2 to the Restructuring Support Agreement.

“**Restructuring Transaction Steps Memorandum**” means the document setting forth the sequence of certain Restructuring Transactions, if any.

“**Restructuring Transactions**” has the meaning ascribed thereto in Article V.A of this Plan.

“**RSU Awards**” means restricted stock units with respect to New Common Stock to be granted to employees of the Reorganized Debtor, which shall: (a) constitute (on an as-converted to common stock basis) ten percent (10%) of the Fully-Diluted New Common Stock as of immediately following the Effective Date; (b) be allocated in good faith by the New Board in consultation with the Reorganized Debtor’s chief executive officer; and (c) otherwise be consistent with the MIP Term Sheet.

“**Schedule of Rejected Executory Contracts and Unexpired Leases**” means the schedule of certain Executory Contracts and Unexpired Leases, if any, to be rejected by the Debtor pursuant to this Plan.

“**Schedule of Retained Causes of Action**” means the schedule of certain Causes of Action of the Debtor that are not released, waived, or transferred pursuant to this Plan.

“**Secured Claim**” means a Claim that is secured by a Lien on property in which the Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in such Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

“**Securities Act**” means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

“**Solicitation**” means the solicitation of votes on this Plan pursuant to sections 1125 and 1126 of the Bankruptcy Code.

“**Solicitation Agent**” means Kurtzman Carson Consultants, LLC dba Verita Global, in its capacity as solicitation, notice, claims and balloting agent for the Debtor.

“**Solicitation Materials**” means any materials used in connection with Solicitation, including the Disclosure Statement and any procedures established by the Bankruptcy Court with respect to Solicitation pursuant to the Solicitation Procedures Order.

“**Solicitation Procedures Order**” means the order of the Bankruptcy Court approving, among other things, the Solicitation procedures and scheduling the Combined Hearing.

“**Specified Employee Plans**” means all employment agreements and severance policies, and all employment, compensation and benefit plans, policies, and programs of the Debtor applicable to any of their respective officers, directors, employees and retirees, including, without limitation, all workers’ compensation programs, savings plans, retirement plans, supplemental executive retirement (SERP) plans, healthcare plans, disability plans, retention plans, life and accidental death and dismemberment insurance plans, health and welfare plans, and 401(k) plans.

“**Strike Price**” means \$12.19 per share.

“**Third-Party Release**” has the meaning set forth in Article X.B hereof.

“**Unexpired Lease**” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code, including any modifications, amendments, addenda, or supplements thereto or restatements thereof.

“**Unimpaired**” means, with respect to a Class of Claims, a Claim that is “unimpaired” within the meaning of section 1124 of the Bankruptcy Code.

“**Unsecured Claim**” means any Claim that is not a Secured Claim.

“**Unsecured Notes**” means Vroom, Inc.’s 0.750% unsecured convertible senior notes due 2026 issued pursuant to the Unsecured Notes Indenture.

“**Unsecured Notes Claims**” means any Claim on account of, arising under, derived from, or based on the Unsecured Notes Indenture, including any Claim for all principal amounts outstanding, accrued and unpaid interest (including any compounding), fees, expenses, costs, indemnification, and other amounts arising under, derived from, related to, or based on the Unsecured Notes Documents.

“**Unsecured Notes Documents**” means the Unsecured Notes Indenture together with all other related documents, instruments, and agreements, in each case as supplemented, amended, restated, or otherwise modified from time to time.

“**Unsecured Notes Indenture**” means that certain indenture governing the Unsecured Notes, dated as of June 18, 2021 (as amended, restated, amended and restated, supplemented, or modified from time to time), between Vroom, Inc., as issuer, and U.S. Bank National Association, as trustee.

“**Unsecured Notes Indenture Trustee**” means U.S. Bank National Association, solely in its capacity as trustee under the Unsecured Notes Documents (as applicable), including to the extent serving as a Distribution Agent (*provided* that if the context requires only certain of the foregoing capacities, then only in such capacity(ies)) or, as applicable, any successors, assignees, or delegees thereof.

“**Unsecured Notes Indenture Trustee Fees and Expenses**” means the reasonable documented fees and out-of-pocket expenses of the Unsecured Notes Indenture Trustee, including the reasonable and documented fees and out-of-pocket expenses of its counsel.

“**Voting Classes**” means Classes 3, 7, and 8.

“**Voting Record Date**” means the applicable date for determining (a) which Holders of Claims and Equity Interests in the Voting Classes are entitled, as applicable, to receive the Disclosure Statement and to vote to accept or reject this Plan, and (b) which Holders of Claims in the Non-Voting Classes are entitled, as applicable, to receive a Release Opt-Out Form.

II.

ADMINISTRATIVE, DIP FACILITY, AND PRIORITY TAX CLAIMS

A. *Administrative Claims*

1. Generally

Subject to the paragraph below regarding Professional Fee Claims, to the extent such Claim has not already been paid in full during the Chapter 11 Case, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim (other than an Allowed Professional Fee Claim or fees and charges assessed against the Estate under section 1930, chapter 123, of title 28, United States Code), in full and final satisfaction, settlement, discharge and releaseof, and in exchange for, such Claim, shall receive, at the option of the Debtor or the Reorganized Debtor, as applicable: (a) payment in full in Cash in an amount equal to the due and unpaid portion of such Allowed Administrative Claimor (b) such other less favorable treatment as to which the Debtor or the Reorganized Debtor, as applicable, and the Holder of such Allowed Administrative

Claims shall have agreed upon in writing; or (c) such other treatment as permitted by section 1129(a)(9) of the Bankruptcy Code; *provided* that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business by the Debtor or Reorganized Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court.

2. Professional Fee Claims

a) Final Fee Applications

All final requests for Professional Fee Claims shall be Filed no later than thirty (30) days after the Effective Date. After notice in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by no later than twenty-one (21) days after the Filing of the applicable final request for payment of the Professional Fee Claim.

b) Professional Fee Escrow Account

No later than the Effective Date, the Debtor or the Reorganized Debtor, as applicable, shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained by the Reorganized Debtor, in trust solely for the benefit of the Professionals. The Reorganized Debtor shall not commingle any funds contained in the Professional Fee Escrow Account. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Such funds shall not be considered property of the Estate, the Debtor, or the Reorganized Debtor. The amount of Professional Fee Claims owing to the Professionals shall be paid in full in Cash to such Professionals by the Reorganized Debtor from the Professional Fee Escrow Account within five (5) Business Days after such Professional Fee Claims are Allowed by a Final Order; *provided* that the Debtor's and the Reorganized Debtor's obligations to pay Allowed Professional Fee Claims shall not be limited or deemed limited to funds held in the Professional Fee Escrow Account. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the Allowed amount of Professional Fee Claims owing to the Professionals, the Reorganized Debtor shall pay such amounts within ten (10) Business Days after entry of the order approving such Professional Fee Claims. When all such Professional Fee Claims have been resolved (either because they are Allowed Professional Fee Claims that have been paid or because they have been disallowed, expunged, or withdrawn), any remaining amount in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtor without any further action or order of the Bankruptcy Court and distributed as set forth herein.

c) Professional Fee Reserve Amount

To receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall estimate their accrued and unpaid Professional Fee Claims prior to and as of the Effective Date and shall deliver such estimate to the Debtor within five (5) days of the Effective Date. If a Professional does not provide such estimate, the Reorganized Debtor shall estimate the accrued and unpaid fees and expenses of such Professional; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional. The total amount so estimated as of the Effective Date shall comprise the Professional Fee Reserve Amount; *provided* that the Reorganized Debtor shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are Filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

d) Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in this Plan, from and after the Confirmation Date, the Reorganized Debtor shall in the ordinary course of business pay (subject to the receipt of an invoice) in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Debtor or Reorganized Debtor (as applicable) after the Confirmation Date without any further notice to or action, order, or approval of the Bankruptcy Court. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered

after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

B. Priority Tax Claims

Subject to Article VIII hereof, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code and, for the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive, if legally required, interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Reorganized Debtor and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business. On the Effective Date, any Liens securing any Allowed Priority Tax Claim shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

C. Statutory Fees

All fees due and payable pursuant to section 1930 of chapter 123 of the Judicial Code prior to the Effective Date shall be paid by the Debtor. On and after the Effective Date, the Reorganized Debtor shall pay any and all such fees when due and payable and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee. The Debtor shall remain obligated to pay quarterly fees to the United States Trustee until the earliest of the Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

III.

CLASSIFICATION AND TREATMENT
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Summary

Except for the Claims addressed in Article II of this Plan, all Claims and Equity Interests are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified Administrative Claims and Priority Tax Claims, as described in Article II.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, for voting, Confirmation, and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that such Claim or Equity Interest qualifies within the description of that Class, and such Claim or Equity Interest shall be deemed classified in a different Class to the extent that any remaining portion of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released, disallowed, or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

| <u>Class</u> | <u>Claim/Equity Interest</u> | <u>Status</u> | <u>Voting Rights</u> |
|--------------|------------------------------|---------------|----------------------|
| 1. | Other Priority Claims | Unimpaired | Presumed to Accept |
| 2. | Secured Claims | Unimpaired | Presumed to Accept |

| Class | Claim/Equity Interest | Status | Voting Rights |
|--------------|----------------------------------|-----------------|-------------------------|
| 3. | <i>Unsecured Notes Claims</i> | <i>Impaired</i> | <i>Entitled to Vote</i> |
| 4. | General Unsecured Claims | Unimpaired | Presumed to Accept |
| 5. | 510(b) Claims | Unimpaired | Presumed to Accept |
| 6. | Intercompany Claims | Unimpaired | Presumed to Accept |
| 7. | <i>Existing Equity Interests</i> | <i>Impaired</i> | <i>Entitled to Vote</i> |
| 8. | <i>Existing Equity Awards</i> | <i>Impaired</i> | <i>Entitled to Vote</i> |

B. *Classification and Treatment of Claims and Equity Interests*

1. Class 1 – Other Priority Claims

- a) *Classification:* Class 1 consists of the Other Priority Claims.
- b) *Treatment:* Subject to Article VIII hereof, to the extent such Allowed Other Priority Claim has not already been paid in full during the Chapter 11 Case, on the Effective Date, or as soon as reasonably practicable thereafter, each Holder of an Allowed Other Priority Claim shall receive in full and final satisfaction, settlement, discharge and release of, and in exchange for, such Other Priority Claim, at the option of the Debtor or the Reorganized Debtor, as applicable: (a) payment in full in Cash in an amount equal to the due and unpaid portion of such Allowed Other Priority Claim; (b) such other less favorable treatment as to which the Debtor or Reorganized Debtor, as applicable, and the Holder of such Allowed Other Priority Claim shall have agreed upon in writing; or (c) such other treatment such that such Allowed Other Priority Claim will be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code; *provided* that Other Priority Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business by the Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.
- c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Claims in Class 1 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 1 will be provided a Release Opt-Out Form solely for purposes of affirmatively opting out of the Third-Party Release.

2. Class 2 – Secured Claims

- a) *Classification:* Class 2 consists of the Secured Claims. Class 2 consists of separate subclasses for each Secured Claim.
- b) *Treatment:* Subject to Article VIII hereof, except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment of its Allowed Secured Claim, in full and final satisfaction, settlement, release, and discharge of each Allowed Secured Claim, on the Effective Date, each Holder of such Allowed Secured Claim shall receive either (a) payment in full in Cash; (b) delivery of the Collateral securing such Allowed Secured Claim; (c) reinstatement of such Allowed Secured Claim; or (d) such other treatment rendering such Allowed Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code; *provided* that Secured Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business by the Debtor or Reorganized Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court.
- c) *Voting:* Class 2 is an Unimpaired Class, and the Holders of Claims in Class 2 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 2 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 2 will be provided a Release Opt-Out Form solely for purposes of affirmatively opting out of the Third-Party Release.

3. Class 3 – Unsecured Notes Claims

- a) *Classification:* Class 3 consists of the Unsecured Notes Claims.
- b) *Treatment:* Except to the extent that such Holder of an Allowed Unsecured Notes Claim agrees to less favorable treatment, on the Effective Date, each Holder of Allowed Unsecured Notes Claims will receive, in full and final satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Unsecured Notes Claim, its *Pro Rata* share of 92.94% of the New Common Stock (subject to dilution by (i) the New Warrants, (ii) the MIP Equity, and (iii) the Post-Effective Date Equity Awards).
- c) *Voting:* Class 3 is Impaired, and Holders of Claims in Class 3 are entitled to vote to accept or reject this Plan.

4. Class 4 – General Unsecured Claims

- a) *Classification:* Class 4 consists of the General Unsecured Claims.
- b) *Treatment:* Except to the extent that a Holder of an Allowed General Unsecured Claim and the Debtor agree to less favorable treatment on account of such Claim, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, on or as soon as practicable after the Effective Date or when such obligation becomes due in the ordinary course of business in accordance with applicable law or the terms of any agreement that governs such Allowed General Unsecured Claim, whichever is later, in the sole discretion of the Debtor, either (a) payment in full in Cash, or (b) such other treatment as to render such Holder Unimpaired in accordance with section 1124 of the Bankruptcy Code; *provided* that no Holder of an Allowed General Unsecured Claim shall receive any distribution for any Claim that has previously been satisfied pursuant to a Final Order of the Bankruptcy Court.
- c) *Voting:* Class 4 is an Unimpaired Class, and the Holders of Claims in Class 4 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 4 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 4 will be provided a Release Opt-Out Form solely for purposes of affirmatively opting out of the Third-Party Release.

5. Class 5 – 510(b) Claims

- a) *Classification:* Class 5 consists of the 510(b) Claims.
- b) *Treatment:* On the Effective Date, each 510(b) Claim shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.
- c) *Voting:* Class 5 is an Unimpaired Class, and the Holders of Claims in Class 5 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 5 are not entitled to vote to accept or reject this Plan. Holders of Claims in Class 5 will be provided a Release Opt-Out Form solely for purposes of affirmatively opting out of the Third-Party Release.

6. Class 6 – Intercompany Claims

- a) *Classification:* Class 6 consists of the Intercompany Claims.
- b) *Treatment:* On the Effective Date, each Intercompany Claim shall be, at the option of the Debtor or the Reorganized Debtor, as applicable, reinstated, compromised, or canceled and released without any distribution.
- c) *Voting:* Class 6 is an Unimpaired Class, and the Holders of Claims in Class 6 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 6 are not entitled to vote to accept or reject this Plan.

7. Class 7 – Existing Equity Interests

- a) *Classification:* Class 7 consists of the Existing Equity Interests.
 - b) *Treatment:* Except to the extent that a Holder of an Allowed Existing Equity Interest agrees to less favorable treatment, on the Effective Date, each Holder of an Allowed Existing Equity Interest shall receive:
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- (1) its *Pro Rata* share of 7.06 % of the New Common Stock (subject to dilution by (1) the New Warrants, (2) the MIP Equity, and (3) the Post-Effective Date Equity Awards); and
- (2) its *Pro Rata* share of the New Warrants.

c) *Voting*: Class 7 is Impaired, and Holders of Claims in Class 7 are entitled to vote to accept or reject this Plan.

8. Class 8 – Existing Equity Awards

a) *Classification*: Class 8 consists of the Existing Equity Awards.

b) *Treatment*: Except to the extent that a Holder of an Allowed Existing Equity Award agrees to less favorable treatment, on the Effective Date, all Allowed Existing Equity Awards shall be converted into the Post-Effective Date Equity Awards.

c) *Voting*: Class 8 is Impaired, and Holders of Claims in Class 8 are entitled to vote to accept or reject this Plan.

C. Special Provision Governing Unimpaired Claims

Except as otherwise provided herein, nothing under this Plan shall affect or limit the Debtor's or the Reorganized Debtor's rights and defenses (whether legal or equitable) in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. Elimination of Vacant Classes

Any Class of Claims or Equity Interests that is not occupied as of the commencement of the Combined Hearing by an Allowed Claim or a Claim temporarily Allowed under Bankruptcy Rule 3018, or as to which no vote is cast, shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

IV.

ACCEPTANCE OR REJECTION OF THE PLAN

A. Presumed Acceptance of Plan

Classes 1, 2, 4, 5, and 6 are Unimpaired under this Plan. Therefore, the Holders of Claims in such Classes are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan. Notwithstanding their non-voting status, Holders of Claims in Classes 1, 2, 4, and 5 will receive a Release Opt-Out Form to allow such Holders to affirmatively opt out of the Third-Party Release.

B. Voting Classes

Classes 3, 7, and 8 are Impaired under this Plan. The Holders of Claims or Equity Interests in such Classes as of the Voting Record Date are entitled to vote to accept or reject this Plan.

C. Presumed Acceptance by Non-Voting Classes

If a Class contains Claims or Equity Interests eligible to vote and no Holder of Claims or Equity Interests eligible to vote in such Class votes to accept or reject this Plan, this Plan shall be presumed accepted by the Holders of such Claims or Equity Interests, as applicable, in such Class.

D. Acceptance by Impaired Class

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least

two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

Pursuant to section 1126(d) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Equity Interests has accepted this Plan if the Holders of at least two-thirds (2/3) in dollar amount of the Allowed Equity Interests in such Class actually voting have voted to accept this Plan.

E. Controversy Concerning Impairment

If a controversy arises as to whether any Claims or Equity Interests, or any Class of Claims or Equity Interests, is Impaired or properly classified under this Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy at or before the Combined Hearing.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code; Cram Down

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by Class 3. The Debtor requests confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right, subject to the terms of the Restructuring Support Agreement, to modify this Plan or the Plan Supplement in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

G. Votes Solicited in Good Faith

The Debtor has, and upon Confirmation shall be deemed to have, solicited votes on this Plan from the Voting Classes in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 of the Bankruptcy Code, and any applicable non-bankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with Solicitation. Accordingly, the Debtor, the Reorganized Debtor, and each of their respective Representatives shall be entitled to, and upon Confirmation are granted, the protections of section 1125(e) of the Bankruptcy Code.

V.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Restructuring Transactions

Without limiting any rights and remedies of the Debtor or Reorganized Debtor under this Plan or applicable law, the entry of the Combined Order shall constitute authorization for the Debtor and Reorganized Debtor, as applicable, to take, or to cause to be taken, all actions necessary or appropriate to consummate and implement the provisions of this Plan prior to, on and after the Effective Date, subject to the consent rights and agreements and obligations contained in the Restructuring Support Agreement. Such restructuring may include one or more issuances, transfers, mergers, amalgamations, consolidations, restructurings, dispositions, liquidations, conversions, elections, dissolutions, cancellations, formations, or creations of one or more new Entities, as may be determined by the Debtor (in consultation with the Required Consenting Noteholders) or Reorganized Debtor, to be necessary or appropriate (collectively, the “**Restructuring Transactions**”).

All such Restructuring Transactions taken, or caused to be taken, shall be deemed to have been authorized and approved by the Bankruptcy Court upon the entry of the Combined Order. The actions to effectuate the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of issuance, transfer, merger, amalgamation, consolidation, restructuring, disposition, liquidation, conversion, elections, cancellation, formation, creation, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of issuance, transfer, assignment, assumption, distribution, contribution, direction, or delegation of any asset, property, right,

liability, duty, or obligation on terms consistent with the terms of this Plan and having such other terms to which the applicable Entities may agree; (c) the filing of appropriate certificates or articles of issuance, transfer, merger, amalgamation, consolidation, restructuring, disposition, liquidation, cancellation, formation, creation, conversion, or dissolution, or the filing of elections, pursuant to applicable state law; (d) the creation of one or more new Entities; and (e) all other actions that the applicable Entities determine to be necessary or appropriate, including, without limitation, making filings or recordings that may be required by applicable state law in connection with such transactions.

The Restructuring Transactions shall include the Restructuring Transactions set forth herein, as well as those which may be set forth in the Restructuring Transaction Steps Memorandum (if applicable). Pursuant to sections 363 and 1123 of the Bankruptcy Code, the Combined Order shall and shall be deemed to authorize the Restructuring Transactions, including, without limitation and to the extent applicable, those set forth in the Restructuring Transaction Steps Memorandum, which shall and shall be deemed to occur in the sequence set forth therein.

B. Continued Corporate Existence

Subject to the Restructuring Transactions permitted by Article V.A of this Plan, after the Effective Date, the Reorganized Debtor shall continue to exist as a separate legal Entity in accordance with the applicable law in the jurisdiction in which it is incorporated and pursuant to its certificate or articles of incorporation and by-laws, or other applicable organizational documents, in effect immediately prior to the Effective Date, except to the extent such certificate and/or articles of incorporation and by-laws, or other applicable organizational documents, are amended, restated, cancelled, or otherwise modified by this Plan, the Plan Supplement, or otherwise, and to the extent any such document is amended, such document is deemed amended pursuant to this Plan and requires no further action or approval (other than any requisite filings required under applicable state or federal law).

C. Vesting of Assets in the Reorganized Debtor Free and Clear of Liens and Claims

Except as otherwise expressly provided in this Plan, the Combined Order, or any Restructuring Document, pursuant to sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all property and assets of the Debtor's Estate, all claims, rights, and Litigation Claims of the Debtor, and any other assets or property acquired by the Debtor or the Reorganized Debtor during the Chapter 11 Case or under or in connection with this Plan (other than Claims or Causes of Action subject to the Debtor Release, the Professional Fee Escrow Account and any rejected Executory Contracts and/or Unexpired Leases), shall vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, and other encumbrances, subject to the Restructuring Transactions and Liens that survive the occurrence of the Effective Date as described in Article III of this Plan. On and after the Effective Date, the Reorganized Debtor may (a) operate its businesses, (b) use, acquire, and dispose of its property and (c) compromise or settle any Claims, in each case without notice to, supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than restrictions expressly imposed by this Plan or the Combined Order.

D. Issuance and Distribution of Plan Securities

On the Effective Date or as soon as reasonably practicable thereafter, subject to Article V.E and the terms and conditions of the Restructuring Transactions, the Reorganized Debtor shall issue the applicable Plan Securities to (a) Holders of Allowed Unsecured Notes Claims in Class 3 and (b) Holders of Allowed Equity Interests in Class 7 and Class 8. For avoidance of doubt: (a) the New Common Stock issued to Holders of Allowed Unsecured Notes Claims in Class 3 and Allowed Equity Interests in Class 8 shall be subject to dilution by the Post-Effective Date Equity Awards, the New Warrants, and the MIP Equity; (b) the Post-Effective Date Equity Awards issued to Holders of Existing Equity Awards in Class 8 shall be subject to dilution by the New Warrants and the MIP Equity; (c) the New Warrants shall be subject to dilution by the Post-Effective Date Equity Awards and the MIP Equity; and (d) the MIP Equity will be issued on a fully-diluted basis after giving effect to the issuance, vesting or exercise, as applicable, of all Plan Securities. The New Common Stock shall carry voting rights in accordance with the New Governance Documents.

Distribution of the Plan Securities may be made by delivery of stock certificates or book-entry transfer thereof by (or at the direction or consent of) the applicable Distribution Agent in accordance with this Plan, the New Warrants Agreement, and the New Governance Documents. Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the Reorganized Debtor shall be the number of shares of common stock of the Reorganized Debtor as may be designated in the New Governance Documents and/or the New Warrants Agreement.

E. Plan Securities; Securities Act Registration and Section 1145 and Private Placement Exemptions

On and after the Effective Date, the Debtor and the Reorganized Debtor, as applicable, are authorized to and shall provide or issue the Plan Securities (including the Post-Effective Date Equity Awards or the MIP Equity and the New Common Stock issuable upon exercise of the New Warrants) and any and all other notes, stock, instruments, certificates, and other documents or agreements required to be distributed, issued, executed or delivered pursuant to or in connection with this Plan, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

The offering, issuance, and distribution of Plan Securities (including the New Common Stock, Post-Effective Date Equity Awards, the MIP Equity, and the issuance of New Common Stock upon exercise of the New Warrants) shall be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration before the offering, issuance, distribution or sale of securities pursuant to section 1145(a) of the Bankruptcy Code. The Reorganized Debtor reserves the right to register Plan Securities, including the shares of New Common Stock underlying the New Warrants, with the U.S. Securities and Exchange Commission by filing a registration statement on Form S-1 in its discretion if it determines that doing so would be necessary or desirable in connection with the trading of such Plan Securities. The New Warrants will not be exercisable for a period of one (1) year after the Effective Date.

The Plan Securities shall be freely transferable by the recipients thereof, subject to (a) any limitations that may be applicable to any Person receiving such securities that is an “affiliate” of the Reorganized Debtor as determined in accordance with applicable U.S. securities law and regulations or is otherwise an “underwriter” as defined in section 1145(b) of the Bankruptcy Code; (b) any transfer restrictions of such securities and instruments in the New Governance Documents; and (c) the receipt of any applicable regulatory approvals.

The Plan Securities issued pursuant to Section 4(a)(2), Regulation D and/or Regulation S and not subject to Section 1145(a) of the Bankruptcy Code, if any, will be “restricted securities” subject to resale restrictions and may be resold, exchanged, assigned, or otherwise transferred only pursuant to registration (or an applicable exemption from such registration requirements) under the Securities Act and other applicable law. Such securities will also be subject to any transfer restrictions in the New Governance Documents and the receipt of any applicable regulatory approvals.

The Plan Securities will be made eligible for clearance and trading through the book entry facilities of DTC, subject to restrictions on transfer, including any restrictions under the applicable non-bankruptcy law, on or as promptly as practicable after the Effective Date, and the Reorganized Debtor shall not be required to provide any further evidence other than this Plan or Combined Order with respect to the treatment of such applicable portion of the New Common Stock or the New Warrants, and this Plan or Combined Order shall be deemed to be legal and binding obligations of the Reorganized Debtor in all respects.

DTC (and any stock transfer agent) shall be required to accept and conclusively rely upon this Plan and Combined Order in lieu of a legal opinion regarding whether the Plan Securities are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services.

Notwithstanding anything to the contrary in this Plan, neither DTC nor any stock transfer agent may require a legal opinion regarding the validity of any transaction contemplated by this Plan, including, for the

avoidance of doubt, whether the Plan Securities (including the New Common Stock, the New Warrants, the Post-Effective Date Equity Awards, or the MIP Equity) are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services.

To the extent de-listed from a nationally recognized securities exchange in connection with the Chapter 11 Case, the Reorganized Debtor shall use commercially reasonable efforts to list the New Common Stock for trading on Nasdaq, the New York Stock Exchange or a comparable nationally recognized securities exchange following the Effective Date.

F. Management Incentive Plan

Promptly following the Effective Date, the New Board shall approve and implement the MIP consistent with the MIP Term Sheet. The RSU Awards and the ESO Grants shall be granted subject to approval by the New Board, with the allocation of such grants to be determined in good faith by the New Board in consultation with the Reorganized Debtor's chief executive officer.

G. Subordination

The allowance, classification, and treatment of satisfying all Claims and Equity Interests proposed under this Plan takes into consideration any and all subordination rights, whether arising by contract or under general principles of equitable subordination, section 510(b) or 510(c) of the Bankruptcy Code, or otherwise. On the Effective Date, any and all subordination rights or obligations that a Holder of a Claim or Equity Interest may have with respect to any distribution to be made under this Plan will be discharged and terminated, and all actions related to the enforcement of such subordination rights will be enjoined permanently. Accordingly, distributions under this Plan to Holders of Allowed Claims and Allowed Equity Interests will not be subject to turnover or payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights; *provided* that any such subordination rights shall be preserved in the event the Combined Order is vacated, the Effective Date does not occur in accordance with the terms hereunder or this Plan is revoked or withdrawn.

H. Release of Liens and Claims

To the fullest extent provided under section 1141(c) and other applicable provisions of the Bankruptcy Code, except as otherwise provided herein or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens, Claims, mortgages, deeds of trust, or other security interests against the assets or property of the Debtor or the Estate shall be fully released, canceled, terminated, extinguished and discharged, in each case without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity. The filing of the Combined Order with any federal, state, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens, Claims and other interests to the extent provided in the immediately preceding sentence. Any Person or Entity holding such Liens, Claims or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.

I. Organizational Documents of the Reorganized Debtor

On the Effective Date, or as soon thereafter as is reasonably practicable, the Reorganized Debtor's certificate of incorporation and bylaws shall be amended or amended and restated, as applicable, as may be required to be consistent with the provisions of this Plan and the Bankruptcy Code. To the extent required under this Plan or applicable non-bankruptcy law, the Reorganized Debtor will file the New Governance Documents with the applicable Secretary of State and/or other applicable authorities in any applicable state, province, or country of incorporation in accordance with the corporate or other applicable laws of such states, provinces, or countries. The New Governance Documents shall, among other things: (a) authorize the issuance of the Plan Securities; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code,

include a provision prohibiting the issuance of non-voting equity Securities. Subject to Article VI.E of this Plan, after the Effective Date, the Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of the New Governance Documents, and this Plan.

J. Corporate Action

The Debtor and the Reorganized Debtor may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the provisions of this Plan, including, without limitation, the issuance, transfer, or distribution of the Plan Securities to be issued pursuant hereto, and without further notice or order of the Bankruptcy Court, any act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor or the Reorganized Debtor or by any other Person (except for those expressly required pursuant hereto).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, directors, officers, managers, members or partners of the Debtor (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by such Person or Entity, or the need for any approvals, authorizations, actions or consents of or from any such Person or Entity.

As of the Effective Date, all matters provided for in this Plan involving the legal or corporate structure of the Debtor or the Reorganized Debtor (including, without limitation, the adoption of the New Governance Documents and similar constituent and organizational documents, and the selection of directors and officers for, each of the Reorganized Debtor), and any legal or corporate action required by the Debtor or the Reorganized Debtor in connection with this Plan including, without limitation, in connection with the authorization, execution and delivery of the New Warrants Agreement shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity.

On and after the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions, and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, and without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity. The secretary and any assistant secretary of the Debtor and the Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions.

Prior to or on the Effective Date, the Debtor is authorized, in its sole discretion, to change its name and to take any other such action as required to effectuate a change of name in its jurisdiction of incorporation. To the extent the Debtor changes its name prior to the closing of the Chapter 11 Case, the Debtor shall change the case caption accordingly.

K. Directors and Officers of the Reorganized Debtor

From and after the Effective Date, each director or officer of the Reorganized Debtor shall serve pursuant to the terms of the charters and bylaws or other constituent documents of the Reorganized Debtor and applicable state corporation law. Additionally, in accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the members of the New Board and any Person proposed to serve as an officer of the Reorganized Debtor shall be disclosed in the Plan Supplement.

L. Cancellation of Notes, Certificates, and Instruments

On the Effective Date, except to the extent otherwise provided in this Plan, all notes, stock, instruments, certificates, credit agreements and other agreements and documents evidencing or relating to the Unsecured Notes Claims, any Impaired Claim, and/or any Impaired Equity Interest (including Existing Equity Interests and Existing Equity Awards), shall be canceled and the obligations of (a) the Debtor thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person or Entity, and (b) the Unsecured Notes Indenture Trustee shall be discharged and its duties deemed satisfied except (to the extent applicable) with respect to serving as the Distribution Agent with respect to the applicable Unsecured Notes Claims; *provided* that the Unsecured Notes Documents shall continue in effect for the limited purpose of allowing Holders of Claims thereunder to receive, and allowing and preserving the rights of the Unsecured Notes Indenture Trustee or other applicable Distribution Agent thereunder to make (or cause to be made), distributions under this Plan. Except to the extent otherwise provided in this Plan and the Restructuring Documents, upon completion of all such distributions the Unsecured Notes Documents and any and all notes, securities and instruments issued in connection therewith shall terminate completely without further notice or action and be deemed surrendered.

Notwithstanding Confirmation or the occurrence of the Effective Date, except as otherwise provided herein, only such provisions that, by their express terms, survive the termination or the satisfaction and discharge of the Unsecured Notes Documents shall survive the occurrence of the Effective Date, including the rights of the Unsecured Notes Indenture Trustee to assert, pursue, and be paid with respect to any charging liens, expense reimbursement, indemnification, and similar amounts.

M. Sources of Cash for Plan Distributions

All Cash necessary for the Debtor or the Reorganized Debtor, as applicable, to make payments required pursuant to this Plan will be obtained from their respective Cash balances, including Cash from operations. Cash payments to be made pursuant to this Plan will be made by the Reorganized Debtor. The Debtor or the Reorganized Debtor, as applicable, may transfer funds from its non-Debtor Affiliates to itself through its integrated cash management system and/or intercompany transactions as it determines to be necessary or appropriate to enable the Reorganized Debtor to make the payments and distributions contemplated by this Plan. To the extent consistent with any applicable limitations set forth in any applicable post-Effective Date agreement, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Debtor's historical intercompany account settlement practices and will not violate the terms of this Plan.

From and after the Effective Date, the Reorganized Debtor, subject to any applicable limitations set forth in any post-Effective Date agreement, shall have the right and authority without further order of the Bankruptcy Court to raise additional capital and obtain additional financing as the New Board deems appropriate.

N. Preservation and Reservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, pursuant to the Debtor Releases provided in Article X.B and the Exculpation contained in Article X.E of this Plan), the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including, without limitation, any actions specifically identified in the Plan Supplement or the Schedule of Retained Causes of Action, and the Reorganized Debtor's rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor, as the successor-in-interest to the Debtor and the Estate, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer, or assign (or decline to do any of the foregoing) any or all of such Causes of Action without notice to or approval from the Bankruptcy Court.

No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement (including the Schedule of Retained Causes of Action), or the Disclosure Statement to any Cause of Action against it as any indication that the Debtor or the Reorganized Debtor, as applicable, will not pursue any and all available Causes of Action of the Debtor against it. Except as otherwise set forth herein, the Debtor and the Reorganized Debtor expressly reserve all rights to prosecute any and all Causes of Action against any Entity.

The Debtor expressly reserves all Causes of Action and Litigation Claims for later adjudication by the Debtor or the Reorganized Debtor (including, without limitation, Causes of Action and Litigation Claims not specifically identified in the Plan Supplement or the Schedule of Retained Causes of Action or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims upon or after the Confirmation or Consummation of this Plan based on the Disclosure Statement, this Plan or the Combined Order, except in each case where such Causes of Action or Litigation Claims have been expressly waived, relinquished, released, compromised or settled in this Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E hereof) or any other Final Order (including, without limitation, the Combined Order). In addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant, or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

For the avoidance of doubt, the Debtor and the Reorganized Debtor do not reserve any Causes of Action or Litigation Claims that have been expressly released (including, for the avoidance of doubt, Claims otherwise released pursuant to the Debtor Releases provided in Article X.B and the Exculpation contained in Article X.E of this Plan).

O. Payment of Fees and Expenses of Certain Creditors

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Case) in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement, as applicable, without any requirement to File a fee application with the Bankruptcy Court or for Bankruptcy Court review or approval. On or before the date that is five (5) days prior to the Effective Date, invoices for all Restructuring Expenses incurred or estimated to be incurred prior to and as of the Effective Date shall be submitted to the Debtor and paid by the Debtor or the Reorganized Debtor, as applicable, in accordance with, and subject to, the terms set forth herein and in the Restructuring Support Agreement. In addition, the Debtor and the Reorganized Debtor (as applicable) shall continue to pay, when due and payable in the ordinary course, the Restructuring Expenses related to this Plan and implementation, Consummation, and defense of the Restructuring Transactions, whether incurred before, on, or after the Effective Date, in accordance with any applicable engagement letter.

VI.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption or Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtor will be assumed by the Debtor in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts and Unexpired Leases that, in each case:

1. have been assumed or rejected by the Debtor by prior order of the Bankruptcy Court;
2. are the subject of a motion to reject Filed by the Debtor pending on the Effective Date;
3. are identified as rejected Executory Contracts and Unexpired Leases by the Debtor on the Schedule of Rejected Executory Contracts and Unexpired Leases to be Filed in the Plan Supplement, which may be amended by the Debtor up to and through the Effective Date to add or remove Executory Contracts and Unexpired Leases by Filing with the Bankruptcy Court a subsequent Plan Supplement and serving it on the affected non-Debtorcontract parties; or
4. are rejected or terminated pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, the Combined Order shall constitute an order of the Bankruptcy Court approving such assumptions and the rejection of Executory Contracts and Unexpired Leases set forth in the Schedule of Rejected Executory Contracts and Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

To the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned (as applicable) pursuant to this Plan or any prior order of the Bankruptcy Court (including, without limitation, any “change of control” provision) prohibits, restricts or conditions, or purports to prohibit, restrict or condition, or is modified, breached or terminated, or deemed modified, breached or terminated by, (a) the commencement of the Chapter 11 Case or the insolvency or financial condition of the Debtor at any time before the closing of the Chapter 11 Case, (b) the Debtor’s or the Reorganized Debtor’s assumption or assumption and assignment (as applicable) of such Executory Contract or Unexpired Lease or (c) the Confirmation or Consummation of this Plan, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-Debtor party thereto to modify or terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights or remedies with respect thereto, and any required consent under any such contract or lease shall be deemed satisfied by the confirmation of this Plan.

Each Executory Contract and Unexpired Lease assumed and/or assigned pursuant to this Plan shall revest in and be fully enforceable by the Reorganized Debtor or the applicable assignee in accordance with its terms and conditions, except as modified by the provisions of this Plan, any order of the Bankruptcy Court approving its assumption and/or assignment, or applicable law.

The inclusion or exclusion of a contract or lease on any schedule or exhibit shall not constitute an admission by the Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that the Debtor has any liability thereunder.

B. Payments Related to Assumption of Executory Contracts and Unexpired Leases

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to this Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding: (a) the amount of any Cure Claim; (b) the ability of the Reorganized Debtor to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code), if applicable, under the Executory Contract or the Unexpired Lease to be assumed; or (c) any other matter pertaining to assumption, the Cure Claims shall be paid following the entry of a Final Order resolving the dispute and approving the assumption of such Executory Contracts or Unexpired Leases; *provided*, that after the Confirmation Date, the Debtor or the Reorganized Debtor, as

applicable, may settle any dispute regarding the amount of any Cure Claim without any further notice or action, order or approval of the Bankruptcy Court.

C. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Combined Order, if any, must be Filed with the Bankruptcy Court within twenty-one (21) days after service of an order of the Bankruptcy Court (including the Combined Order) approving such rejection. Any Claim arising from the rejection of Executory Contracts or Unexpired Leases that becomes an Allowed Claim is classified and shall be treated as a Class 4 General Unsecured Claim.

Any Person or Entity that is required to File a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtor, the Reorganized Debtor, or the Estate, and the Debtor, its Estate, and the Reorganized Debtor, and their respective assets and property, shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.F hereof.

D. D&O Liability Insurance Policies

On the Effective Date, each D&O Liability Insurance Policy shall be deemed and treated as an Executory Contract that is and will be assumed by the Debtor (and assigned to the Reorganized Debtor, if necessary) pursuant to section 365(a) and section 1123 of the Bankruptcy Code as to which no Proof of Claim, request for administrative expense, or Cure Claim need be Filed, and all Claims arising from the D&O Liability Insurance Policies will survive the Effective Date and be Unimpaired. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Combined Order shall constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the D&O Liability Insurance Policies.

In furtherance of the foregoing, the Reorganized Debtor shall maintain and continue in full force and effect the D&O Liability Insurance Policies for the benefit of the insured Persons for the full term of such policies, and all insured Persons, including without limitation, any members, managers, directors, and officers of the Reorganized Debtor who served in such capacity at any time prior to the Effective Date or any other individuals covered by such D&O Liability Insurance Policies, shall be entitled to the full benefits of any such policies for the full term of such policies regardless of whether such insured Persons remain in such positions after the Effective Date. Notwithstanding the foregoing, after assumption of the D&O Liability Insurance Policies, nothing in this Plan or the Combined Order alters the terms and conditions of the D&O Liability Insurance Policies. Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtor under the D&O Liability Insurance Policies. For the avoidance of doubt, the D&O Liability Insurance Policies shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the D&O Liability Insurance Policies.

The Debtor is further authorized to take such actions, and to execute and deliver such documents, as may be reasonably necessary or appropriate to implement, maintain, cause the binding of, satisfy any terms or conditions of, or otherwise secure for the insureds the benefits of the D&O Tail, without further notice to or order of the Bankruptcy Court or approval or consent of any Person or Entity.

E. Indemnification Provisions

On the Effective Date, all Indemnification Provisions shall be deemed and treated as Executory Contracts that are and shall be assumed by the Debtor (and assigned to the Reorganized Debtor, if necessary) pursuant to section 365(a) and section 1123 of the Bankruptcy Code as to which no Proof of Claim, request for administrative expense, or Cure Claim need be Filed, and all Claims arising from the Indemnification Provisions shall survive the Effective Date and be Unimpaired. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Combined Order shall constitute the Bankruptcy Court's approval of the Debtor's assumption

of each of the Indemnification Provisions. Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtor or other applicable parties under the Indemnification Provisions. For the avoidance of doubt, the Indemnification Provisions shall continue to apply with respect to actions, or failures to act, that occurred on or prior to the Effective Date, subject to the terms and conditions of the Indemnification Provisions.

F. Employment Plans

Subject to the provisions of this Plan, all Specified Employee Plans (other than awards of stock options, restricted stock, restricted stock units, performance stock units, and other equity awards, including stock rights under any stock purchase plan) shall be treated as Executory Contracts under this Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. All Proofs of Claim Filed for amounts due under any Specified Employee Plans shall be considered satisfied by the applicable agreement and/or program and agreement to assume and cure in the ordinary course as provided in this Plan. All Specified Employee Plans to which contributions are made will be deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code and the Reorganized Debtor reserves all of its rights under such agreements. For the avoidance of doubt, the Debtor and the Reorganized Debtor, as applicable, shall honor all its obligations under section 1114 of the Bankruptcy Code. After the Effective Date, the New Board shall, in its discretion, implement employee incentive or bonus plans and when it deems appropriate in accordance with the terms of any applicable New Governance Document; *provided*, that the MIP shall be implemented pursuant to and in accordance with the terms of this Plan, including Article V.F hereof. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Combined Order shall constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the Specified Employee Plans.

G. Insurance Contracts

On the Effective Date, each Insurance Contract shall be deemed and treated as an Executory Contract that is and shall be assumed by the Debtor (and assigned to the Reorganized Debtor, if necessary) pursuant to section 365(a) and section 1123 of the Bankruptcy Code as to which no Proof of Claim, request for administrative expense, or Cure Claim need be Filed. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Combined Order shall constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the Insurance Contracts. Confirmation and Consummation of this Plan shall not impair or otherwise modify any available defenses of the Reorganized Debtor or any insurer under the Insurance Contracts.

H. Extension of Time to Assume or Reject

Notwithstanding anything to the contrary set forth in Article VI of this Plan, in the event of a dispute as to whether a contract is executory or a lease is unexpired, the right of the Reorganized Debtor to move to assume or reject such contract or lease shall be extended until the date that is ten (10) days after entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. The deemed assumption provided for in Article VI.A of this Plan shall not apply to any such contract or lease, and any such contract or lease shall be assumed or rejected only upon motion of the Reorganized Debtor following the Bankruptcy Court's determination that the contract is executory or the lease is unexpired.

I. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed by the Debtor or the Reorganized Debtor shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case

shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

J. Contracts and Leases Entered into After the Petition Date

Contracts and leases entered into after the Petition Date by the Debtor may be performed by the Debtor or Reorganized Debtor in the ordinary course of business without further approval of the Bankruptcy Court.

K. Reservation of Rights

Nothing contained in this Plan or the Plan Supplement shall constitute an admission by the Debtor or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtor or the Reorganized Debtor, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

VII.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed

Unless otherwise provided in this Plan, on the Effective Date (or if a Claim or Equity Interest is not an Allowed Claim or Allowed Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Allowed Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Allowed Equity Interest (as applicable) shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests (as applicable) in the applicable Class; *provided*, that any Allowed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Case or assumed by the Debtor prior to the Effective Date shall be paid or performed in the ordinary course of business.

In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Equity Interests, distributions on account of any such Disputed Claims or Disputed Equity Interests shall be made pursuant to the provisions set forth in Article VIII.

B. Distribution Agent

Except as otherwise provided in the Combined Order, all distributions under this Plan shall be made by the Distribution Agent on the Effective Date, except as otherwise set forth herein. The Reorganized Debtor may employ or contract with other Entities to assist in or make the distributions required by this Plan and may pay the reasonable and documented fees and expenses of such Entities and the Distribution Agent in the ordinary course of business. The Distribution Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Distribution Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtor.

C. Rights and Powers of Distribution Agent

1. Powers of the Distribution Agent

The Distribution Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

Distributions on account of the Allowed Unsecured Notes Claims shall be made to (or in coordination with) the Unsecured Notes Indenture Trustee and the Unsecured Notes Indenture Trustee will be, and shall act as, the Distribution Agent with respect to the Unsecured Notes Claims in accordance with the terms and conditions of this Plan and the Unsecured Notes Documents. All distributions to Holders of Allowed Unsecured Notes Claims shall be deemed completed when made by the Debtor or Reorganized Debtor to (or at the direction or consent of) the Unsecured Notes Indenture Trustee.

2. Expenses Incurred on or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable and documented fees and expenses incurred by the Distribution Agent on or after the Effective Date (including taxes), and any reasonable and documented compensation and expense reimbursement claims (including reasonable and documented attorney fees and expenses) made by the Distribution Agent, shall be paid in Cash by the Debtor or the Reorganized Debtor, as applicable, and as of the date of such completion with respect to distributions made to Holders of Allowed Unsecured Notes Claims, the duties of the Unsecured Notes Indenture Trustee with respect to such distributions shall be deemed satisfied and discharged.

For the avoidance of doubt, if and to the extent the Unsecured Notes Indenture Trustee serves as the Distribution Agent with respect to the Unsecured Notes Claims, (a) the Unsecured Notes Indenture Trustee shall incur no liability and be held harmless by the Reorganized Debtor, except for its fraud, gross negligence, or willful misconduct, and (b) the Distribution Agent shall be deemed to be an additional capacity of the Unsecured Notes Indenture Trustee under the applicable Unsecured Notes Documents entitling it to all rights, privileges, benefits, immunities, and protections provided under such documents.

D. Special Rules for Distributions to Holders of Disputed Claims and Disputed Interests.

Except as otherwise agreed by the relevant parties: (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Disputed Equity Interest until all such disputes in connection with such Disputed Claim or Disputed Equity Interest have been resolved by settlement or Final Order; and (b) any Entity that holds both an Allowed Claim or Allowed Equity Interest and a Disputed Claim or Disputed Equity Interest shall not receive any distribution on the Allowed Claim or Allowed Equity Interest unless and until all objections to the Disputed Claim or Disputed Equity Interest have been resolved by settlement or Final Order or such Claims or Equity Interests have been Allowed or expunged.

E. Delivery of Distributions

1. Delivery of Distributions in General

Except as otherwise provided herein, the Distribution Agent shall make distributions to Holders of Allowed Claims and Allowed Equity Interests as of the Distribution Record Date, or, if applicable, to such Holders' respective designees, as appropriate: (a) at the address for each such Holder as indicated on the Debtor's records as of the Distribution Record Date (or of a designee designated by a Holder of Unsecured Notes Claims); (b) to the signatory set forth on any Proof of Claim Filed by such Holder or other Representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtor has not been notified in writing of a change of address); (c) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtor or the applicable Distribution Agent, as appropriate, after the date of any related Proof of Claim; or (d) on any counsel that has appeared in the Chapter 11 Case on the Holder's behalf; *provided*, that the manner of such distributions shall be determined at the discretion of the Reorganized Debtor.

2. Delivery of Distributions on Account of Unsecured Notes Claims

The Unsecured Notes Indenture Trustee shall be deemed to be the Holder of all Allowed Unsecured Notes Claims for purposes of distributions to be made hereunder, and all distributions on account of such Allowed Claims shall be made to or at the direction of the Unsecured Notes Indenture Trustee. As soon as practicable following compliance with the requirements set forth in Article VII, if applicable, the Unsecured Notes Indenture

Trustee shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Unsecured Notes Claims in accordance with the terms of the Unsecured Notes Indenture and this Plan.

The Unsecured Notes Indenture Trustee, in its capacity as Distribution Agent, may transfer or facilitate the transfer of distributions to Holders of Unsecured Notes Claims through the facilities of DTC in exchange for the relevant Unsecured Notes. If it is necessary to adopt alternate, additional, or supplemental distribution procedures for any reason, including because such distributions cannot be made through the facilities of DTC, to otherwise effectuate the distributions under this Plan, the Debtor or Reorganized Debtor, as applicable, shall implement the Alternate/Supplemental Distribution Process.

Notwithstanding anything in this Plan to the contrary and without limiting the exculpation and release provisions of this Plan, the Unsecured Notes Indenture Trustee shall not have any liability to any Entity with respect to distributions made or directed to be made by the Unsecured Notes Indenture Trustee.

3. Minimum Distributions

No fractional shares or units of New Common Stock or Post-Effective Date Equity Awards shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. Whenever any payment or distribution of a fraction of a dollar, share, or unit of New Common Stock or Post-Effective Date Equity Awards under this Plan would otherwise be called for, the actual payment or distribution will reflect (a) with respect to New Common Stock, a rounding of such fraction to the nearest whole dollar, share, or unit of New Common Stock or Post-Effective Date Equity Awards (up or down), with half dollars, shares, or units of New Common Stock or less being rounded down; and (b) with respect to Post-Effective Date Equity Awards, a rounding of such fraction down to the nearest whole dollar, share, or unit of Post-Effective Date Equity Awards. The total number of authorized shares of New Common Stock or shares or units of Post-Effective Date Equity Awards, as applicable, shall be adjusted as necessary to account for the foregoing rounding.

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim or Allowed Equity Interest that is Impaired under this Plan if the amount to be distributed to the specific Holder of an Allowed Claim or Allowed Equity Interest on the Effective Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.E.4 below.

4. Undeliverable Distributions

a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim or Allowed Equity Interest is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address in accordance with the time frames described in Article VII.E.4(b) hereof, at which time (or as soon as reasonably practicable thereafter) all currently due but missed distributions shall be made to such Holder. Undeliverable distributions shall remain in the possession of the Reorganized Debtor, subject to Article VII.E.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends, or other accruals of any kind on account of their distribution being undeliverable.

b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim or an Allowed Equity Interest (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within ninety (90) days after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtor or its Estate, the Reorganized Debtor or their respective assets or property, or any Distribution Agent. In such case, any Cash, Plan Securities, or other property reserved for distribution on account of such Claim shall become the property of the Reorganized Debtor free and clear of any

Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash, Plan Securities, and/or other property, as applicable, shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan. Nothing contained in this Plan shall require the Debtor, the Reorganized Debtor, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim or Allowed Equity Interest.

c) *Failure to Present Checks*

Checks issued by the Distribution Agent on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the issuance of such check. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the date of mailing or other delivery of such check shall have its rights for such un-negotiated check discharged and be forever barred, estopped and enjoined from asserting any such right against the Debtor, its Estate, the Reorganized Debtor, or their respective assets or property. In such case, any Cash held for payment on account of such Claims shall become the property of the Reorganized Debtor, free and clear of any Claims or other rights of such Holder with respect thereto and notwithstanding any federal or state escheat laws to the contrary. Any such Cash shall thereafter be distributed or allocated in accordance with the applicable terms and conditions of this Plan.

F. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in this Plan, the Combined Order, or another Final Order of the Bankruptcy Court, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim or Equity Interest shall be entitled to interest accruing on or after the Petition Date on any Claim.

G. *Compliance with Tax Requirements*

In connection with this Plan and all distributions hereunder, the Reorganized Debtor or other applicable Distribution Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder and under all related agreements shall be subject to any such withholding and reporting requirements. The Reorganized Debtor or other applicable Distribution Agent shall have the right, but not the obligation, to take any and all actions that may be necessary or appropriate to comply with such applicable withholding and reporting requirements, including (a) withholding distributions and amounts therefrom pending receipt of information necessary to facilitate such distributions, including properly executed withholding certification forms, and (b) in the case of a non-Cash distribution that is subject to withholding, withholding an appropriate portion of such property and either liquidating such withheld property to generate sufficient funds to pay applicable withholding taxes (or reimburse the distributing party for any advance payment of the withholding tax) or pay the withholding tax using its own funds and retain such withheld property. Notwithstanding any provision in this Plan to the contrary, upon request of the Debtor, the Reorganized Debtor or any other applicable Distribution Agent, all Persons holding Claims or Equity Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes (or to establish eligibility for a reduction of or an exemption from the withholding of any taxes), and each Holder of an Allowed Claim or Allowed Equity Interest will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution. Any amounts withheld or reallocated pursuant to this Article VII.G. shall be treated as if distributed to the Holder of the Allowed Claim or Allowed Equity Interest.

Any Person or Entity entitled to receive any property as an issuance or distribution under this Plan shall, upon request, deliver to the Reorganized Debtor or other applicable Distribution Agent, or such other Person designated by the Reorganized Debtor or the Distribution Agent, an IRS Form W-9 or, if the payee is a foreign Person or Entity, an applicable IRS Form W-8, or any other forms or documents reasonably requested by the

Reorganized Debtor or Distribution Agent to reduce or eliminate any withholding required by any applicable Governmental Unit.

The Reorganized Debtor reserves the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens, and encumbrances.

H. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law (as reasonably determined by the Reorganized Debtor), be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

I. Means of Cash Payment

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option of the applicable Distribution Agent, by checks drawn on, or wire transfer from, a domestic bank selected by such Distribution Agent. Cash payments to foreign creditors may be made, at the option of such Distribution Agent, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

J. Timing and Calculation of Amounts to Be Distributed

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, on the Effective Date or as soon as reasonably practicable thereafter, each Holder of an Allowed Claim or Allowed Equity Interest shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Equity Interests in the applicable Class. If and to the extent that there are Disputed Claims or Disputed Equity Interests, distributions on account of any such Disputed Claims or Disputed Equity Interests shall be made pursuant to the provisions set forth in the applicable Class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

K. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

A Claim shall be correspondingly reduced, and the applicable portion of such Claim shall be disallowed without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives a payment on account of such Claim from a party that is not the Debtor or Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Reorganized Debtor to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the amount of such Claim as of the date of any such distribution under this Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance Carriers

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to satisfy, in full or in part, a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon

such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything to the contrary herein, nothing contained in this Plan shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtor or any other Entity may hold against any other Entity, including insurers, under any policies of insurance or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

L. Setoffs

Without altering or limiting any of the rights and remedies of the Debtor and the Reorganized Debtor under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtor and the Reorganized Debtor may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim an amount equal to any Claims, Causes of Action and Litigation Claims of any nature that the Debtor or the Reorganized Debtor may hold against the Holder of any such Allowed Claim; *provided*, that at least ten (10) days prior to effectuating such withholding, the Debtor or the Reorganized Debtor, as applicable, shall provide written notice thereof to the applicable Holder of such Claim, and all objections and defenses of such Holder to such withholding are preserved. In the event that any such Claims or Causes of Action are adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtor and the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved Claims or Causes of Action. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such Claims or Causes of Action, all of which are reserved unless expressly released or compromised pursuant to this Plan or the Combined Order.

VIII.

PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Resolution of Disputed Claims

1. Allowance of Claims

After the Effective Date, and except as otherwise provided in this Plan, the Reorganized Debtor shall have and shall retain any and all available rights and defenses that the Debtor had with respect to any Claim, including, without limitation, the right to assert any objection to Claims based on the limitations imposed by section 502 or section 510 of the Bankruptcy Code. The Debtor and the Reorganized Debtor may contest the amount and validity of any Disputed or contingent or unliquidated Claim in the ordinary course of business in the manner and venue in which such Claim would have been determined, resolved, or adjudicated if the Chapter 11 Case had not been commenced.

2. Disallowance of Certain Claims

Any Holders of Claims disallowed pursuant to section 502(d) of the Bankruptcy Code, unless and until expressly Allowed pursuant to this Plan, shall not receive any distributions on account of such Claims until such time as such Causes of Action against that Holder have been settled or a Final Order of the Bankruptcy Court with respect thereto has been entered and all sums due, if any, to the Debtor by that Holder have been turned over or paid to the Reorganized Debtor.

3. Prosecution of Objections to Claims

After Confirmation but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor, in each case, shall have the authority to File objections to Claims (other than Claims that are Allowed under this Plan) and settle, compromise, withdraw or litigate to judgment objections to any and all such Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; *provided* that this provision shall not apply to Professional Fee Claims, which may be objected to by any party-in-interest in the Chapter 11 Case. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court. The Reorganized Debtor shall have the sole authority to administer and adjust the Claims Register and its books and records to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

4. Claims Estimation

After Confirmation but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor, may at any time request that the Bankruptcy Court estimate any Disputed Claim or contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. § 1334 to estimate any such Claim, whether for allowance or to determine the maximum amount of such Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation.

Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen (14) calendar days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another.

5. No Filings of Proofs of Claim

Except as otherwise provided in this Plan, Holders of Claims will not be required to File a Proof of Claim, and except as provided in this Plan, no parties should File a Proof of Claim. The Debtor does not intend to object in the Bankruptcy Court to the allowance of Claims Filed; *provided* that the Debtor and the Reorganized Debtor, as applicable, reserve the right to object to any Claim that is entitled, or deemed to be entitled, to a distribution under this Plan or is rendered Unimpaired under this Plan. Instead, the Debtor intends to make distributions, as required by this Plan, in accordance with the books and records of the Debtor. Unless disputed by a Holder of a Claim, the amount set forth in the books and records of the Debtor will constitute the amount of the Allowed Claim of such Holder. If any such Holder of a Claim disagrees with the Debtor's books and records with respect to the Allowed amount of such Holder's Claim, such Holder must so advise the Debtor in writing within thirty (30) days of receipt of any distribution on account of such Holder's Claim, in which event the Claim will become a Disputed Claim. The Debtor intends to attempt to resolve any such disputes consensually or through judicial means outside the Bankruptcy Court. Nevertheless, the Debtor may, in its discretion, File with the Bankruptcy Court (or any other court of competent jurisdiction) an objection to the allowance of any Claim or any other appropriate motion or adversary proceeding with respect thereto. All such objections will be litigated to Final Order; *provided* that the Debtor may compromise, settle, withdraw, or resolve by any other method approved by the Bankruptcy Court any objections to Claims.

B. Adjustment to Claims Without Objection

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted on the Claims Register by the Reorganized Debtor without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

C. No Distributions Pending Allowance

If an objection to a Claim is Filed, no payment or distribution provided under this Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

D. Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims

The Reorganized Debtor or other applicable Distribution Agent shall make distributions on account of any Disputed Claim that has become Allowed after the Effective Date at such time that such Claim becomes Allowed (or as soon as reasonably practicable thereafter). Such distributions will be made pursuant to the applicable provisions of Article VII of this Plan.

E. No Interest

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

IX.

CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

A. Conditions Precedent to Consummation

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof.

1. The Combined Order shall be consistent with the Restructuring Support Agreement and otherwise in compliance with the consent rights contained therein; shall have been entered by the Bankruptcy Court; shall not have been reversed, stayed, amended, modified, dismissed, vacated, or reconsidered; and shall not be subject to any pending appeal, and the appeals period for the Combined Order shall have expired;
 2. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Combined Order) authorizing the assumption, assumption, and assignment and/or rejection of the Executory Contracts and Unexpired Leases by the Debtor as contemplated in this Plan and the Plan Supplement;
 3. This Plan, the Disclosure Statement and the other Restructuring Documents, and all other documents contained in any supplement to this Plan, including any exhibits, schedules, amendments, modifications, or supplements thereto or other documents contained therein, shall be in full force and effect and in form and substance consistent with the Restructuring Support Agreement, and otherwise in compliance with the consent rights of the Required Consenting Noteholders, each to the extent required in the Restructuring Support Agreement;
 4. Any and all governmental and regulatory approvals, including Bankruptcy Court approval, that are legally required for the consummation of this Plan shall have been obtained, not subject to unfulfilled conditions, and be in full force and effect;
 5. Subject only to the occurrence of the Effective Date, the New Governance Documents and the New Warrants Agreement shall be in full force and effect (with all conditions precedent thereto having been satisfied or waived), subject to any applicable post-closing execution and delivery requirements;
 6. The Restructuring Support Agreement shall be in full force and effect and shall not have been terminated in accordance with its terms;
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7. The Professional Fee Escrow Account shall have been funded in full in Cash by the Debtor in accordance with the terms and conditions of this Plan and in an amount sufficient to pay the Restructuring Expenses and reasonable and documented fees and expenses after the Effective Date, including those of (a) Porter Hedges LLP, as counsel to the Debtor, (b) Latham & Watkins LLP, as special counsel to the Debtor, (c) Stout Risius Ross, LLC, as financial advisor to the Debtor, (d) Kurtzman Carson Consultants, LLC dba Verita Global, as claims, noticing, and solicitation agent to the Debtor, and (e) The Overture Alliance, LLC, as compensation consultant to the Debtor; pending approval of the Professional Fee Claims by the Bankruptcy Court; and

8. The Restructuring Expenses shall have been paid in full in Cash.

B. Waiver of Conditions

Subject to section 1127 of the Bankruptcy Code, the conditions to Consummation of this Plan set forth in this Article IX may be waived in writing by the Debtor and the Required Consenting Noteholders (the consent of the Required Consenting Noteholders not to be unreasonably withheld or delayed) and without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to consummate this Plan. The failure of the Debtor, the Reorganized Debtor, or the Required Consenting Noteholders to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

X.

RELEASE, DISCHARGE, INJUNCTION AND RELATED PROVISIONS

A. General

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to this Plan. The entry of the Combined Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that any such compromise or settlement is in the best interests of the Debtor, its Estate, and any Holders of Claims and Equity Interests and is fair, equitable and reasonable.

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and Allowed Equity Interests and their respective distributions (if any) and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and Allowed Equity Interests and their respective distributions (if any) and treatments hereunder, are settled, compromised, terminated and released pursuant hereto; *provided* that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, and other agreements or documents delivered under or in connection with this Plan.

B. Release of Claims and Causes of Action

1. ***Debtor Release.*** As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce this Plan and the obligations contemplated by this Plan and the Restructuring Documents, or as otherwise provided in any order of the Bankruptcy Court, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally,

irrevocably, and forever released, to the maximum extent permitted by law, by the Debtor, the Reorganized Debtor, and the Estate, in each case on behalf of themselves and their respective successors, assigns, and Representatives and any and all other Persons that may purport to assert any Causes of Action derivatively, by or through the foregoing Persons, from any and all Claims and Causes of Action (including any derivative claims, asserted or assertable on behalf of the Debtor, the Reorganized Debtor, or the Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Debtor, the Reorganized Debtor, the Estate, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity Interest or other Person (collectively, the “*Debtor Released Claims*”), based on or relating to, or in any manner arising from, in whole or in part, (a) the Debtor, the Debtor’s capital structure, the Reorganized Debtor, the Estate, the Chapter 11 Case (including the filing thereof), the Disclosure Statement, this Plan (including the Plan Supplement), the Restructuring Support Agreement (and any annexes, exhibits, and term sheets attached thereto), and the Unsecured Notes and Unsecured Notes Documents, (b) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (c) the business or contractual arrangements between the Debtor and any Released Parties, (d) the negotiation, formulation or preparation of the Disclosure Statement, this Plan (including the Plan Supplement), the Restructuring Support Agreement (and any annexes, exhibits, and term sheets attached thereto), the New Warrants Documents, the Plan Securities and any related documentation, the New Governance Documents, and any other Restructuring Documents, or related agreements, instruments or other documents, (e) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Case, (f) the purchase, sale, or rescission of the purchase or sale of any Equity Interest or Plan Securities of the Debtor or the Reorganized Debtor, (g) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan, and/or (h) any other act or omission; *provided*, that the foregoing “*Debtor Release*” shall not operate to waive or release, and the “*Debtor Released Claims*” shall not include, any Cause of Action of the Debtor or its Estate: (1) against a Released Party arising from any obligations owed to the Debtor pursuant to an Executory Contract or Unexpired Lease that is not otherwise rejected by the Debtor pursuant to section 365 of the Bankruptcy Code before, after, or as of the Effective Date; (2) expressly set forth in and preserved by this Plan or related documents; (3) that is of a commercial nature and arising in the ordinary course of business, such as accounts receivable and accounts payable on account of goods and services being performed; (4) against a Holder of a Disputed Claim to the extent necessary to administer and resolve such Disputed Claim solely in accordance with this Plan; or (5) arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, gross negligence, willful misconduct or criminal conduct. Notwithstanding anything to the contrary in the foregoing, the “*Debtor Release*” set forth above does not release any post-Effective Date obligations of any Entity under this Plan or any document, instrument or agreement executed in connection with this Plan with respect to the Debtor, the Reorganized Debtor, or the Estate.

2. *Release By Holders of Claims and Interests.* As of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce this Plan, and the obligations contemplated by this Plan and the Restructuring Documents, or as otherwise provided in any order of the Bankruptcy Court, on and after the Effective Date, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Releasing Parties, in each case from any and all Claims and Causes of Action whatsoever (including any derivative claims, asserted or assertable on behalf of the Debtor, the Reorganized Debtor, or its Estate), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state

statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such Holders or their estates, affiliates, heirs, executors, administrators, successors, assigns, managers, accountants, attorneys, Representatives, consultants, agents, and any other Persons claiming under or through them would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Equity Interest or other Person (collectively, the “*Third-Party Released Claims*”), based on or relating to, or in any manner arising from, in whole or in part, (a) the Debtor, the Debtor’s capital structure, the Reorganized Debtor, the Estate, the Chapter 11 Case (including the filing thereof), the Disclosure Statement, this Plan (including the Plan Supplement), the Restructuring Support Agreement (and any annexes, exhibits, and term sheets attached thereto), the Unsecured Notes and Unsecured Notes Documents, (b) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (c) the business or contractual arrangements between the Debtor and any Released Parties, (d) the negotiation, formulation or preparation of the Disclosure Statement, this Plan (including the Plan Supplement), the Restructuring Support Agreement (and any annexes, exhibits, and term sheets attached thereto), the New Warrants Documents, the Plan Securities and any related documentation, the New Governance Documents, and any other Restructuring Documents, or related agreements, instruments or other documents, (e) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Case, (f) the purchase, sale, or rescission of the purchase or sale of any Equity Interest or Plan Securities of the Debtor or the Reorganized Debtor, (g) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan, and/or (h) any other act or omission; *provided*, that the foregoing Third-Party Release shall not operate to waive or release, and the “Third-Party Released Claims” shall not include, any Cause of Action of any Releasing Party: (1) against a Released Party arising from any obligations owed to the Releasing Party that are wholly unrelated to the Debtor or the Reorganized Debtor; (2) expressly set forth in and preserved by this Plan or related documents; or (3) arising from an act or omission that is judicially determined by a Final Order to have constituted actual fraud, gross negligence, willful misconduct or criminal conduct. Notwithstanding anything to the contrary in the foregoing, the “Third-Party Release” set forth above does not release any post-Effective Date obligations of any Entity under this Plan or any document, instrument or agreement executed in connection with this Plan.

C. Waiver of Statutory Limitations on Releases

Each of the Releasing Parties in each of the Releases contained above expressly acknowledges that although ordinarily a general release may not extend to Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above Releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the released party. The Releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected, or unsuspected, foreseen, or unforeseen.

D. Discharge of Claims and Equity Interests

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Combined Order, effective as of the Effective Date, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims, Equity Interests and Causes of Action of any kind or nature whatsoever against the Debtor or any of its respective assets or properties, including any interest accrued on such Claims or Equity Interests from and after the Petition Date, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims, Equity Interests or Causes of Action.

Except as otherwise expressly provided by this Plan or the Combined Order, upon the Effective Date, the Debtor and its Estate shall be deemed discharged and released under and to the fullest extent provided under sections 524 and 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before Confirmation, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Such discharge shall void any judgment obtained against the Debtor or the Reorganized Debtor at any time, to the extent that such judgment relates to a discharged Claim.

Except as otherwise expressly provided by this Plan or the Combined Order, upon the Effective Date: (a) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, settlement, discharge, and release of all Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor or any of its respective assets, property, or Estate; (b) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely without further notice or action; and (c) all Entities shall be precluded from asserting against the Debtor, the Estate, the Reorganized Debtor, each of their respective successors and assigns, and each of their respective assets and properties, any such Claims or Equity Interests, whether based upon any documents, instruments or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date or otherwise.

E. Exculpation

To the fullest extent permitted by applicable law, and without affecting or limiting the Releases set forth in Article X.B. of this Plan, effective as of the Effective Date, the Exculpated Party shall neither have nor incur any liability to any Person or Entity for any claims, causes of action or for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date in connection with or arising out of: (a) the administration of the Chapter 11 Case, commencement of the Chapter 11 Case, pursuit of Confirmation and consummation of this Plan, making distributions, the Disclosure Statement, the Restructuring Transactions, the New Warrants Documents, or the solicitation of votes for, or confirmation of, this Plan; (b) the occurrence of the Effective Date; (c) the administration of this Plan or the property to be distributed under this Plan; (d) the issuance of securities under or in connection with this Plan; (e) the purchase, sale, or rescission of the purchase or sale of any asset or security of the Debtor; or (f) the transactions in furtherance of any of the foregoing; *provided*, that none of the foregoing provisions shall operate to waive or release (x) any Claims or Causes of Action arising out of or related to any act or omission of the Exculpated Party that constitutes intentional fraud, criminal conduct, or willful misconduct, as determined by a Final Order, and (y) the Exculpated Party's rights and obligations under this Plan, the Restructuring Documents, and the Combined Order, but in all respects such Persons will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. The Exculpated Party has acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of votes on this Plan and, therefore, are not, and will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. The Exculpation will be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Party from liability.

F. Permanent Injunction

The Combined Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities released pursuant to this Plan, including the Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities released or exculpated in this Plan or the Combined Order.

No Person or Entity may commence or pursue a Claim or Cause of Action, as applicable, of any kind against the Debtor, the Reorganized Debtor, the Exculpated Party, or the Released Parties, as applicable, that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action, as applicable, subject to Article X.B, Article X.C, Article X.D, Article X.E, and Article X.F hereof, without the Bankruptcy Court (a) first determining, after notice and a hearing, that such Claim or Cause of Action, as applicable, represents a colorable Claim of any kind, and (b) specifically authorizing such Person or Entity to bring such Claim or Cause of Action, as applicable, against the Debtor, the Reorganized Debtor, the Exculpated Party, or any Released Party, as applicable. At the hearing for the Bankruptcy Court to determine whether such Claim or Cause of Action represents a colorable Claim of any kind, the Bankruptcy Court may, or shall if the Debtor, the Reorganized Debtor, the Exculpated Party, any Released Party, or other party in interest requests by motion (oral motion being sufficient), direct that such Person or Entity seeking to commence or pursue such Claim or Cause of Action file a proposed complaint with the Bankruptcy Court embodying such Claim or Cause of Action, such complaint satisfying the applicable Rules of Federal Procedure, including, but not limited to, Rule 8 and Rule 9 (as applicable), which the Bankruptcy Court shall assess before making a determination. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any claims or causes of action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court reserves jurisdiction to adjudicate any such claims to the maximum extent provided by the law.

Nothing in this Plan, Combined Order, or other related Plan documents shall affect a release of any Claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any Claim arising under the enforcement, regulatory activities, or police powers of such governmental agencies, nor shall anything in this Plan, Combined Order, or other related Plan documents enjoin the United States or any of its agencies or any state and local authority whatsoever from exercising the enforcement, regulatory activities, or police powers of such governmental agencies, nor shall anything in this Plan, Combined Order, or other related Plan documents exculpate any party or Person in connection with the enforcement, regulatory activities, or police powers of such governmental agencies.

G. Binding Nature of Plan

ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THIS PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, THE DEBTOR, THE REORGANIZED DEBTOR, ANY AND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR, ALL PERSONS AND ENTITIES THAT ARE PARTIES TO OR ARE SUBJECT TO THE SETTLEMENTS, COMPROMISES, RELEASES, EXCULPATIONS, DISCHARGES, AND INJUNCTIONS DESCRIBED IN THIS PLAN, EACH PERSON AND ENTITY ACQUIRING PROPERTY UNDER THIS PLAN, ANY AND ALL NON-DEBTOR PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES WITH THE DEBTOR AND THE RESPECTIVE SUCCESSORS AND ASSIGNS OF EACH OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING WHETHER OR NOT SUCH PERSON OR ENTITY (A) SHALL RECEIVE OR RETAIN ANY PROPERTY, OR INTEREST IN PROPERTY, UNDER THIS PLAN, (B) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASE OR (C) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN OR AFFIRMATIVELY VOTED TO REJECT THIS PLAN.

H. Protection Against Discriminatory Treatment

To the extent provided by section 525 of the Bankruptcy Code and the Supremacy Clause of the United States Constitution, all Persons and Entities, including Governmental Units, shall not discriminate against the Reorganized Debtor or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant, against the Reorganized

Debtor, or another Person or Entity with whom the Reorganized Debtor has been associated, solely because the Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case but before the Debtor is granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Case.

I. Recoupment

In no event shall any Holder of a Claim be entitled to recoup such Claim against any Claim, right, or Cause of Action of the Debtor or the Reorganized Debtor, as applicable, unless such Holder actually has performed such recoupment and provided Notice thereof in writing to the Debtor on or before Confirmation, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

J. Integral Part of Plan

Each of the provisions set forth in this Plan with respect to the settlement, release, discharge, exculpation, injunction, indemnification, and insurance of, for or with respect to Claims and/or Causes of Action are an integral part of this Plan and essential to its implementation. Accordingly, each Entity that is a beneficiary of such provision shall have the right to independently seek to enforce such provision and such provision may not be amended, modified, or waived after the Effective Date without the prior written consent of such beneficiary.

XI.

RETENTION OF JURISDICTION

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Combined Order and the occurrence of the Effective Date, the Bankruptcy Court shall, on and after the Effective Date, retain exclusive jurisdiction over the Chapter 11 Case and all Entities with respect to all matters arising out of or related to the Chapter 11 Case, the Debtor and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any such Claim or Equity Interest;
 2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided* that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;
 3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected (as applicable);
 4. resolve any issues related to any matters adjudicated in the Chapter 11 Case;
 5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
 6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or
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instituted by the Reorganized Debtor after the Effective Date; *provided* that the Reorganized Debtor shall reserve the right to commence actions in all appropriate forums and jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement, or the Disclosure Statement;
8. resolve any cases, controversies, suits, or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Person's or Entity's obligations incurred in connection with this Plan;
9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;
10. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
11. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;
12. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
13. issue injunctions and enforce them, enter, and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with Consummation or enforcement of this Plan;
14. enforce the terms and conditions of this Plan, the Combined Order, and the Restructuring Documents;
15. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, the indemnification and other provisions contained in Article X hereof and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such provisions;
16. hear and determine all Litigation Claims;
17. enter and implement such orders or take such other actions as may be necessary or appropriate if the Combined Order is modified, stayed, reversed, revoked, or vacated;
18. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Combined Order or any release or exculpation adopted in connection with this Plan;
19. enter an order or final decree concluding or closing the Chapter 11 Case;
20. enforce all orders previously entered by the Bankruptcy Court; and
21. hear any other matter not inconsistent with the Bankruptcy Code.

Notwithstanding the foregoing, (a) any dispute arising under or in connection with the New Governance Documents shall be dealt with in accordance with the provisions of the applicable document and (b) if the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in this Article XI of this Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

XII.

MISCELLANEOUS PROVISIONS

A. Substantial Consummation

“Substantial Consummation” of this Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

B. Post-Effective Date Fees and Expenses

The Reorganized Debtor shall pay the liabilities and charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services (including reasonable fees, costs and expenses incurred by Professionals relating to the preparation of interim and final fee applications and obtaining Bankruptcy Court approval thereof) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court, including, without limitation, the reasonable fees, expenses, and disbursements of the Distribution Agents and the fees, costs and expenses incurred by Professionals in connection with the implementation, enforcement and Consummation of this Plan and the Restructuring Documents.

C. Conflicts

In the event that a provision of the Restructuring Documents or the Disclosure Statement (including any and all exhibits and attachments thereto) conflicts with a provision of this Plan or the Combined Order, the provision of this Plan and the Combined Order (as applicable) shall govern and control to the extent of such conflict. In the event that a provision of this Plan conflicts with a provision of the Combined Order, the provision of the Combined Order shall govern and control to the extent of such conflict.

D. Modification of Plan

Effective as of the date hereof: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Combined Order in accordance with section 1127(a) of the Bankruptcy Code; and (b) after the entry of the Combined Order, the Debtor or the Reorganized Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim or Equity Interest that has accepted this Plan shall be deemed to have accepted this Plan as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim or Equity Interest of such Holder.

E. Effect of Confirmation on Modifications

Entry of the Combined Order shall constitute (a) approval of all modifications to this Plan occurring after the solicitation of votes thereon pursuant to section 1127(a) of the Bankruptcy Code; and (b) a finding that such modifications to this Plan do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

F. Revocation or Withdrawal of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Effective Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraws this Plan, or if Confirmation or the Effective Date does not occur, then: (a) this Plan will be null and void in all respects; (b) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effectuated by this Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims, Equity Interests, or Causes of Action by any Entity, (ii) prejudice in any manner the rights of the Debtor or any other Entity, or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

G. Successors and Assigns

This Plan shall be binding upon and inure to the benefit of the Debtor, the Reorganized Debtor, all present and former Holders of Claims and Equity Interests, other parties-in-interest, and their respective heirs, executors, administrators, successors, and assigns. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

H. Reservation of Rights

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Combined Order and the Consummation occurs. Neither the Filing of this Plan, any statement

or provision contained herein, nor the taking of any action by the Debtor or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (b) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

I. Further Assurances

The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Combined Order.

J. Severability

If, prior to Confirmation, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Combined Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

K. Service of Documents

Any notice, direction or other communication given regarding the matters contemplated by this Plan (each, a “*Notice*”) must be in writing, sent by personal delivery, electronic mail, courier or facsimile and addressed as follows:

If to the Debtor:

Vroom, Inc.
3600 West Sam Houston Pkwy S., Floor 4
Houston, TX 77042
Attn: Thomas Shortt
Anna-Lisa Corrales
Email: tom.shortt@vroom.com
annalisa@vroom.com

with a copy (which shall not constitute Notice) to:

Porter Hedges LLP
1000 Main St., 36th Floor
Houston, TX 77002
Attn: John F. Higgins
Eric M. English
M. Shane Johnson
Telephone: (713) 226-6000
Email: jhiggins@porterhedges.com
eenglish@porterhedges.com
sjohnson@porterhedges.com

If to Mudrick:

Wachtell Lipton Rosen & Katz

51 West 52nd Street
New York, NY 10019
Attn: Joshua A. Feltman
Email: JAFeltman@wlrk.com

A Notice is deemed to be given and received (a) if sent by personal delivery or courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (b) if sent by electronic mail, when transmitted by the sender. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any element of a party's address that is not specifically changed in a Notice shall be assumed not to be changed. Sending a copy of a Notice to the Debtor's or Reorganized Debtor's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party.

L. Exemption from Certain Taxes and Fees

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under this Plan (including the Restructuring Transactions) or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan (including the Restructuring Transactions), shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales or use tax, or other similar tax or governmental assessment. All appropriate state or local governmental officials, agents, or filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

M. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that a Restructuring Document or an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of New York, without giving effect to the principles of conflicts of law of such jurisdiction.

N. Tax Reporting and Compliance

The Reorganized Debtor is authorized, on behalf of the Debtor, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor for all taxable periods ending after the Petition Date through and including the Effective Date.

O. Entire Agreement

Except as otherwise provided herein or therein, this Plan and the Restructuring Documents supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan and the Restructuring Documents.

P. Closing of Chapter 11 Case

The Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

Q. 2002 Notice Parties

After the Effective Date, the Debtor and the Reorganized Debtor, as applicable, are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed a renewed request after the Combined Hearing to receive documents pursuant to Bankruptcy Rule 2002.

R. Default by a Holder of a Claim or Equity Interest

An act or omission by a Holder of a Claim or an Equity Interest in contravention of the provisions of this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Reorganized Debtor may seek to hold the defaulting party in contempt of the Combined Order and may be entitled to reasonable attorneys' fees and costs of the Reorganized Debtor in remedying such default. Upon the finding of such a default by a Holder of a Claim or Equity Interest, the Bankruptcy Court may: (a) designate a party to appear, sign, and/or accept the documents required under this Plan on behalf of the defaulting party, in accordance with Bankruptcy Rule 7070; (b) enforce this Plan by order of specific performance; (c) award judgment against such defaulting Holder of a Claim or Equity Interest in favor of the Reorganized Debtor in an amount, including interest, to compensate the Reorganized Debtor for the damages caused by such default; and (d) make such other order as may be equitable that does not materially alter the terms of this Plan.

Dated: November 12, 2024

Respectfully submitted,

VROOM, INC.

By: /s/ Thomas H. Shortt
Title: Thomas H. Shortt
Chief Executive Officer
Vroom, Inc.

Exhibit A

Restructuring Support Agreement

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VROOM, INC.

The name of the corporation is Vroom, Inc. (the “Corporation”). The Corporation was originally incorporated by the filing of its original certificate of incorporation with the Secretary of State of the State of Delaware on January 31, 2012 under the name BCM Partners III, Corp. On June 25, 2013, the Corporation filed an Amended and Restated Certificate of Incorporation changing its name to Autoamerica, Inc.; on July 9, 2015, the Corporation filed an Amended and Restated Certificate of Incorporation changing its name to Vroom, Inc.; on June 11, 2020, the Corporation filed an Amended and Restated Certificate of Incorporation which restated, integrated and further amended the provisions of the Amended and Restated Certificate of Incorporation; and on February 13, 2024, the Corporation filed a Certificate of Amendment to the Amended and Restated Certificate of Incorporation to amend and restate the first paragraph of Article FOURTH of the Amended and Restated Certificate of Incorporation. This Amended and Restated Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”), which restates and integrates and also further amends the provisions of the Amended and Restated Certificate of Incorporation of the Corporation, as amended by the Certificate of Amendment to the Amended and Restated Certificate of Incorporation, and as heretofore in effect (the “Prior Certificate of Incorporation”), was duly adopted in accordance with the provisions of Section 303 of the General Corporation Law of the State of Delaware (the “DGCL”) and pursuant to the authority granted to the Corporation under Section 303 of the DGCL and the *Prepackaged Plan of Reorganization for Vroom, Inc. under Chapter 11 of the Bankruptcy Code*, as confirmed by that certain order of the United States Bankruptcy Court for the Southern District of Texas entered on January 8, 2025, in *In re: Vroom, Inc.*, Case No. 24-90571 (CML), under Chapter 11 of the United States Bankruptcy Code (11 U.S.C., Sections 101-1330), as amended. The Prior Certificate of Incorporation is hereby amended, integrated and restated to read in its entirety as follows:

FIRST: The name of the Corporation is Vroom, Inc.

SECOND: The address of the Corporation’s registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at that address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH: That, effective as of 5 p.m. Eastern Time on the date this Certificate of Incorporation is filed with the Office of the Secretary of State of the State of Delaware (the “Effective Time”), a one-for-five conversion of the Corporation’s Common Stock (as defined below) shall become effective, pursuant to which each five shares of Common Stock outstanding and held of record by each stockholder of the Corporation (including treasury shares) immediately prior to the Effective Time shall be reclassified and combined into one validly issued, fully-paid and nonassessable share of Common Stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of Common Stock from and after

the Effective Time (such reclassification and combination of shares, the “Bankruptcy Emergence Issuance Adjustment”). The par value of the Common Stock following the Bankruptcy Emergence Issuance Adjustment shall remain at \$0.001 per share. No fractional shares of Common Stock shall be issued as a result of the Bankruptcy Emergence Issuance Adjustment. In lieu thereof, (i) with respect to holders of one or more certificates which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, upon surrender after the Effective Time of such certificate or certificates, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Bankruptcy Emergence Issuance Adjustment, following the Effective Time, shall be entitled to receive such number of shares as adjusted by rounding any fractional share of Common Stock to the nearest whole share (up or down), with half shares or less being rounded down; and (ii) with respect to holders of shares of Common Stock in book-entry form in the records of the Company’s transfer agent that were issued and outstanding immediately prior to the Effective Time, any holder who would otherwise be entitled to a fractional share of Common Stock as a result of the Bankruptcy Emergence Issuance Adjustment, following the Effective Time, shall be entitled to receive such number of shares as adjusted by rounding any fractional share of Common Stock to the nearest whole share (up or down), with half shares or less being rounded down automatically and without any action by the holder.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 255,000,000 shares, consisting of (a) 250,000,000 shares of Common Stock, \$0.001 par value per share (“Common Stock”), and (b) 5,000,000 shares of Preferred Stock, \$0.001 par value per share (“Preferred Stock”).

The Corporation shall not issue non-voting equity securities; provided, however, that the foregoing restriction shall (a) have no further force and effect beyond that required under Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect. The prohibition on the issuance of non-voting equity securities is included in this Certificate of Incorporation in compliance with Section 1123(a)(6) of the Bankruptcy Code (11 U.S.C. § 1123(a)(6)).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the “Board of Directors”) upon any issuance of the Preferred Stock of any series.

2. Voting. Each holder of record of Common Stock, as such, shall have one vote for each share of Common Stock which is outstanding in his, her or its name on the books of the Corporation on all matters on which stockholders are entitled to vote generally; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be

entitled to vote on any amendment to this Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or the DGCL. There shall be no cumulative voting.

Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Certificate of Incorporation, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

3. Dividends. Dividends may be declared and paid on the Common Stock if, as and when determined by the Board of Directors, subject to any preferential dividend or other rights of any then outstanding Preferred Stock and to the requirements of applicable law. The distribution to holders of warrants (the "Warrants") issued pursuant to that certain warrant agreement, entered into between the Company and an agent acting on behalf of the holders of the Warrants on or about the date hereof (as amended, modified or otherwise restated from time to time, collectively, the "Warrant Agreement") of any amounts equivalent to, or based upon, dividends declared and paid on the Common Stock shall be governed by the terms of such Warrant Agreement.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them, subject to any preferential or other rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors as hereinafter provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the DGCL, to determine and fix the number of shares of such series and such powers (including voting powers, full or limited, or no voting powers), and such designations, preferences and relative, participating, optional or other special rights, if any, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the DGCL. The powers, preferences and relative, participating, optional and other special rights of each such series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time

outstanding. Without limiting the generality of the foregoing, the resolution or resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Certificate of Incorporation or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board of Directors, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

FIFTH: Except as otherwise provided herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL and this Certificate of Incorporation, and all rights conferred upon stockholders, directors or any other persons herein are granted subject to this reservation; provided, however, that notwithstanding anything to the contrary contained in this Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted from time to time by this Certificate of Incorporation or applicable law, at any time when Mudrick Capital Management, L.P., together with its affiliates (collectively, the "Significant Stockholder") beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally, this Article FIFTH and Articles SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH or TWELFTH may only be amended, altered or repealed if approved by the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation then entitled to vote at any annual or special meeting of stockholders.

SIXTH: In furtherance and not in limitation of the powers conferred upon it by the DGCL, and subject to the terms of any series of Preferred Stock, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation. The stockholders may not adopt, amend, alter or repeal the Bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by law and this Certificate of Incorporation, by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon. Notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote of the stockholders, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally, in addition to any other vote required by law and this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

SEVENTH: Except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty as a director, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the DGCL is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

Except to the extent that the DGCL prohibits the elimination or limitation of liability of officers for breaches of fiduciary duty as an officer, no senior officers of the Corporation, to the extent permitted and defined by Section 102(b)(7) of the DGCL, shall be personally liable to the stockholders for monetary damages for any breach of fiduciary duty as an officer, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any officer of the Corporation for or with respect to any acts or omissions of such officer occurring prior to such amendment or repeal. If the DGCL is amended to permit further elimination or limitation of the personal liability of officers, then the liability of an officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

To the fullest extent permitted by applicable law, the Corporation shall indemnify (and provide advancement of expenses to) directors and officers of the Corporation from and against any and all liabilities, costs, expenses or damages that they may incur on account of, related to, or in connection with, directly or indirectly, their service to the Corporation. The Corporation may indemnify (and provide advancement of expenses to) employees and agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification). Indemnification may be made through Bylaw provisions, agreements with such persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL.

EIGHTH: This Article EIGHTH is inserted for the management of the business and for the conduct of the affairs of the Corporation.

1. General Powers. Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred by the DGCL or by this Certificate of Incorporation or the Bylaws of the Corporation, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

2. Number of Directors; Election of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established from time to time solely by resolution of the Board of Directors. Election of directors need not be by written ballot, except as and to the extent provided in the Bylaws of the Corporation.

3. Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the next succeeding annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; provided, further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

4. Removal. Subject to the rights of holders of any series of Preferred Stock then outstanding and except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to this Certificate of Incorporation, directors of the Corporation may be removed from office, with or without cause, by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote at an election of directors; provided, however, that, subject to the rights granted to holders of one or more series of Preferred Stock then outstanding, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of stock of the Corporation entitled to vote at an election of directors, the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required for the removal of any director with or without cause.

5. Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorship in the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, by a sole remaining director or by the vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote at an election of directors; provided, however, that, subject to the rights granted to holders of one or more series of Preferred Stock then outstanding, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of stock of the Corporation entitled to vote at an election of directors, the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required for any stockholder vote to fill any vacancy or newly-created directorship on the Board. A director elected to fill a vacancy shall hold office for a term ending on the date of the next succeeding annual meeting of stockholders following such director's election; provided that the term of such director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

6. Preferred Stock Directors. During any period when the holders of any series of Preferred Stock, voting separately as a series or together with one or more series, have the right to elect additional directors, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or

her earlier death, resignation, disqualification or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall be reduced accordingly.

7. Stockholder Nominations and Introduction of Business, Etc. Subject to the rights of holders of any series of Preferred Stock, advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

NINTH: All actions that are required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting; provided, however, that, subject to the rights granted to holders of one or more series of Preferred Stock then outstanding, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of stock of the Corporation entitled to vote at an election of directors, no action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting.

TENTH: Subject to the rights of the holders of any series of Preferred Stock, special meetings of stockholders for any purpose or purposes may be called at any time only by the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or president (in the absence of a chief executive officer) of the Corporation, or the Secretary of the Corporation at the request of the holders of at least a majority of the outstanding shares of capital stock of the Corporation (provided, that, at any time when the Significant Stockholder beneficially owns in the aggregate less than 50% of the total voting power of the outstanding shares of stock of the Corporation entitled to vote generally at any annual or special meeting of the stockholders, any such request shall be made by the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation to be binding on the Corporation), and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting.

ELEVENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by any current or former director, officer, other employee or agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws of the Corporation, or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery of the State of Delaware or (d) any action asserting a claim governed by the internal affairs

doctrine, in each case, subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein; provided that, the provisions of this Article ELEVENTH will not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or the rules and regulations under the Exchange Act, or any other claim for which the U.S. federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Unless the Corporation consents in writing to the selection of an alternative forum, the U.S. federal district courts shall be the exclusive forum for the resolution of any complaint asserting a cause of action against the Corporation or any director, officer, other employee or agent of the Corporation and arising under the Securities Act of 1933, as amended. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article ELEVENTH. If any provision or provisions of this Article ELEVENTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article ELEVENTH (including, without limitation, each portion of any sentence of this Article ELEVENTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

TWELFTH: This Article TWELFTH is inserted for the management of business opportunities.

1. Competition and Corporate Opportunities. To the fullest extent permitted by applicable law, the Corporation renounces any interest or expectancy of the Corporation and its subsidiaries in any business opportunity, transaction or other matter in which the Significant Stockholder, any officer, director, partner or employee of the Significant Stockholder, and any portfolio company in which such entities or persons have an equity interest (other than the Corporation and its subsidiaries) (each, a “Specified Party”) participates or desires or seeks to participate even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so and each such Specified Party shall have no duty to communicate or offer such business opportunity to the Corporation and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries or any stockholder for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, by reason of the fact that such Specified Party pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries. For the avoidance of doubt, the Specified Party shall, to the fullest extent permitted by law, have the right to, and shall have no duty (whether contractual or otherwise) not to, directly or indirectly: (a) engage in the same, similar or competing business activities or lines of business as the Corporation, (b) do business with any

client or customer of the Corporation, or (c) make investments in competing businesses of the Corporation, and such acts shall not be deemed wrongful or improper.

2. Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article TWELFTH, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

Notwithstanding the foregoing, the Corporation, on behalf of itself and its subsidiaries, does not hereby renounce any interest or expectancy it or its subsidiaries may have in any business opportunity, transaction or other matter that is offered in writing solely to (1) a director or officer of the Corporation or its subsidiaries who is not also a Specified Party, or (2) a Specified Party who is a director, officer or employee of the Corporation and who is offered such opportunity solely in his or her capacity as a director, officer or employee of the Corporation. Any person purchasing or otherwise acquiring any interest in any shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article TWELFTH. Neither the alteration, amendment or repeal of this Article TWELFTH nor the adoption of any provision of this Certificate inconsistent with this Article TWELFTH nor, to the fullest extent permitted by the laws of the State of Delaware, any modification of law, shall eliminate or reduce the effect of this Article TWELFTH in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article TWELFTH, would accrue or arise, prior to such alteration, amendment, repeal, adoption or modification

IN WITNESS WHEREOF, this Certificate of Incorporation, which restates, integrates and amends the Prior Certificate of Incorporation of the Corporation, and which has been duly adopted in accordance with Section 303 of the DGCL, has been executed by its duly authorized officer this 14th day of January, 2025.

VROOM, INC.

By: /s/ Thomas H. Shortt
Name: Thomas H. Shortt
Title: Chief Executive Officer

**AMENDED AND RESTATED
BYLAWS
OF
VROOM, INC.
(a Delaware corporation)**

Adopted on January 14, 2025

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**AMENDED AND RESTATED BYLAWS
OF
VROOM, INC.**

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The address of the registered office of Vroom, Inc. (the “Corporation”) in the State of Delaware, and the name of its registered agent at such address, shall be fixed in the Corporation’s certificate of incorporation, as the same may be amended and/or restated from time to time (the “certificate of incorporation”).

1.2 OTHER OFFICES.

The Corporation may have other offices at any place or places, either within or outside the State of Delaware, as the Corporation’s board of directors (the “Board”) may from time to time establish or as the business of the Corporation may from time to time require.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

Meetings of stockholders shall be held at such place, if any, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “DGCL”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

2.2 ANNUAL MEETING.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted.

2.3 SPECIAL MEETING.

Right to Call a Special Meeting. Subject to the rights of the holders of any series of preferred stock, a special meeting of the stockholders may only be called in the manner provided in the certificate of incorporation. No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting. Nothing contained in this Section 2.3 shall be construed as limiting, fixing or otherwise affecting the time when a meeting of stockholders called by action of the Board may be held.

Adopted on January 14, 2025

2.4 ADVANCE NOTICE PROCEDURES FOR BUSINESS BROUGHT BEFORE A MEETING.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in a notice of meeting given by or at the direction of the Board or a duly authorized committee of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by or at the direction of the Board, a duly authorized committee of the Board or the person presiding over the meeting, or (iii) otherwise properly brought before the meeting by a stockholder present in person who (A)(1) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.4 in all applicable respects, or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “Exchange Act”), which proposal has been included in the proxy statement for the annual meeting. Unless otherwise required by law, if the stockholder is not present in person to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. The foregoing clause (iii) of this Section 2.4(a) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3 of these bylaws, and subject to any rights of holders of preferred stock, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. For purposes of this Section 2.4, “present in person” shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A “qualified representative” of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at such meeting of stockholders. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.5 of these bylaws, and this Section 2.4 shall not be applicable to nominations for election to the Board except as expressly provided in Section 2.5 of these bylaws.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder’s notice must be delivered to, or mailed and received by the secretary of the Corporation at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year’s annual meeting; *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, to be timely, notice by the stockholder must be so delivered, or mailed and received by the secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which

public disclosure (as defined in Section 2.4(h) of these bylaws) of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); (B) the number of shares of each class or series of stock of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future; and (C) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at the meeting and intends to be present in person at the meeting to propose such business (the disclosures to be made pursuant to the foregoing clauses (A)–(C) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of stock of the Corporation; *provided* that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided, further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of stock of the Corporation owned beneficially by such Proposing

Person that are separated or separable from the underlying shares of the Corporation, (C)(x) if such Proposing Person is (i) a general or limited partnership, syndicate or other group, the identity of each general partner and each person who functions as a general partner of the general or limited partnership, each member of the syndicate or group and each person controlling the general partner or member, (ii) a corporation or a limited liability company, the identity of each officer and each person who functions as an officer of the corporation or limited liability company, each person controlling the corporation or limited liability company and each officer, director, general partner and person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (iii) a trust, any trustee of such trust (each such person or persons set forth in the preceding clauses (i), (ii) and (iii), a “Responsible Person”), any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person and any material interests or relationships of such Responsible Person that are not shared generally by other record holders or beneficial owners of the shares of any class or series of stock of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, and (y) if such Proposing Person is a natural person, any material interests or relationships of such natural person that are not shared generally by other record holders or beneficial owners of the shares of any class or series of stock of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, (D) any material shares or any Synthetic Equity Position in any principal competitor of the Corporation in any principal industry of the Corporation held by such Proposing Persons, (E) a summary of any material discussions regarding the business proposed to be brought before the meeting (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record holders or beneficial owners of the shares of any class or series of stock of the Corporation (including their names), (F) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (G) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, (H) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) a representation whether such Proposing Person intends or is part of a group which intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal, and (J) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the

business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (J) are referred to as “Disclosable Interests”); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner;

(iii) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act, and the rules and regulations promulgated thereunder, by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert with such stockholder or beneficial owner, if any; and

(iv) As to each item of business that a Proposing Person proposes to bring before the annual meeting, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; *provided, however*, that the disclosures required by this paragraph (c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

(d) For purposes of this Section 2.4, the term “Proposing Person” shall mean (i) the stockholder of record providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(e) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall

be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(f) Notwithstanding anything in these bylaws to the contrary and except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The person presiding over the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(g) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders, other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. The foregoing notice requirements of this Section 2.4 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(h) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

2.5 ADVANCE NOTICE PROCEDURES FOR NOMINATIONS OF DIRECTORS.

(a) Nominations of any person for election to the Board at an annual meeting or, if the election of directors is a matter specified in any notice of special meeting given by or at the direction of the person calling such meeting pursuant to Section 2.3 of these bylaws, at a special meeting, may be made at such meeting only (i) by or at the direction of the Board, including by any committee of the Board or persons duly authorized to do so by the Board or these bylaws, or (ii) by a stockholder present in person who (A) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.5 as to such notice and nomination. Unless otherwise required by law, if the stockholder is not present in person to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. The foregoing clause (ii) of this Section 2.5(a) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at any meeting of stockholders. For purposes of this Section 2.5, “present in person” shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such meeting. A “qualified representative” of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at such meeting of stockholders.

(b) (i) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (A) provide Timely Notice (as defined in Section 2.4(b) of these bylaws) thereof in writing and in proper form to the secretary of the Corporation, (B) provide the information, agreements and questionnaires with respect to such stockholder and its proposed nominee as required by this Section 2.5, and (C) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5.

(ii) Without qualification, if the election of directors is a matter specified in the notice of special meeting given by or at the direction of the person calling such special meeting pursuant to Section 2.3 of these bylaws, then for a stockholder to make any nomination of a person or persons for election to the Board as specified in the notice of the special meeting, the stockholder must (A) provide timely notice thereof in writing and in proper form to the secretary of the Corporation, (B) provide the information, agreements and questionnaires with respect to such stockholder and its proposed nominee as required by this Section 2.5, and (C) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder’s notice for nominations to be made at a special meeting must be delivered to, or mailed and received by the secretary of the Corporation at, the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which public disclosure (as defined in Section 2.4(h) of these bylaws) of the date of such special meeting was first made.

(iii) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iv) In no event may a Nominating Person (as defined below) provide notice with respect to a greater number of director candidates than are subject to election by stockholders at the applicable meeting. If the Corporation shall, subsequent to any notice given by a Nominating Person pursuant to the foregoing paragraphs (i) or (ii) of this Section 2.5(b), increase the number of directors subject to election at the applicable meeting, such notice as to any additional nominees shall be due on the later of (x) the conclusion of the time period for providing Timely Notice (if such notice is being given pursuant to paragraph (i) of this Section 2.5(b)) or the conclusion of the time period specified in paragraph (ii) of this Section 2.5(b) (if such notice is being given pursuant to such paragraph) and (y) the tenth (10th) day following the date of public disclosure (as defined in Section 2.4(h) of these bylaws) of such increase.

(c) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Nominating Person, the Stockholder Information (as defined in Section 2.4(c)(i) of these bylaws) except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(c)(ii) of these bylaws), except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(ii), and the disclosures with respect to the business to be brought before the meeting in Section 2.4(c)(iii) shall be made with respect to the nomination of each person for election as a director at the meeting;

(iii) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act, (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each proposed nominee or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement as provided in Section 2.5(f), and (E) a written consent of such person to being named in the

Corporation's proxy statement as a nominee of the Nominating Person and to serving as a director if elected; and

(iv) The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(d) For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder of record providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(e) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(f) To be eligible to be a nominee for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in this Section 2.5 and must deliver (in accordance with the time period prescribed for delivery in a notice to such proposed nominee given by or on behalf of the Board), to the secretary of the Corporation at the principal executive offices of the Corporation, (i) a completed written questionnaire (in the form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, and (ii) a written representation and agreement (in the form provided by the Corporation) that such proposed nominee (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will

act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director of the Corporation that has not been disclosed to the Corporation, and (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person’s term in office as a director (and, if requested by any proposed nominee, the secretary of the Corporation shall provide to such proposed nominee all such policies and guidelines then in effect).

(g) The Board may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate’s nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation’s Corporate Governance Guidelines.

(h) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(i) No proposed nominee shall be eligible for nomination as a director of the Corporation unless such proposed nominee and the Nominating Person seeking to place such proposed nominee’s name in nomination have complied with this Section 2.5, as applicable. The person presiding over the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.5, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the proposed nominee in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(j) Notwithstanding anything in these bylaws to the contrary, no candidate for nomination at an annual or special meeting shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with this Section 2.5

2.6 NOTICE OF STOCKHOLDERS’ MEETINGS.

Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given in accordance with either Section 2.7 or Section 8.1 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notice shall specify the place, if any, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice

of the meeting), the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.7 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be deemed given:

- (a) if mailed, when deposited in the U.S. mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Corporation's records;
- (b) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address as it appears on the Corporation's records; or
- (c) if electronically transmitted, as provided in Section 8.1 of these bylaws.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

2.8 QUORUM.

Unless otherwise provided by law, the certificate of incorporation or these bylaws, the holders of a majority in voting power of the capital stock of the Corporation issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by class or series is required on a matter, the holders of a majority in voting power of such class or series issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (a) the person presiding over the meeting or (b) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have the power to adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented.

2.9 ADJOURNMENTS, POSTPONEMENTS AND CANCELLATION OF MEETING.

Any meeting of stockholders, annual or special, may be adjourned or postponed from time to time by the person presiding over such meeting or by the Board, without the need for approval thereof by stockholders to reconvene or convene, respectively, at the same or some other place. When a meeting is adjourned or postponed, notice need not be given of the adjourned or postponed meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned or postponed meeting are announced at the meeting at which the adjournment is taken or, with respect to a postponed meeting, are publicly announced. At any adjourned or postponed meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment or postponement is for more than thirty (30) days, a notice of the adjourned or postponed meeting shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment or postponement, a new record date for determination of stockholders entitled to vote is fixed for the adjourned or postponed meeting, the Board shall fix a new record date for notice of such adjourned or postponed meeting, and shall give notice of the adjourned or postponed meeting to each stockholder of record entitled to vote at such adjourned or postponed meeting as of the record date so fixed for notice of such adjourned or postponed meeting. Any previously scheduled annual or special meeting of the stockholders may be canceled by resolution of the Board.

2.10 CONDUCT OF BUSINESS.

Meetings of stockholders shall be presided over by the chairperson of the Board, if any, or in his or her absence by the vice chairperson of the Board, if any, or in the absence of the foregoing persons by the chief executive officer, or in the absence of the foregoing persons by the president, or in the absence of the foregoing persons by a vice president, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The secretary of the Corporation shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be determined by the Board or the person presiding over the meeting and announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for the removal of disruptive persons from the meeting and restrictions around the use of electronic devices, including audio or video recording devices); (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at

the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The person presiding over any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and, if such presiding person should so determine, such presiding person shall so declare to the meeting, and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 VOTING.

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.13 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder. Voting at meetings of stockholders need not be by written ballot.

At any duly called or convened meeting of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. All other elections and questions presented to the stockholders at a duly called or convened meeting at which a quorum is present shall, unless a different or minimum vote is required by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities (in which case such different or minimum vote shall be the applicable vote on the matter), be decided by the affirmative vote of the holders of a majority of the votes cast (excluding abstentions and broker non-votes) on such matter by the holders entitled to vote thereon.

2.12 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Until such time as Mudrick Capital Management, L.P., together with its affiliates (collectively, the “Significant Stockholder”) beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote at any annual or special meeting, any and all actions required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares

of the Corporation's stock entitled to vote thereon were present and voted; *provided, however*, that any action required or permitted to be taken by the holders of preferred stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of Preferred Stock. In the case of action to be taken by a stockholder or stockholders by written consent, no written consent shall be effective to take the action referred to therein, unless written consents signed by a sufficient number of stockholders to take such action are delivered to and received by the Corporation in accordance with this Section 2.12 within sixty (60) days of the date the earliest dated written consent was received by the Corporation in accordance with this Section.

Every written consent shall be signed by one or more persons who as of the record date are stockholders of record on such record date, shall bear the date of signature of each such stockholder, and shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such consent and the class and number of shares of the Corporation that are owned of record and beneficially by each such stockholder and shall be delivered to and received by the Secretary at the Corporation's principal office by hand or by certified or registered mail, return receipt requested.

Upon and after such time as the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally at any annual or special meeting, no action required or permitted to be taken by stockholders may be effected by written consent in lieu of a meeting. Instead, any such actions shall only be taken at a duly called annual or special meeting of stockholders convened in accordance with applicable law, the certificate of incorporation and these bylaws.

2.13 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING.

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purpose of any other lawful action, the Board may fix a record date, which shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Unless otherwise restricted by the certificate of incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

2.14 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law to be filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states on its face that it is irrevocable and if, and only for so long as, it is coupled with an interest sufficient in law to support an irrevocable power and shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission which sets forth or is submitted with information from which it can be determined that the means of electronic transmission was authorized by the stockholder.

2.15 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the date of the meeting), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the

Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to the identity of the stockholders entitled to vote in person or by proxy and the number of shares held by each of them, and as to the stockholders entitled to examine the list of stockholders required by this Section 2.15.

2.16 INSPECTORS OF ELECTION.

Before any meeting of stockholders or in the event of the delivery of written consent, the Corporation may, and shall if required by law, appoint an inspector or inspectors of election to act at the meeting or its adjournment or postponement and make a written report thereof. The number of inspectors shall be either one (1) or three (3). The Corporation may also designate one or more persons to act as alternate inspectors to replace any inspector who fails or refuses to act. If any person appointed as inspector and such person's designated alternate, if any, fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Such inspectors shall have the duties prescribed by law. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspector(s) of election is prima facie evidence of the facts stated therein. The inspector(s) of election may appoint such persons to assist them in performing their duties as they determine.

ARTICLE III - DIRECTORS

3.1 POWERS.

Except as provided in the DGCL or the certificate of incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

3.2 NUMBER OF DIRECTORS.

The authorized number of directors constituting the Board shall be determined from time to time solely by resolution of the Board, *provided* the Board shall consist of at least one (1) member. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS.

The directors shall be elected at the annual meetings of stockholders as specified in the certificate of incorporation. Except as provided in Section 3.4 of these bylaws, each director, including, without limitation, a director elected to fill a vacancy or newly created directorship, shall hold office until the next annual meeting of stockholders and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The Corporation may also have, at the discretion of the Board, a chairperson of the Board and a

vice chairperson of the Board. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission to the chairperson of the Board or the Corporation's chief executive officer, president or secretary. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Subject to the rights of the holders of any series of preferred stock, any vacancy on the Board, or any newly created directorship resulting from an increase in the authorized number of directors, shall, in each case, be filled in the manner provided for in the certificate of incorporation. Any director appointed in accordance with the preceding sentence shall hold office until the next annual meeting of stockholders and until such director's successor shall have been elected and qualified. A vacancy on the Board shall be deemed to exist in the case of the death, removal or resignation of any director.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone, video conference or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS.

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board; *provided* that any director who is absent when such determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

3.7 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be held at any time and place as determined by the chairperson of the Board, the chief executive officer, the president or a majority of the directors then in office.

Notice of the time and place of special meetings shall be:

- (a) delivered personally by hand, by courier or by telephone;
- (b) sent by United States first-class mail, postage prepaid;
- (c) sent by facsimile; or
- (d) sent by electronic mail, electronic transmission or other similar means,

in each case, directed to each director at that director's address, telephone number, facsimile number or electronic mail or other electronic address, as the case may be, as shown on the Corporation's records.

If the notice is (a) delivered personally by hand, by courier or by telephone, (b) sent by facsimile or (c) sent by electronic mail, electronic transmission or other similar means, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least four (4) days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM.

At all meetings of the Board, a majority of the number of directors fixed by the Board pursuant to Section 3.2 of these bylaws shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then a majority of the directors present thereat may adjourn the meeting from time to time, without further notice other than announcement at the meeting, until a quorum is present.

3.9 BOARD ACTION BY CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the writing or writings or electronic transmission or transmissions shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS.

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

3.11 REMOVAL OF DIRECTORS.

Subject to the rights of the holders of the shares of any series of preferred stock of the Corporation then outstanding, the entire Board or any individual director may be removed from office, with or without cause, by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote at an election of directors; provided, however, that, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to remove the entire Board or any individual director from office.

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

The Board may designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Corporation. Notwithstanding anything to the contrary contained in this Article IV, the resolution of the Board establishing any committee of the Board and/or the charter of any such committee may establish requirements or procedures relating to the governance and/or operation of such committee that are different from, or in addition to, those set forth in these bylaws and, to the extent that there is any inconsistency between these bylaws and any such resolution or charter, the terms of such resolution or charter shall be controlling.

4.2 COMMITTEE MINUTES.

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 MEETINGS AND ACTION OF COMMITTEES.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (a) Section 3.5 of these bylaws (place of meetings and meetings by telephone);
- (b) Section 3.6 of these bylaws (regular meetings);
- (c) Section 3.7 of these bylaws (special meetings and notice);
- (d) Section 3.8 of these bylaws (quorum);
- (e) Section 3.9 of these bylaws (action without a meeting); and
- (f) Section 7.12 of these bylaws (waiver of notice),

in each case, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However:*

- (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (ii) special meetings of committees may be called by resolution of the committee or resolution of the Board; and
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee.

ARTICLE V - OFFICERS

5.1 OFFICERS.

The officers of the Corporation shall include a chief executive officer and a secretary. The Corporation may also have, at the discretion of the Board, a chairperson of the Board (who must be a director), a vice chairperson of the Board (who must be a director), a president, a chief financial officer, a treasurer, one (1) or more vice presidents, one (1) or more assistant vice presidents, one (1) or more assistant treasurers, one (1) or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS; SUBORDINATE OFFICERS.

The Board shall appoint the officers of the Corporation. The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers shall hold office for such period, as is provided in these bylaws or as the Board may from time to time determine.

5.3 REMOVAL AND RESIGNATION OF OFFICERS.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving notice in writing or by electronic transmission to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.4 VACANCIES IN OFFICES.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.2 of these bylaws.

5.5 REPRESENTATION OF SHARES OF OTHER ENTITIES.

The chairperson of the Board, the chief executive officer, the president, the treasurer, the secretary or assistant secretary of the Corporation, or any other person authorized by the Board or the chief executive officer or the president, is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all securities of any other entity or entities standing in the name of the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.6 AUTHORITY AND DUTIES OF OFFICERS.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE VI - RECORDS AND REPORTS

6.1 MAINTENANCE OF RECORDS.

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the Corporation are recorded in accordance with Section 224 of the DGCL shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), *provided* that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code.

ARTICLE VII - GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

Except as otherwise provided in a resolution approved by the Board, all shares of capital stock of the Corporation issued after the date of the adoption of these bylaws shall be uncertificated shares. Notwithstanding the foregoing, shares of capital stock of the Corporation represented by a certificate issued prior to the date of the adoption of these bylaws, shall be certificated shares until such certificate is surrendered to the Corporation. The Corporation shall not have power to issue a certificate in bearer form.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.3 MULTIPLE CLASSES OR SERIES OF STOCK.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the DGCL or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 LOST CERTIFICATES.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation in accordance with applicable law. The Board may direct uncertificated shares be issued in the place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such uncertificated shares.

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

7.6 DIVIDENDS.

The Board, subject to any restrictions contained in either (a) the DGCL or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.7 FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 SEAL.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 TRANSFER OF STOCK.

Shares of the Corporation shall be transferable in the manner prescribed by applicable law and in these bylaws. Shares of stock of the Corporation shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; *provided, however*, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the secretary or assistant secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

7.10 STOCK TRANSFER AGREEMENTS.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes or series owned by such stockholders in any manner not prohibited by the DGCL.

7.11 REGISTERED STOCKHOLDERS.

The Corporation, to the fullest extent permitted by law:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; and

(b) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

7.12 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the Board need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

7.13 NONVOTING EQUITY SECURITIES

The Corporation shall not issue non-voting equity securities; provided, however, that the foregoing restriction shall (a) have no further force and effect beyond that required under Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), (b) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect. The prohibition on the issuance of non-voting equity securities is included in these bylaws in compliance with Section 1123(a)(6) of the Bankruptcy Code (11 U.S.C. § 1123(a)(6)).

ARTICLE VIII - NOTICE BY ELECTRONIC TRANSMISSION

8.1 NOTICE BY ELECTRONIC TRANSMISSION.

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission in compliance with applicable law. Notwithstanding the foregoing, a notice may not be delivered by electronic transmission from and after the time that:

(a) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation; and

(b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however*, that the inadvertent failure to treat such inability shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (b) if by electronic mail, when directed to an electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receive notice by electronic mail;
- (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and
- (d) if by any other form of electronic transmission consented to by the stockholder, when directed to the stockholder.

Notice by a form of electronic transmission shall not apply to matters governed by Sections 164, 296, 311, 312 or 324 of the DGCL.

8.2 DEFINITION OF ELECTRONIC TRANSMISSION.

For the purposes of these bylaws, an “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE IX - INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such person in connection with any such Proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section 9.4, the Corporation shall be required

to indemnify a person in connection with a Proceeding (or part thereof) commenced by such person only if the commencement of such Proceeding (or part thereof) by such person was authorized in the specific case by the Board.

9.2 INDEMNIFICATION OF OTHERS.

The Corporation may, to the extent authorized by the Board, indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or other agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

9.3 ADVANCEMENT OF EXPENSES.

The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by any officer or director of the Corporation, and may pay the expenses incurred by any employee or agent of the Corporation, in defending any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that such person is not entitled to be indemnified under this Article IX or otherwise.

9.4 DETERMINATION; CLAIM.

If a claim for indemnification (following the final disposition of such Proceeding) under this Article IX is not paid in full within sixty (60) days, or a claim for advancement of expenses under this Article IX is not paid in full within thirty (30) days, after a written claim therefor has been received by the Corporation, the claimant may thereafter (but not before) file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the Corporation shall have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses under applicable law.

9.5 NON-EXCLUSIVITY OF RIGHTS.

The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.6 INSURANCE.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against any loss, liability or expense incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such loss, liability or expense under the provisions of the DGCL.

9.7 OTHER SOURCES.

The Corporation's obligation, if any, to indemnify or advance expenses to a person pursuant to this Article IX shall be reduced by any amount such person may collect from the proceeds of insurance or, to the extent such person was or is serving at the Corporation's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity, as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit entity. In the event the Corporation makes any indemnification or advancement payments to any person in connection with a Proceeding, and such person is subsequently reimbursed from the proceeds of insurance or indemnification or advancement payments received from any other source in connection with such Proceeding, such person shall promptly refund such indemnification or advancement payments to the Corporation to the extent of such reimbursement.

9.8 CONTINUATION OF INDEMNIFICATION.

The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article IX shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

9.9 AMENDMENT OR REPEAL; INTERPRETATION.

The provisions of this Article IX shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a director or officer of the Corporation (whether before or after the adoption of these bylaws), in consideration of such person's performance of such services and, pursuant to this Article IX, the Corporation intends to be legally bound to each such current or former director or officer of the Corporation. With respect to current and former directors and officers of the Corporation, the rights conferred under this Article IX are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these bylaws. With respect to any directors or officers of the Corporation who commence service following adoption of these bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the Corporation. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection (i) hereunder of any person in respect of any act or omission occurring prior to the time of such repeal

or modification or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the Corporation in effect prior to the time of such repeal or modification.

Any reference to an officer of the Corporation in this Article IX shall be deemed to refer exclusively to the chairperson of the Board, a vice chairperson of the Board, the president, the secretary, a chief executive officer, a chief financial officer, a treasurer appointed pursuant to Article V of these bylaws, and to any vice president, assistant secretary, assistant treasurer, or other officer of the Corporation appointed by (x) the Board pursuant to Article V of these bylaws or (y) an officer to whom the Board has delegated the power to appoint officers pursuant to Article V of these bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan shall be deemed to refer exclusively to an officer appointed by the board of directors (or equivalent governing body) of such other entity pursuant to the certificate of incorporation and bylaws (or equivalent organizational documents) of such other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan. The fact that any person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan has been given or has used the title of “vice president” or any other title that could be construed to suggest or imply that such person is or may be an officer of the Corporation or of such other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan shall not result in such person being constituted as, or being deemed to be, an officer of the Corporation or of such other corporation, partnership, joint venture, trust, other enterprise, non-profit entity or employee benefit plan for purposes of this Article IX.

9.10 OTHER INDEMNIFICATION AND ADVANCEMENT OF EXPENSES.

This Article IX shall not limit the right of the Corporation, to the fullest extent and in the manner permitted by law, to indemnify and to advance expenses to other persons serving the Corporation when and as authorized by appropriate corporate action.

ARTICLE X - AMENDMENTS.

Subject to the limitations set forth in the provisions of the certificate of incorporation, the Board is expressly empowered to adopt, amend, alter or repeal the bylaws of the Corporation. The stockholders may not adopt, amend, alter or repeal the bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by law and the certificate of incorporation, by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon. Notwithstanding any other provisions of these bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders, at any time when the Significant Stockholder beneficially owns (directly or indirectly) in the aggregate less than 50% of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally, in addition to any vote other vote required by the certificate of incorporation, these bylaws or applicable law, the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation

to alter, amend, repeal or rescind, in whole or in part, any provision of these bylaws (including, without limitation, this Article X) or to adopt any provision inconsistent herewith.

WARRANT AGREEMENT

between

VROOM, INC.

and

**EQUINITI TRUST COMPANY, LLC,
as Warrant Agent**

Dated as of January 14, 2025

Warrants To Purchase Common Stock

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WARRANT AGREEMENT

This Warrant Agreement (as may be supplemented, amended or amended and restated pursuant to the applicable provisions hereof, this “**Agreement**”), dated as of January 14, 2025, is entered into by and between Vroom, Inc., a Delaware corporation (the “**Company**”), and Equiniti Trust Company, LLC, as warrant agent (the “**Warrant Agent**”). Capitalized terms that are used in this Agreement shall have the meanings set forth in this Agreement, including Section 1 hereof.

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of the *Prepackaged Plan of Reorganization of Vroom, Inc.*, Case No. 24-90571 (CML) (as amended, supplemented or otherwise modified in accordance with the terms thereof, the “**Plan**”) and chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Company proposes to issue and deliver Warrants (as defined below) to purchase up to an aggregate of 364,516 shares of Common Stock (as defined below) (after giving effect to the one-for-five conversion of the Corporation’s Common Stock in accordance with the Company’s amended and restated certificate of incorporation and the Plan), subject to adjustment as provided herein, and the Warrant Certificates evidencing such Warrants;

WHEREAS, each Warrant shall entitle the registered owner thereof to purchase one share of Common Stock, subject to adjustment as provided herein;

WHEREAS, the Warrants and the shares of Common Stock issuable upon exercise of the Warrants are being issued in an offering in reliance on an exemption from the registration requirements of the Securities Act (as defined below) and of any applicable state securities or “blue sky” laws afforded by Section 1145 of the Bankruptcy Code; and

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, exchange, transfer, substitution and exercise of Warrants and the Warrant Certificates evidencing such Warrants.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

1. Definitions.

“**Action**” has the meaning set forth in Section 11.2.

“**Affiliate**” of any specified Person, means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Appropriate Officer**” means any person designated as such by the Board of Directors from time to time.

“**Board of Directors**” means the board of directors of the Company, any duly authorized committee of that board or any comparable governing body under local law.

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a legal holiday in the State of New York or a day on which banking institutions and trust companies in the state in which the Corporate Agency Office is located are authorized or obligated by law, regulation or executive order to close.

“**Common Stock**” means, subject to the provisions of Section 5.1(f), the shares of common stock, \$0.001 par value per share of the Company.

“**Company**” means the company identified in the Preamble hereof, and any Successor Company that becomes successor to the Company in accordance with Section 15.

“**Company Order**” means a written request or order signed in the name of the Company by an Appropriate Officer, and delivered to the Warrant Agent.

“**Corporate Agency Office**” has the meaning set forth in Section 8.1(a).

“**Countersigning Agent**” means any Person authorized by the Warrant Agent to act on behalf of the Warrant Agent to countersign Warrant Certificates.

“**Exchange**” means, in the case of any securities, (i) the principal U.S. national or regional securities exchange on which such securities are then listed or (ii) if such securities are not then listed on a principal U.S. national or regional securities exchange, the principal other market on which such securities are then traded.

“**Exchange Act**” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case, as amended from time to time.

“**Exercise Date**” has the meaning set forth in Section 3.2(f).

“**Exercise Form**” has the meaning set forth in Section 3.2(c).

“**Exercise Notice**” has the meaning set forth in Section 3.2(c).

“**Exercise Period**” means the period from and including the Original Issue Date to and including the Expiration Time.

“**Exercise Price**” means the exercise price per share of Common Stock, initially set at \$60.95 (after giving effect to the one-for-five conversion of the Corporation’s Common Stock in accordance with the Company’s amended and restated certificate of incorporation and the Plan), subject to adjustment as provided in Section 5.1.

“**Expiration Time**” means the earliest to occur of (x) the Scheduled Expiration Time, (y) the date and time of consummation of a Transaction to which clause (ii) of Section 5.1(f) applies and (z) the date and time of effectiveness of a Winding Up.

“**Fair Market Value**” means, on any date of determination, (i) in the event such securities are not listed for trading on an Exchange, the dollar amount which a willing buyer would pay a willing seller in an arm’s length transaction on such date (neither being under any compulsion to buy or sell) for such security or other non-cash property taking into account all relevant factors (without regard to the lack of liquidity of such securities due to any restrictions (contractual or otherwise) applicable thereto or any discount for minority interests) and (ii) in the event such securities are listed for trading on an Exchange, the volume weighted average closing price for the ten (10) consecutive Trading Days ending on (and including) the Trading Day immediately prior to such date of determination, in the case of this clause (ii), as reasonably determined as of such date by the Board of Directors in good faith, whose determination shall take into account any fairness opinion, if any, delivered in connection with such Transaction and not be inconsistent therewith and be evidenced by a resolution of the Board of Directors filed with the Warrant Agent with written notice of such determination given by the Company to the Holders in accordance with Section 11.2.

“**Governmental Authority**” means any (i) government, (ii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other

tribunal) or (iii) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, in each case, whether federal, state, local, municipal, foreign, supranational or of any other jurisdiction.

“**Holder**” means any Person in whose name at the time any Warrant Certificate is registered upon the Warrant Register and, when used with respect to any Warrant Certificate, the Person in whose name such Warrant Certificate is registered in the Warrant Register.

“**IRS**” means the Internal Revenue Service.

“**Law**” means all laws, statutes, rules, regulations, codes, injunctions, decrees, orders, ordinances, registration requirements, disclosure requirements and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

“**Non-Recourse Parties**” has the meaning set forth in Section 25.

“**Original Issue Date**” means January 14, 2025, the date on which Warrants are originally issued under this Agreement.

“**outstanding**” when used with respect to any Warrants, means, as of the time of determination, all Warrants theretofore originally issued under this Agreement, except (i) Warrants that have been exercised pursuant to Section 3.2(a), (ii) Warrants that have expired, terminated and become void pursuant to Section 3.2(b), Section 4 or Section 5.1(f) and (iii) Warrants that have otherwise been acquired by the Company; provided, however, that in determining whether the Holders of the requisite amount of the outstanding Warrants have given any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Agreement, Warrants held directly or beneficially by the Company or any Subsidiary of the Company or any of their respective employees shall be disregarded and deemed not to be outstanding.

“**Person**” means any individual, entity, estate, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Plan**” has the meaning set forth in the recitals hereto.

“**Qualifying Person**” means, with respect to any Transaction, a holder of Common Stock that is neither (i) an employee of the Company or of any Subsidiary thereof (solely in such Person’s capacity as an employee) nor (ii) a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (“**Constituent Person**”), or an Affiliate of a Constituent Person.

“**Regulatory Approval**” means any notice or approval which the Company (or any Affiliate of the Company) is required to file with or obtain from any Governmental Authority with jurisdiction over the Company or its Affiliates in order to complete a Transfer or issue Common Stock to a Holder in compliance with applicable Law.

“**Required Warrant Holders**” means Holders of Warrant Certificates evidencing a majority of the then-outstanding Warrants.

“**Scheduled Expiration Time**” means 5:00 p.m. New York time on January 14, 2030 (the fifth anniversary of the Original Issue Date) or, if not a Business Day, then 5:00 p.m. New York time on the next Business Day thereafter.

“**SEC**” means the United States Securities and Exchange Commission.

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

“**Subsidiary**” means an entity more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For purposes of this definition, “voting stock” means stock or other equity securities which ordinarily have voting power for the election of directors or managers, whether at all times or only so long as no senior class of stock or other equity securities has such voting power by reason of any contingency. A “Subsidiary” shall also include an entity of which more than 50% of the gains or losses is allocated, directly or indirectly, to the Company or to one or more other Subsidiaries, or to the Company and one or more other Subsidiaries, collectively.

“**Successor Company**” has the meaning set forth in Section 15.

“**Trading Day**” means, with respect to any securities listed for trading on an Exchange, a day on which trading in such securities occurs on the Exchange.

“**Transaction**” has the meaning set forth in Section 5.1(f).

“**Transfer**” means any transfer, sale, exchange, assignment or other disposition.

“**Warrant Agent**” means the warrant agent set forth in the preamble hereof or the successor or successors of such Warrant Agent appointed in accordance with the terms hereof.

“**Warrant Certificates**” means those certain warrant certificates evidencing the Warrants, substantially in the form set forth in Exhibit A attached hereto; provided, however, that (i) if a Warrant is issued by electronic or book entry registration on the books of the Warrant Agent only and not represented by a physical certificate, then (A) the Holder thereof shall be deemed to hold and have received a Warrant Certificate for all purposes under this Agreement as a result of the Warrant Agent’s registration of such Holder’s applicable Warrants in the Holder’s name on the books of the Warrant Agent (including the Warrant Register), (B) the Warrant Agent shall be deemed to hold the Warrant Certificate electronically on behalf of such Holder and (C) the Company and the Warrant Agent shall deliver a physical Warrant Certificate or Exercise Form, as applicable, to a Holder upon a Holder’s written request, and (ii) any Warrant Certificate shall bear the legend substantially in the form set forth in Exhibit A.

“**Warrant Register**” has the meaning set forth in Section 8.1(b).

“**Warrants**” means those certain warrants to purchase initially up to an aggregate of 364,516 shares of Common Stock at the Exercise Price, subject to adjustment pursuant to Section 5, issued hereunder.

“**Winding Up**” has the meaning set forth in Section 4.

2. Warrant Certificates.

2.1. Original Issuance of Warrants.

2.1.1. On the Original Issue Date and subject to the terms and conditions set forth in this Agreement, in accordance with the terms of the Plan, the Warrant Agent shall issue and register the Warrants in the names of the respective Holders thereof in book-entry positions on the books of the Warrant Agent, in such denominations and otherwise in accordance with the instructions delivered to the Warrant Agent by the Company. The Warrants so issued and registered shall be reflected on statements issued by the Warrant Agent to the Holders.

2.1.2. Except as set forth in Section 3.2(d), Section 6 and Section 8, the Warrant Certificates issued and registered by the Warrant Agent on the Original Issue Date shall be the only Warrant Certificates issued or outstanding under this Agreement.

2.1.3. Each Warrant Certificate shall evidence the number of Warrants specified therein, and each Warrant evidenced thereby shall represent the right, subject to the provisions contained herein and therein, to purchase one share of Common Stock, subject to adjustment as provided in Section 5.

2.2. Form of Warrant Certificates.

The Warrant Certificates evidencing the Warrants (a) shall be in registered form only and substantially in the form set forth in Exhibit A hereto, (b) shall be dated the date on which countersigned by the Warrant Agent, (c) shall have such insertions as are appropriate or required or permitted by this Agreement and (d) may have such letters, numbers or other marks of identification and such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the directors or officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any law or with any rule or regulation pursuant thereto or with any rule or regulation of any securities exchange on which the Warrants may be listed, in each case, as reasonably determined by an Appropriate Officer.

2.3. Execution and Delivery of Warrant Certificates.

2.3.1. Warrant Certificates evidencing the Warrants which may be countersigned and delivered under this Agreement are limited to Warrant Certificates evidencing 364,516 Warrants, except for Warrant Certificates countersigned and delivered upon registration of transfer of, or in exchange for, or in lieu of, one or more previously countersigned Warrant Certificates pursuant to Section 3.2(d), Section 6 and Section 8.

2.3.2. The Warrant Agent is hereby authorized to countersign (by manual or electronic signature) and deliver Warrant Certificates as required by Section 2.1, Section 3.2(d), Section 6 or Section 8.

2.3.3. The Warrant Certificates shall be executed in the corporate name and on behalf of the Company by the Chairman (or any Co-Chairman) of the Board of Directors, the Chief Executive Officer, the President or any one of the Vice Presidents or officers of the Company and attested to by the Secretary or one of the Assistant Secretaries of the Company, either manually, by electronic signature or by facsimile signature printed thereon. The Warrant Certificates shall be countersigned by the Warrant Agent, either by manual or electronic signature, and shall not be valid for any purpose unless so countersigned. In case any officer of the Company whose signature shall have been placed upon any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issue and delivery thereof, such Warrant Certificates may, nevertheless, be countersigned by the Warrant Agent and issued and delivered with the same force and effect as though such person had not ceased to be such officer of the Company, and any Warrant Certificate may be signed on behalf of the Company by such person as, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company, although at the date of the execution of this Agreement any such person was not such officer.

3. Exercise and Expiration of Warrants.

3.1. Right to Acquire Common Stock Upon Exercise.

Each Warrant Certificate shall, when countersigned by the Warrant Agent, entitle the Holder thereof, subject to the provisions thereof and of this Agreement, to acquire from the Company, for each Warrant evidenced thereby, one share of Common Stock at the Exercise Price, subject to adjustment as provided in this Agreement; provided, however, that if such Warrant Certificate is issued by electronic or book entry registration on the books of the Warrant Agent only and not represented by physical certificates, (a) the Holder's rights shall not be subject to such countersignature by the Warrant Agent and (b) the Holder shall be deemed to hold and have received the Warrant Certificate for all purposes under this Agreement as a result of the Warrant Agent's registration of such Holder's applicable Warrants in the Holder's name on the books of the Warrant Agent (including the Warrant Register). The Exercise Price, and the number of shares of Common Stock obtainable upon exercise of each Warrant, shall be adjusted from time to time as required by Section 5.1.

3.2. Exercise and Expiration of Warrants.

3.2.1. Exercise of Warrants. Subject to and upon compliance with the terms and conditions set forth herein, a Holder of a Warrant Certificate may exercise all or any whole number of the Warrants evidenced thereby, on any Business Day from and after the Original Issue Date until the Expiration Time, for the shares of Common Stock obtainable thereunder.

3.2.2. Expiration of Warrants. The Warrants, to the extent not exercised prior thereto, shall automatically expire, terminate and become void as of the Expiration Time. No further action of any Person (including by, or on behalf of, any Holder, the Company, or the Warrant Agent) shall be required to effectuate the expiration of Warrants pursuant to this Section 3.2(b).

3.2.3. Method of Exercise. In order for a Holder to exercise all or any of the Warrants represented by a Warrant Certificate, the Holder thereof must (i) provide written notice to the Company and the Warrant Agent in accordance with the notice information set forth in Section 11 ("**Exercise Notice**"), (ii) at the Corporate Agency Office, (x) deliver to the Warrant Agent an exercise form for the election to exercise such Warrants, substantially in the form set forth in Exhibit B hereto (an "**Exercise Form**"), setting forth the number of Warrants being exercised and otherwise properly completed and duly executed by the Holder thereof, and (y) surrender to the Warrant Agent the Warrant Certificate evidencing such Warrants; (iii) pay to the Warrant Agent an amount equal to (x) all taxes required to be paid by the Holder, if any, pursuant to Section 3.4 prior to, or concurrently with, exercise of such Warrants and (y) the aggregate of the Exercise Price in respect of each share of Common Stock into which such Warrants are exercisable, in case of (x) and (y), by cashier's check payable to the order of the Warrant Agent, or by wire transfer in immediately available funds to such account of the Warrant Agent at such banking institution as the Warrant Agent shall have designated from time to time for such purpose in accordance with Section 11.1(b) and (iv) comply with Section 3.8 and Section 9.4.

3.2.4. Partial Exercise. If fewer than all the Warrants represented by a Warrant Certificate are exercised, such Warrant Certificate shall be surrendered and a new Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company in accordance with Section 2.3(c). The Warrant Agent shall countersign the new Warrant Certificate, registered in such name or names, subject to the provisions of Section 8 regarding registration of transfer and payment of governmental charges in respect thereof, as may be directed in writing by the Holder, and shall deliver the new Warrant Certificate to the Person or Persons in whose name such new Warrant Certificate is so registered. The Company, whenever required by the Warrant Agent, will supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for such purpose.

3.2.5. Issuance of Common Stock. Upon due exercise of Warrants evidenced by any Warrant Certificate in conformity with the foregoing provisions of Section 3.2(c), the Warrant Agent shall, when the actions specified in Section 3.2(c)(i) have been effected, any payment specified in Section 3.2(c)(ii) is received and the provisions of Section 3.8 have been complied with, deliver to the Company the Exercise Form received pursuant to Section 3.2(c)(i), deliver or deposit all funds received as instructed in writing by the Company and advise the Company by telephone at the end of such day of the amount of funds so deposited to its account. The Company shall thereupon, as promptly as practicable, and in any event within two (2) Business Days after the Exercise Date referred to below, (i) determine the number of shares of Common Stock issuable pursuant to exercise of such Warrants pursuant to Section 3.6 and (ii) deliver or cause to be delivered to the Recipient (as defined below) the shares of Common Stock in book-entry form in accordance with Section 3.2(f) in an amount equal to the aggregate number of shares of Common Stock issuable upon such exercise (based upon the aggregate number of Warrants so exercised), as so determined, together with an amount in cash in lieu of any fractional share of Common Stock(s), if the Company so elects pursuant to Section 5.2. The shares of Common Stock in book-entry form so delivered shall be, to the extent possible, in such denomination or denominations as such Holder shall request in the applicable Exercise Form and shall be registered or otherwise placed in the name of, and delivered to, the Holder or, subject to Section 3.4 and Section 3.7, such other Person as shall be designated in writing by the Holder in such Exercise Form (the Holder or such other Person being referred to herein as the “**Recipient**”). As a condition to the issuance of shares of Common Stock pursuant to this Section 3.2(e), the Recipient shall provide to the Company or its registered office provider such documentation and other evidence as is reasonably required by the Company or its registered office to carry out and to be satisfied that they have complied with all necessary “know your customer” or similar requirements under all applicable laws and regulations.

3.2.6. Time of Exercise. Each exercise of a Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which each of the requirements for exercise of such Warrant specified in Section 3.2(c) and Section 3.8 has been duly satisfied (the “**Exercise Date**”). At such time, subject to Section 5.1(d)(iv) and the Recipient complying with its obligations pursuant to Section 3.2(e), the Company shall procure the entry into the Company’s register of stockholders of the name of the Recipient as holder of the shares of Common Stock on the Exercise Date, and shall provide to the Recipient an extract of the register so updated as soon as practicable thereafter, in book-entry form for the shares of Common Stock issuable upon such exercise as provided in Section 3.2(e) shall be deemed to have been issued and, for all purposes of this Agreement, the Recipient shall, as between such Person and the Company, be deemed to be and entitled to all rights of the holder of record of such shares of Common Stock.

3.2.7. The Warrant Agent shall:

3.2.7.1 examine all Exercise Forms and all other documents delivered to it by or on behalf of the Holders as contemplated hereunder to ascertain whether or not, on their face, such Exercise Forms and any such other documents have been executed and completed in accordance with their terms and the terms hereof;

3.2.7.2 where an Exercise Form or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrants exists, inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

3.2.7.3 inform the Company of, cooperate with, and reasonably assist such Person and the Company in, resolving any discrepancies between Exercise Forms received and delivery of Warrants to the Warrant Agent's account; and

3.2.7.4 advise the Company promptly after receipt of an Exercise Form of (x) the receipt of such Exercise Form and the number of Warrants exercised in accordance with the terms and conditions of this Agreement, (y) the instructions with respect to delivery of the shares of Common Stock deliverable upon such exercise and (z) such other information as the Company shall reasonably require.

3.2.8. All questions as to the validity, form and sufficiency (including time of receipt) of an Exercise Form will be determined by the Company in its reasonable discretion in accordance with the provisions set forth herein. The Company reserves the right to reject any and all Exercise Forms not in proper form or for which any corresponding agreement by the Company to exchange would be unlawful; provided that the Company shall provide the Holder with the reasonable opportunity to correct any defects in the Exercise Forms. Moreover, without limiting the rights and immunities of the Warrant Agent, the Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Forms with regard to any particular exercise of Warrants. If the Company believes there is any irregularity in the exercise of the Warrants, then the Company shall (or shall cause the Warrant Agent to) promptly give notice to the Holder of the Warrants that submitted the applicable Exercise Form of such irregularities and an opportunity to cure the same, provided that the Warrant Agent shall not incur any liability for the failure to give such notice. The Warrant Agent shall incur no liability for or in respect of any determination, action or omission by the Company in accordance with this Section 3.2(h).

3.3. Application of Funds upon Exercise of Warrants.

Any funds delivered to the Warrant Agent upon exercise of any Warrant(s) shall be held by the Warrant Agent in trust for the Company. The Warrant Agent shall promptly deliver and pay to or upon the written order of the Company all funds received by it upon the exercise of any Warrants by bank wire transfer to an account designated by the Company or as the Warrant Agent otherwise may be directed in writing by the Company.

3.4. Payment of Taxes.

The Company shall pay any and all transfer or similar taxes that may be payable in respect of the issue or delivery of shares of Common Stock on exercise of Warrants pursuant hereto. The Company shall not be required, however, to pay any tax or other charge imposed in respect of any transfer involved in the issue and delivery of shares of Common Stock or payment of cash or other property to any Recipient other than the Holder of the Warrant Certificate evidencing the exercised Warrant, and in case of such transfer or payment, the Warrant Agent and the Company shall not be required to issue or deliver any shares of Common Stock in book-entry form or any certificate or pay any cash or other property until (a) such tax or charge has been paid or an amount sufficient for the payment thereof has been delivered to the Warrant Agent or the Company or (b) it has been established to the Company's satisfaction that any such tax or other charge that is or may become due has been paid.

3.5. Cancellation of Warrant Certificates.

Any Warrant Certificate surrendered for exercise shall, if surrendered to the Company, be delivered to the Warrant Agent. All Warrant Certificates surrendered or delivered to or received by the Warrant Agent for cancellation pursuant to this Section 3.5 shall be promptly cancelled by the Warrant Agent and shall not be reissued by the Company. The Warrant Agent shall destroy any such cancelled Warrant Certificates and deliver its certificate of destruction to the Company, unless the Company shall otherwise direct.

3.6. Common Stock Issuable.

The number of shares of Common Stock “obtainable upon exercise” or “issuable upon exercise” of Warrants at any time shall be the number of shares of Common Stock into which such Warrants are then exercisable. The number of shares of Common Stock “into which each Warrant is exercisable” shall be one share of Common Stock, subject to adjustment as provided in Section 5.1.

3.7. Regulatory Approvals. .

3.7.1. The Company reserves the right to reject any and all Exercise Forms that it reasonably determines in good faith are not in proper form or for which any corresponding agreement by the Company to exchange would, in the reasonable opinion of the Company, be unlawful. Any such determination by the Company shall be final and binding on the Holder of the Warrants, absent manifest error; provided that the Company shall provide a Holder with the reasonable opportunity to correct any defects in its Exercise Forms (without prejudicing such Holder’s ability to deliver subsequent Exercise Forms). The Company further reserves the right to request such information (including, without limitation, information with respect to citizenship, other ownership interests and Affiliates) as the Company (A) may deem appropriate, after consulting with independent outside legal counsel, to determine whether the exercise of the Warrants would be unlawful. The Company reserves the absolute right to waive any of the conditions to any particular exercise of Warrants or any defects in the Exercise Form(s) with regard to any particular exercise of Warrants. The Company shall provide prompt written notice to the Holder of any such rejection or waiver.

3.7.2. Without limiting the foregoing and notwithstanding any provisions contained herein to the contrary, (i) no Holder shall be entitled to exercise any Warrant until all Regulatory Approvals required to be made to or obtained from any Governmental Authority with jurisdiction over the Company or its Subsidiaries have been made or obtained, and in the event that all required Regulatory Approvals are not received, the Holder shall continue to hold its Warrants; and (ii) the Company may prohibit the exercise of any Warrants if such exercise would, in the Company’s reasonable determination (A) result in a violation of applicable laws or regulations or (B) involve circumstances that the Board of Directors determines could require the registration or qualification of any class of Common Stock or require the Company to file reports pursuant to any applicable federal or state securities laws.

3.7.3. [Reserved].

3.7.4. Upon receipt of all necessary Regulatory Approvals, if any, in respect of the exercise of any Warrant, and provided that (i) a Holder has complied with the requirements of Section 3.2(a) and Section 3.2(c), and (ii) the Company has determined that (x) the Holder’s exercise of its Warrants does not violate the Securities Act or any decision, rule, regulation, policy, order or declaratory ruling issued by the SEC, as applicable and (y) all conditions imposed by any Governmental Authority in any Regulatory Approval have been satisfied, such Holder’s Warrants shall be automatically deemed exercised.

3.8. Withholding.

Subject to Section 3.4, notwithstanding anything in this Agreement or the Warrant to the contrary, the Company shall be entitled to deduct and withhold (or cause to be deducted and withheld) from any amounts or property payable or deliverable to any Person pursuant to or in connection with this Agreement or the Warrant such amounts as are required to be deducted or withheld under applicable Law (and the Company shall be entitled to withhold, for the avoidance of doubt, such amounts (without duplication) from any amounts or

property that are payable or deliverable to such Person pursuant to or in connection with this Agreement or the Warrant subsequent to the payment or delivery or other circumstance that gave rise to the requirement to deduct or withhold under applicable Law) and may require Holders to pay the withholding tax amount to the Company in cash as a condition of receiving the benefit of any antidilution adjustment pursuant to Section 5 or otherwise. Any amounts that are so withheld shall be paid to the appropriate Governmental Authority and shall be treated as having been paid to the Person in respect of which such withholding was made.

4. Dissolution, Liquidation or Winding Up.

Unless Section 5.1(f) applies, if, on or prior to the Expiration Time, the Company (or any other Person controlling the Company) shall propose a voluntary or involuntary dissolution, liquidation or winding up (collectively, a “***Winding Up***”); provided that a Winding Up shall not be effected pursuant to a Transaction) of the affairs of the Company, the Company shall give written notice thereof to the Warrant Agent and all Holders in the manner provided in Section 11.2 prior to the date on which such transaction is expected to become effective or, if earlier, the record date for such transaction. Such notice shall also specify the date as of which the holders of record of the shares of Common Stock shall be entitled to exchange their shares for securities, money or other property deliverable upon such Winding Up, as the case may be.

5. Adjustments.

5.1. Adjustments.

In order to prevent dilution of the rights granted under the Warrants and to grant the Holders certain additional rights, the Exercise Price shall be subject to adjustment from time to time only as specifically provided in this Section 5.1 (the “***Adjustment Events***”) and the number of shares of Common Stock obtainable upon exercise of Warrants shall be subject to adjustment from time to time only as specifically provided in this Section 5.1, in each case, without duplication.

5.1.1. Subdivisions and Combinations. In the event the Company shall, at any time or from time to time after the Original Issue Date while any Warrants remain outstanding and unexpired in whole or in part, effect a subdivision (by any equity security split, subdivision or otherwise) of the outstanding shares of Common Stock into a greater number of shares of Common Stock (other than (x) a subdivision upon a Transaction to which Section 5.1(f) applies or (y) an equity security split effected by means of a stock or equity security dividend or distribution to which Section 5.1(b) applies), then and in each such event the Exercise Price in effect at the opening of business on the day after the date upon which such subdivision becomes effective shall be proportionately decreased by multiplying such Exercise Price by a fraction (i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to such subdivision and (ii) the denominator of which shall be the sum of (A) the total number of shares of Common Stock issued and outstanding immediately prior to such subdivision plus (B) the number of shares of Common Stock issuable as a result of such subdivision. Conversely, if the Company shall, at any time or from time to time after the Original Issue Date while any Warrants remain outstanding and unexpired in whole or in part, effect a combination (by any reverse equity security split, combination or otherwise) of the outstanding shares of Common Stock into a smaller number of shares of Common Stock (other than a combination upon a Transaction to which Section 5.1(f) applies), then and in each such event the Exercise Price in effect at the opening of business on the day after the date upon which such combination becomes effective shall be proportionately increased by multiplying such Exercise Price by a fraction (i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to such combination and (ii) the denominator of which shall be the sum of (A) the total number of shares of Common Stock issued and outstanding immediately prior to such combination, minus (B) the number of shares of

Common Stock reduced as a result of such combination. Any adjustment under this Section 5.1(a) shall become effective immediately after the opening of business on the day after the date upon which the subdivision or combination becomes effective.

5.1.2. Common Stock Dividends. In the event the Company shall, at any time or from time to time after the Original Issue Date while any Warrants remain outstanding and unexpired, in whole or in part, pay, make or issue to the holders of its Common Stock a dividend or distribution payable in, or otherwise pay, make or issue a dividend or other distribution on any class of its equity securities payable in, shares of Common Stock (other than a dividend or distribution upon a Transaction to which Section 5.1(f) applies), then and in each such event the Exercise Price in effect at the opening of business on the day after the date for the determination of the holders of shares of Common Stock entitled to receive such dividend or distribution shall be decreased by multiplying such Exercise Price by a fraction (not to be greater than 1):

5.1.2.1 the numerator of which shall be the total number of shares of Common Stock issued and outstanding at the close of business on such date for determination; and

5.1.2.2 the denominator of which shall be the sum of (A) the total number of shares of Common Stock issued and outstanding at the close of business on such date for determination plus (B) the number of shares of Common Stock issuable in payment of such dividend or distribution.

Any adjustment under this Section 5.1(b) shall, subject to Section 5.1(d)(iv), become effective immediately after the opening of business on the day after the date for the determination of the holders of Common Stock entitled to receive such dividend or distribution.

5.1.3. Reclassifications. In the event that the Company reclassifies the Common Stock (other than any such reclassification in connection with a Transaction to which Section 5.1(f) applies) into shares of Common Stock and any other equity interests of the Company, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock for the purposes and within the meaning of Section 5.1(a) (and the effective date of such reclassification shall be deemed to be “the date upon which such subdivision becomes effective” or “the date upon which such combination becomes effective,” as applicable, for the purposes and within the meaning of Section 5.1(a)). Any dividend or distribution of equity interests made or paid on Common Stock shall not be deemed a reclassification within the meaning of this Section 5.1(c).

5.1.4. Other Provisions Applicable to Adjustments. The following provisions shall be applicable to the making of adjustments to the Exercise Price and the number of shares of Common Stock into which each Warrant is exercisable under Section 5.1:

5.1.4.1 Common Stock Held by the Company. The dividend or distribution of any issued shares of Common Stock owned or held by or for the account of the Company shall be deemed a dividend or distribution of Common Stock for purposes of Section 5.1(b). The Company shall not make or issue any dividend or distribution on Common Stock held in the treasury of the Company. For the purposes of Section 5.1(b), the number of shares of Common Stock at any time outstanding shall not include Common Stock held in the treasury of the Company.

5.1.4.2 When Adjustments Are to be Made. The adjustments required by Section 5.1(a), Section 5.1(b), Section 5.1(c) and Section 5.1(g) shall be made whenever and as often

as any specified event requiring an adjustment shall occur, except that no adjustment of the Exercise Price that would otherwise be required shall be made unless and until such adjustment either by itself or with other adjustments not previously made increases or decreases the Exercise Price immediately prior to the making of such adjustment by at least 1%. Any adjustment representing a change of less than such minimum amount (except as aforesaid) shall be carried forward and made as soon as such adjustment, together with other adjustments required by Section 5.1(a), Section 5.1(b), Section 5.1(c) and Section 5.1(g) and not previously made, would result in such minimum adjustment.

5.1.4.3 Fractional Interests. In computing adjustments under this Section 5.1, fractional interests in Common Stock shall be taken into account to the nearest one-thousandth of a share of Common Stock.

5.1.4.4 Deferral of Issuance Upon Exercise. In any case in which Section 5.1(b) or Section 5.1(g) shall require that a decrease in the Exercise Price be made effective prior to the occurrence of a specified event and any Warrant is exercised after the time at which the adjustment became effective but prior to the occurrence of such specified event and, in connection therewith, Section 5.1(e) shall require a corresponding increase in the number of shares of Common Stock into which each Warrant is exercisable, the Company may elect to defer (but not in any event later than the Expiration Time) until the occurrence of such specified event (A) the issuance to the Holder of the Warrant Certificate evidencing such Warrant (or other Person entitled thereto) of, and the registration of such Holder (or other Person) as the record holder of, the shares of Common Stock over and above the shares of Common Stock issuable upon such exercise on the basis of the number of shares of Common Stock obtainable upon exercise of such Warrant immediately prior to such adjustment and to require payment in respect of such number of shares of Common Stock the issuance of which is not deferred on the basis of the Exercise Price in effect immediately prior to such adjustment and (B) the corresponding reduction in the Exercise Price; provided, however, that the Company shall deliver to such Holder or other person a due bill or other appropriate instrument that evidences the right of such Holder or other Person to receive, and to become the record holder of, such additional shares of Common Stock, upon the occurrence of such specified event requiring such adjustment (without payment of any additional Exercise Price in respect of such additional shares of Common Stock) and, if the shares of Common Stock are then traded on a national securities exchange or other market, meets any applicable requirements of the principal national securities exchange or other market on which the shares of Common Stock are then traded.

5.1.5. Adjustment to Common Stock Obtainable Upon Exercise. Whenever the Exercise Price is adjusted as provided in this Section 5.1 (other than as an adjustment required pursuant to Section 5.1(g)), the number of shares of Common Stock into which a Warrant is exercisable shall simultaneously be adjusted by multiplying such number of shares of Common Stock into which a Warrant is exercisable immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment, and the denominator of which shall be the Exercise Price immediately thereafter.

5.1.6. Changes in Common Stock. In case at any time or from time to time after the Original Issue Date while any Warrants remain outstanding and unexpired in whole or in part, the Company (including any Successor Company) shall be a party to or shall otherwise engage in any transaction or series of related transactions constituting: (1) a merger of the Company into, a direct or indirect sale of all of the Company's equity to, or a consolidation

of the Company with any other Person, or any similar transaction, in each case, in which the previously outstanding shares of Common Stock shall be (either directly or upon subsequent liquidation), cancelled, reclassified or converted or changed into or exchanged for securities or other property (including cash) or any combination of the foregoing, or a sale or transfer of all or substantially all of the assets of the Company and its Subsidiaries (taken as a whole) (a “**Non-Surviving Transaction**”), or (2) any merger of another Person into the Company in which the previously outstanding shares of Common Stock shall be cancelled, reclassified or converted or changed into or exchanged for securities of the Company or other property (including cash) or any combination of the foregoing (a “**Surviving Transaction**” and any Non-Surviving Transaction or Surviving Transaction being herein called a “**Transaction**”), then:

5.1.6.1 as a condition to the consummation of such Transaction, the Company shall (or, in the case of any Non-Surviving Transaction, the Company shall cause such other Person to) execute and deliver to the Warrant Agent a written instrument providing that: any Warrant that remains outstanding in whole or in part (including after giving effect to the changes specified under clause (ii) below), upon the exercise thereof at any time on or after the consummation of such Transaction, shall be exercisable (on such terms and subject to such conditions as shall be as nearly equivalent as may be practicable to the provisions set forth in this Agreement) into, in lieu of the shares of Common Stock issuable upon such exercise prior to such consummation, only the securities or other property (“**Substituted Property**”) that would have been receivable upon such Transaction by a holder of the number of shares of Common Stock into which such Warrant was exercisable immediately prior to such Transaction and for an aggregate Exercise Price for such Warrant equal to the product of (I) the number of shares of Common Stock into which such Warrant was exercisable immediately prior to such Transaction and (II) the Exercise Price per share of Common Stock immediately prior to such Transaction;

5.1.6.2 the rights and obligations of the Company (or, in the event of a Non-Surviving Transaction, such other Person) and the Holders in respect of Substituted Property shall be substantially unchanged to be as nearly equivalent as may be practicable to the rights and obligations of the Company and Holders in respect of shares of Common Stock hereunder as set forth in Section 3.1 hereof; and

5.1.6.3 in respect of any Transaction, such written instrument under clause (i) above shall provide for adjustments which, for events subsequent to the effective date of such written instrument, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5; and the provisions of this Section 5.1(f) shall similarly apply to successive Transactions.

5.1.7. Optional Tax Adjustment. The Company may at its option, at any time during the term of the Warrants, adjust the number of shares of Common Stock into which each Warrant is exercisable, or adjust the Exercise Price, in addition to those changes required by Section 5.1(a), Section 5.1(b), Section 5.1(c) or Section 5.1(g), as deemed advisable by the Board of Directors, in order that any event treated for income tax purposes as a dividend of equity securities or equity security rights shall not be taxable to the recipients (or the amount that is taxable to the recipients shall be reduced).

5.1.8. Warrants Deemed Exercisable. For purposes solely of this Section 5, the number of shares of Common Stock which the holder of any Warrant would have been entitled to receive had such Warrant been exercised in full at any time or into which any Warrant was exercisable at any time shall be determined assuming such Warrant was exercisable in full at such time.

5.1.9. Notice of Adjustment. Upon the occurrence of each adjustment of the Exercise Price or the number of shares of Common Stock into which a Warrant is exercisable pursuant to this Section 5.1, the Company at its expense shall promptly:

5.1.9.1 compute such adjustment in accordance with the terms hereof;

5.1.9.2 after such adjustment becomes effective, deliver to all Holders, in accordance with Section 11.1(b) and Section 11.2, a notice setting forth such adjustment in reasonable detail and showing in reasonable detail the facts upon which such adjustment (including the kind and amount of securities, cash or other property for which the Warrants shall be exercisable and the Exercise Price) is based; and

5.1.9.3 deliver to the Warrant Agent a certificate of the Treasurer or other officer of the Company having equivalent responsibilities setting forth the Exercise Price and the number of shares of Common Stock into which each Warrant is exercisable after such adjustment and setting forth a brief statement of the facts requiring such adjustment and the computation by which such adjustment was made (including a description of the basis on which the Fair Market Value was determined). As provided in Section 10.1, the Warrant Agent shall be entitled to rely on such certificate and shall be under no duty or responsibility with respect to any such certificate, except to exhibit the same from time to time to any Holder desiring an inspection thereof during reasonable business hours.

5.1.10 Statement on Warrant Certificates. Irrespective of any adjustment in the Exercise Price or amount or kind of equity securities into which the Warrants are exercisable, Warrant Certificates theretofore or thereafter issued may continue to express the same Exercise Price initially applicable or amount or kind of equity securities initially issuable upon exercise of the Warrants evidenced thereby pursuant to this Agreement.

5.2. Fractional Interest.

The Company shall not be required upon the exercise of any Warrant to issue any fractional shares of Common Stock, but may, in lieu of issuing any fractional shares of Common Stock make an adjustment therefore in cash on the basis of the Fair Market Value per share of Common Stock on the date of such exercise. If Warrant Certificates evidencing more than one Warrant shall be presented for exercise at the same time by the same Holder, the number of full shares of Common Stock which shall be issuable upon such exercise thereof shall be computed on the basis of the aggregate number of Warrants so to be exercised. The Holders, by their acceptance of the Warrant Certificates, expressly waive their right to receive any fraction of a share of Common Stock or a stock certificate representing a fraction of a share of Common Stock.

5.3. No Other Adjustments.

In each case, except in accordance with Section 5.1, the applicable Exercise Price and the number of shares of Common Stock obtainable upon exercise of any Warrant will not be adjusted for (x) any dividend or distribution made or paid on the shares of Common Stock or any other equity securities, (y) any purchase (including by tender or exchange offer) of any shares of Common Stock or (z) the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or carrying the right to purchase any of the foregoing, including:

5.3.1.1 upon the issuance of any other securities by the Company on or after the Original Issue Date, whether or not contemplated by the Plan, or upon the issuance of shares of Common Stock upon the exercise of any such securities;

5.3.1.2 upon the issuance of any shares of Common Stock or other securities or any payments pursuant to the Management Incentive Plan (as defined in the Plan) or any other equity incentive plan of the Company;

5.3.1.3 upon the issuance of any shares of Common Stock pursuant to the exercise of the Warrants; or

5.3.1.4 upon the issuance of any shares of Common Stock or other securities of the Company in connection with a business acquisition transaction.

6. Loss or Mutilation.

If (a) any mutilated Warrant Certificate is surrendered to the Warrant Agent or (b) both (i) there shall be delivered to the Company and the Warrant Agent (A) a claim by a Holder as to the destruction, loss or wrongful taking of any Warrant Certificate of such Holder and a request thereby for a new replacement Warrant Certificate, and (B) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (ii) such other reasonable requirements as may be imposed by the Company and the Warrant Agent as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Warrant Agent that such Warrant Certificate has been acquired by a “protected purchaser” within the meaning of Section 8-405 of the Uniform Commercial Code, the Company shall execute and upon its written request the Warrant Agent shall countersign and deliver to the registered Holder of the lost, wrongfully taken, destroyed or mutilated Warrant Certificate, in exchange therefore or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants. At the written request of such registered Holder, the new Warrant Certificate so issued shall be retained by the Warrant Agent as having been surrendered for exercise, in lieu of delivery thereof to such Holder, and shall be deemed for purposes of Section 3.2 to have been surrendered for exercise on the date the conditions specified in clauses (a) or (b) of the preceding sentence were first satisfied.

Upon the issuance of any new Warrant Certificate under this Section 6, the Company may require the payment of any tax or other governmental charge that is imposed in relation thereto and any other reasonable and documented out-of-pocket expenses (including the reasonable and documented fees and expenses of the Warrant Agent and of counsel to the Company) in connection therewith.

Every new Warrant Certificate executed and delivered pursuant to this Section 6 in lieu of any lost, wrongfully taken or destroyed Warrant Certificate shall constitute an additional contractual obligation of the Company, whether or not the allegedly lost, wrongfully taken or destroyed Warrant Certificate shall be at any time enforceable by anyone, and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder.

The provisions of this Section 6 are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, wrongfully taken, or destroyed Warrant Certificates.

7. Reservation and Authorization of Common Stock.

The Company covenants that, for the duration of the Exercise Period, the Company will at all times reserve and keep available, from its authorized and unissued shares of Common Stock solely for issuance and delivery upon the exercise of the Warrants and free of preemptive rights, such number of shares of Common Stock and other securities, cash or property as from time to time shall be issuable upon the exercise in full of all outstanding Warrants for cash. The Company further covenants that it shall, from time to time, take all steps necessary to increase the authorized number of its shares of Common Stock to such number of shares of Common Stock as shall be sufficient to deliver all shares of Common Stock deliverable upon exercise in full of all outstanding Warrants, if at any time the authorized number of shares of Common Stock remaining unissued would otherwise be insufficient to allow delivery of all the shares of Common Stock then deliverable upon the exercise in full of

all outstanding Warrants. The Company covenants that it will take such actions as may be necessary or appropriate in order that all shares of Common Stock issuable upon exercise of the Warrants will, upon issuance, be duly and validly issued, fully paid and non-assessable, and will be free of restrictions on transfer and will be free from all taxes, liens and charges in respect of the issue thereof. The Company shall take all such actions as may be necessary to ensure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any U.S. national securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Company upon each such issuance). The Company covenants that all shares of Common Stock will, at all times that Warrants are exercisable, be duly approved for listing subject to official notice of issuance on each securities exchange, if any, on which the Common Stock is then listed. The Company covenants that the stock certificates, if any, issued to evidence any shares of Common Stock issued upon exercise of Warrants will comply with the Delaware General Corporation Act (as amended) and any other applicable law.

The Company hereby authorizes and directs its current and future transfer agents for the shares of Common Stock at all times to reserve stock certificates for such number of shares of Common Stock, to the extent as, and if, required. The Warrant Agent is hereby authorized to requisition from time to time from any such transfer agents stock certificates required to honor outstanding Warrants upon exercise thereof in accordance with the terms of this Agreement, and the Company hereby authorizes and directs such transfer agents to comply with all such requests of the Warrant Agent. The Company will supply such transfer agents with duly executed stock certificates for such purposes, to the extent as, and if, required.

8. Warrant Transfer and Exchange.

8.1. Warrant Transfer Books.

8.1.1. The Warrant Agent will maintain an office (the “*Corporate Agency Office*”) in the United States of America, where Warrant Certificates may be surrendered for registration of transfer or exchange and where Warrant Certificates may be surrendered for exercise of Warrants evidenced thereby, which office is 55 Challenger Rd, Suite 200, Ridgefield Park, NJ 07660, Attn: Reorg Department/Warrant Exercise, on the Original Issue Date. The Warrant Agent will give prompt written notice to all Holders of Warrant Certificates of any change in the location of such office.

8.1.2. The Warrant Certificates evidencing the Warrants shall be issued in registered form only. The Company shall cause to be kept at the office of the Warrant Agent designated for such purpose a warrant register (the “*Warrant Register*”) in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by law, the Company shall provide for the registration of Warrant Certificates and of transfers or exchanges of Warrant Certificates as herein provided.

8.1.3. Upon surrender for registration of transfer of any Warrant Certificate at the Corporate Agency Office, the Company shall execute, and the Warrant Agent shall countersign and deliver, in the name of the designated transferee or transferees, one or more new Warrant Certificates evidencing a like aggregate number of Warrants.

8.1.4. At the option of the Holder, Warrant Certificates may be exchanged at the office of the Warrant Agent upon payment of the charges hereinafter provided for other Warrant Certificates evidencing a like aggregate number of Warrants. Whenever any Warrant Certificates are so surrendered for exchange, the Company shall execute, and the Warrant Agent shall countersign and deliver, the Warrant Certificates of the same tenor and evidencing the same number of Warrants as evidenced by the Warrant Certificates surrendered by the Holder making the exchange. Every Warrant Certificate surrendered for registration of transfer or exchange shall (if so required by the Company or the Warrant Agent) be duly endorsed, or be accompanied by a written instrument of transfer in form

satisfactory to the Company and the Warrant Agent, duly executed by the Holder thereof or his attorney duly authorized in writing.

8.2. Restrictions on Exchanges and Transfers.

8.2.1. No Warrants or Common Stock shall be sold, exchanged or otherwise Transferred (A) in violation of (i) the Securities Act or state securities Laws or (ii) the Company's certificate of incorporation or other governing documents and (B) unless the transferee delivers to the Warrant Agent a properly completed and duly executed IRS Form W-9 or the appropriate IRS Form W-8, as applicable. If any Holder purports to Transfer Warrants to any Person in a transaction that would violate the provisions of this Section 8.2, such Transfer shall be void ab initio and of no effect.

8.2.2. The Company reserves the right to reject any and all assignment forms that it reasonably determines are not in proper form or for which any corresponding agreement by the Company to Transfer or exchange would, in the reasonable opinion of the Company, be unlawful. Any such determination by the Company shall be final and binding on the Holder of the Warrants, absent manifest error provided that the Company shall provide a Holder with the reasonable opportunity to correct any defects in its assignment forms (without prejudicing such Holder's ability to deliver subsequent assignment forms). The Company further reserves the right to request such information (including, without limitation, information with respect to citizenship, other ownership interests and Affiliates) as the Company may deem appropriate, after consulting with independent outside legal counsel, to determine whether the Transfer or exchange of the Warrants would (i) be unlawful or (ii) involve circumstances that the Board of Directors determines could require the registration or qualification of any class of equity securities of the Company or require the Company to file reports pursuant to any applicable federal or state securities laws including, but not limited to, the Company having, in the aggregate, either (A) 1,900 or more holders of record (as such concept is understood for purposes of Section 12(g) of the Exchange Act) or (B) in the aggregate, more than 450 holders of record (as such concept is understood for purposes of Section 12(g) of the Exchange Act) who do not satisfy the definition of an "accredited investor" within the meaning of Rule 501(a) under Regulation D of the Securities Act (determined, in each case, in Company's reasonable discretion).

8.2.3. Moreover, the Company reserves the absolute right to waive any of the conditions to any particular Transfer or exchange of Warrants or any defects in the assignment form(s) with regard to any particular Transfer or exchange of Warrants. The Company shall provide prompt written notice to the Holder of any such rejection or waiver.

8.2.4. Notwithstanding anything herein to the contrary, it shall be a condition to the Transfer of any Warrant that the transferee of such Warrant shall comply with Section 8.2(a).

8.3. Miscellaneous Procedures for Transfer or Exchanges of Warrants.

8.3.1. All Warrant Certificates issued upon any registration of transfer or exchange of Warrant Certificates shall be the valid obligations of the Company, evidencing the same obligations, and entitled to the same benefits under this Agreement, as the Warrant Certificates surrendered for such registration of transfer or exchange.

8.3.2. No service fee shall be charged to the transferor or transferee for any registration of transfer or exchange of Warrant Certificates; provided, however, that the Company may require payment of a sum sufficient to cover any stamp, registration or other similar transfer tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Warrant Certificates.

8.3.3. The Warrant Agent shall, upon request of the Company from time to time, deliver to the Company such reports of registered ownership of the Warrants and such records of transactions with respect to the Warrants and the shares of Common Stock as the Company may request. The Warrant Agent shall also make available to the Company for inspection by the Company's agents or employees, from time to time as the Company may request, such original books of accounts and records maintained by the Warrant Agent in connection with the issuance and exercise of Warrants hereunder, such inspections to occur at the Corporate Agency Office during normal business hours.

8.3.4. The Warrant Agent shall keep copies of this Agreement and any notices given to Holders hereunder available for inspection by the Holders during normal business hours at the Corporate Agency Office. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Agreement as the Warrant Agent may request.

9. Warrant Holders.

9.1. No Voting or Dividend Rights.

9.1.1. No Holder of a Warrant Certificate evidencing any Warrant shall have or exercise any rights, solely by reason of the ownership or possession of a Warrant or the Warrant Certificate representing the same or otherwise by virtue hereof, as a holder of Common Stock of the Company, including the right to vote, to receive dividends and other distributions as a holder of Common Stock or to receive notice of, or attend, meetings or any other proceedings of the holders of Common Stock.

9.1.2. The consent of any Holder of a Warrant Certificate, solely by reason of the ownership or possession of a Warrant or the Warrant Certificate representing the same or otherwise by virtue hereof, shall not be required with respect to any action or proceeding of the Company.

9.1.3. Except as provided in Section 4, no Holder of a Warrant Certificate, solely by reason of the ownership or possession of a Warrant or the Warrant Certificate representing the same or otherwise by virtue hereof, shall have any right to receive any cash dividends, equity security dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of Common Stock prior to, or for which the relevant record date preceded, the date of the exercise of such Warrant.

9.1.4. No Holder of a Warrant Certificate shall have any right not expressly conferred hereunder or under, or by applicable law with respect to, the Warrant Certificate held by such Holder.

9.2. Rights of Action.

All rights of action against the Company in respect of this Agreement, except rights of action vested in the Warrant Agent, are vested in the Holders of the Warrant Certificates, and any Holder of any Warrant Certificate, without the consent of the Warrant Agent or the Holder of any other Warrant Certificate, may, in such Holder's own behalf and for such Holder's own benefit, enforce and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Holder's right to exercise such Holder's Warrants in the manner provided in this Agreement.

9.3. Treatment of Holders of Warrant Certificates.

Every Holder, by virtue of accepting a Warrant Certificate, consents and agrees with the Company, with the Warrant Agent and with every subsequent holder of such Warrant Certificate that, prior to due presentment of such Warrant Certificate for registration of transfer, the Company and the Warrant Agent may treat the Person in whose name the Warrant Certificate is registered as the owner thereof for all purposes and as the

Person entitled to exercise the rights granted under the Warrants, and neither the Company, the Warrant Agent nor any agent thereof shall be affected by any notice to the contrary.

9.4. Tax Forms.

Each Holder of a Warrant Certificate shall deliver to the Warrant Agent a properly completed and duly executed IRS Form W-9 or the appropriate IRS Form W-8, as applicable.

10. Concerning the Warrant Agent.

10.1. Nature of Duties and Responsibilities Assumed.

The Company hereby appoints the Warrant Agent to act as agent of the Company as set forth in this Agreement. The Warrant Agent hereby accepts the appointment as agent of the Company and agrees to perform that agency upon the terms and conditions set forth in this Agreement and in the Warrant Certificates or as the Company and the Warrant Agent may hereafter agree, by all of which the Company and the Holders of Warrant Certificates, by their acceptance thereof, shall be bound; provided, however, that the terms and conditions contained in the Warrant Certificates are subject to and governed by this Agreement or any other terms and conditions hereafter agreed to by the Company and the Warrant Agent.

The Warrant Agent shall not, by countersigning Warrant Certificates or by any other act hereunder, be deemed to make any representations as to validity or authorization of (i) the Warrants or the Warrant Certificates (except as to its countersignature thereon), (ii) any securities or other property delivered upon exercise of any Warrant, (iii) the accuracy of the computation of the number or kind or amount of equity securities or other securities or other property deliverable upon exercise of any Warrant or (iv) the correctness of any of the representations of the Company made in such certificates that the Warrant Agent receives. The Warrant Agent shall not at any time have any duty to calculate or determine whether any facts exist that may require any adjustments pursuant to Section 5 hereof with respect to the kind and amount of Common Stock or other securities or any property issuable to Holders upon the exercise of Warrants required from time to time. The Warrant Agent shall have no duty or responsibility to determine the accuracy or correctness of such calculation or with respect to the methods employed in making the same. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Stock or of any securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment pursuant to Section 5 hereof, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any Common Stock or stock or other securities or property upon the surrender of any Warrant Certificate for the purpose of exercise or upon any adjustment pursuant to Section 5 hereof or to comply with any of the covenants of the Company contained in Section 5 hereof.

The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith on the belief that any Warrant Certificate or any other documents or any signatures are genuine or properly authorized, (ii) be responsible for any failure on the part of the Company to comply with any of its covenants and obligations contained in this Agreement or in the Warrant Certificates or (iii) be liable for any act or omission in connection with this Agreement except for its own gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

The Warrant Agent is hereby authorized to accept and protected in accepting instructions with respect to the performance of its duties hereunder by Company Order and to apply to any such officer named in such Company Order for instructions (which instructions will be promptly given in writing when requested), and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions in any Company Order.

The Warrant Agent may execute and exercise any of the rights and powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees; provided, however, that reasonable care has been exercised in the selection and in the continued employment of any such attorney, agent or employee. The Warrant Agent shall not be under any obligation or duty to institute, appear in or defend any action, suit or legal proceeding in respect hereof, unless first indemnified to its satisfaction, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without such indemnity. The Warrant Agent shall promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Agreement.

The Company shall perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further acts, instruments and assurances as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

The Warrant Agent shall act solely as agent of the Company hereunder and does not assume any obligation or relationship of agency or trust for or with any of the Holders or any beneficial owners of Warrants. The Warrant Agent shall not be liable except for the failure to perform such duties as are specifically set forth herein or specifically set forth in the Warrant Certificates, and no implied covenants or obligations shall be read into this Agreement against the Warrant Agent whose duties and obligations shall be determined solely by the express provisions hereof or the express provisions of the Warrant Certificates.

10.2. Right to Consult Counsel.

The Warrant Agent may at any time consult with legal counsel satisfactory to it (who may be legal counsel for the Company), and the Warrant Agent shall incur no liability or responsibility to the Company or to any Holder for any action taken, suffered or omitted by it in good faith in accordance with the opinion or advice of such counsel.

10.3. Compensation, Reimbursement and Indemnification.

The Company agrees to pay the Warrant Agent from time to time compensation for all fees and expenses relating to its services hereunder as the Company and the Warrant Agent may agree from time to time and to reimburse the Warrant Agent for reasonable expenses and disbursements, including reasonable counsel fees incurred in connection with the execution and administration of this Agreement. The Company further agrees to indemnify the Warrant Agent for and hold it harmless against any losses, liabilities or reasonable expenses arising out of or in connection with the acceptance and administration of this Agreement, including the reasonable costs, legal fees and expenses of investigating or defending any claim of such liability, except that the Company shall have no liability hereunder to the extent that any such loss, liability or expense results from the Warrant Agent's own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

10.4. Warrant Agent May Hold Company Securities.

The Warrant Agent, any Countersigning Agent and any stockholder, equity holder, director, officer or employee of the Warrant Agent or any Countersigning Agent may buy, sell or deal in any of the warrants or other securities of the Company or its Affiliates, become pecuniarily interested in transactions in which the Company or its Affiliates may be interested, contract with or lend money to the Company or its Affiliates or otherwise act as fully and freely as though it were not the Warrant Agent or the Countersigning Agent, respectively, under this Agreement. Nothing herein shall preclude the Warrant Agent or any Countersigning Agent from acting in any other capacity for the Company or for any other legal entity.

10.5. Resignation and Removal; Appointment of Successor.

10.5.1The Warrant Agent may resign its duties and be discharged from all further duties and liability hereunder (except liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct, fraud or bad faith) after giving 30 days' prior written notice to the Company. The Company may remove the Warrant Agent upon 30 days' written notice, and the Warrant Agent shall thereupon in like manner be discharged from all further duties and liabilities hereunder, except as aforesaid. The Warrant Agent shall, at the expense of the Company, cause notice to be given in accordance with Section 11.1(b) to each Holder of a Warrant Certificate of said notice of resignation or notice of removal, as the case may be. Upon such resignation or removal, the Company shall appoint in writing a new Warrant Agent. If the Company shall fail to make such appointment within a period of 30 calendar days after it has been notified in writing of such resignation by the resigning Warrant Agent or after such removal, then the Holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent. Any new Warrant Agent, whether appointed by the Company or by such a court, shall be an entity doing business under the laws of the United States or any state thereof in good standing, authorized under such laws to act as Warrant Agent, and having a combined capital and surplus of not less than \$25,000,000. The combined capital and surplus of any such new Warrant Agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such Warrant Agent prior to its appointment; provided, however, that such reports are published at least annually pursuant to law or to the requirements of a federal or state supervising or examining authority. After acceptance in writing of such appointment by the new Warrant Agent, it shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as the Warrant Agent, without any further assurance, conveyance, act or deed; but if for any reason it shall be reasonably necessary or expedient to execute and deliver any further assurance, conveyance, act or deed, the same shall be done at the reasonable expense of the Company and shall be legally and validly executed and delivered by the resigning or removed Warrant Agent. Not later than the effective date of any such appointment, the Company shall file notice thereof with the resigning or removed Warrant Agent. Failure to give any notice provided for in this Section 10.5(a), however, or any defect therein, shall not affect the legality or validity of the resignation of the Warrant Agent or the appointment of a new Warrant Agent as the case may be.

10.5.2Any entity into which the Warrant Agent or any new Warrant Agent may be merged, or any entity resulting from any consolidation to which the Warrant Agent or any new Warrant Agent shall be a party, shall be a successor Warrant Agent under this Agreement without any further act; provided, however, that such entity would be eligible for appointment as successor to the Warrant Agent under the provisions of Section 10.5(a). Any such successor Warrant Agent shall promptly cause notice of its succession as Warrant Agent to be given in accordance with Section 11.1(b) to each Holder of a Warrant Certificate at such Holder's last address as shown on the Warrant Register.

10.6. Appointment of Countersigning Agent.

10.6.1The Warrant Agent may appoint a Countersigning Agent or Agents which shall be authorized to act on behalf of the Warrant Agent to countersign Warrant Certificates issued upon original issue and upon exchange, registration of transfer or pursuant to Section 6, and Warrant Certificates so countersigned shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. Wherever reference is made in this Agreement to the countersignature and delivery of Warrant Certificates by the Warrant Agent or to Warrant Certificates countersigned by the Warrant Agent, such reference shall be deemed to include countersignature and delivery on behalf of the Warrant Agent by a Countersigning Agent

and Warrant Certificates countersigned by a Countersigning Agent. Each Countersigning Agent shall be acceptable to the Company and shall at the time of appointment be an entity doing business under the laws of the United States of America or any State thereof in good standing, authorized under such laws to act as Countersigning Agent, and having a combined capital and surplus of not less than \$25,000,000. The combined capital and surplus of any such new Countersigning Agent shall be deemed to be the combined capital and surplus as set forth in the most recent annual report of its condition published by such Countersigning Agent prior to its appointment; provided, however, that such reports are published at least annually pursuant to law or to the requirements of a federal or state supervising or examining authority.

10.6.2 Any entity into which a Countersigning Agent may be merged or any entity resulting from any consolidation to which such Countersigning Agent shall be a party, shall be a successor Countersigning Agent without any further act; provided, however, that such entity would be eligible for appointment as a new Countersigning Agent under the provisions of Section 10.6(a), without the execution or filing of any paper or any further act on the part of the Warrant Agent or the Countersigning Agent. Any such successor Countersigning Agent shall promptly cause notice of its succession as Countersigning Agent to be given in accordance with Section 11.1(b) to each Holder of a Warrant Certificate at such Holder's last address as shown on the Warrant Register.

10.6.3 A Countersigning Agent may resign at any time by giving 30 days' prior written notice thereof to the Warrant Agent and to the Company. The Warrant Agent may at any time terminate the agency of a Countersigning Agent by giving 30 days' prior written notice thereof to such Countersigning Agent and to the Company.

10.6.4 The Warrant Agent agrees to pay to each Countersigning Agent from time to time reasonable compensation for its services under this Section 10.6 and the Warrant Agent shall be entitled to be reimbursed for such payments, subject to the provisions of Section 10.3.

10.6.5 Any Countersigning Agent shall have the same rights and immunities as those of the Warrant Agent set forth in Section 10.1.

11. Notices.

11.1. Notices Generally.

11.1.1 Any request, notice, direction, authorization, consent, waiver, demand or other communication permitted or authorized by this Agreement to be made upon, given or furnished to or filed with the Company or the Warrant Agent by the other party hereto or by any Holder shall be sufficient for every purpose hereunder if in writing (including electronic mail or other form of electronic communication) and emailed or delivered by hand (including by courier service) as follows:

if to the Company, to:

Vroom, Inc.

4700 Mercantile Drive

Fort Worth, Texas 76137

Attn: Thomas Shortt; Anna-Lisa Corrales

Email: tom.shortt@vroom.com; annalisa@vroom.com

if to the Warrant Agent, to:

Equiniti Trust Company, LLC
55 Challenger Rd, Suite 200
Ridgefield Park, NJ 07660
Attn: Reorg Department/Warrant Exercise
Email: reorgwarrants@equiniti.com

or, in either case, such other address as shall have been set forth in a notice delivered in accordance with this Section 11.1(a).

All such communications shall, when so delivered by electronic mail or delivered by hand, be effective when electronically mailed with confirmation of receipt or received by the addressee, respectively.

11.1.2 Where this Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at the address of such Holder as it appears in the Warrant Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made by a method approved by the Warrant Agent as one which would be most reliable under the circumstances for successfully delivering the notice to the addressees shall constitute a sufficient notification for every purpose hereunder.

11.2. Required Notices to Holders. In the event the Company shall:

11.2.1 take any action that would result in an adjustment to the Exercise Price and/or the number of Common Stock issuable upon exercise of a Warrant pursuant to Section 5.1;

11.2.2 consummate any Winding Up; or

11.2.3 consummate any Transaction (each of (a), (b) or (d), an "**Action**");

then, the Company shall cause to be delivered to the Warrant Agent and, unless the Company has made a filing with the SEC, including pursuant to a Current Report on Form 8-K, which filing discloses such Action, the Company shall give to each Holder of a Warrant Certificate, in accordance with Section 11.1(b) hereof, a written notice of such Action, including, (x) in the case of an Action pursuant to Section 11.2(a), the information required under Section 5.1(i)(ii), and (y) in the case of an Action pursuant to Section 11.2(c), the material terms and conditions of such Transaction and the date on which such Transaction is expected to become effective. Such notice shall (i) be given promptly after the effective date of such Action and (ii) in the case of an Action pursuant to Section 11.2(c), be given at least ten (10) Business Days prior to the closing of the relevant Transaction.

If at any time the Company shall cancel any of the Actions for which notice has been given under this Section 11.2 prior to the consummation thereof, the Company shall give each Holder prompt notice of such

cancellation in accordance with Section 11.1(b), unless the Company has many a filing with the SEC, including pursuant to a Current Report on Form 8-K, disclosing the cancellation of such Action(s).

In addition, in the event the Company enters into any definitive agreement with respect to any Transaction, the Company shall promptly cause to be delivered to the Warrant Agent and shall promptly give to each Holder of a Warrant Certificate, in accordance with Section 11.1(b), a notice of the entering into such definitive agreement, unless the Company has many a filing with the SEC, including pursuant to a Current Report on Form 8-K, disclosing the entering into of such definitive agreement.

12. Inspection.

The Warrant Agent shall cause a copy of this Agreement to be available at all reasonable times at the office of the Warrant Agent for inspection by any Holder of any Warrant Certificate. The Warrant Agent may require any such Holder to submit its Warrant Certificate for inspection by the Warrant Agent.

13. Amendments.

13.1.1 Subject to Section 13(c), this Agreement may be amended, modified, waived or supplemented by the Company and the Warrant Agent with the consent of the Required Warrant Holders; provided, however, that any amendment, modification, waiver, or supplement to this Agreement which has a material, disproportionate, and adverse effect on any Holder of a Warrant Certificate (as compared to other Holders and without giving effect to such Holder's specific tax or economic position or any other matters personal to such holder) shall also require the approval of such Holder in order to be effective and enforceable against such Holder.

13.1.2 Notwithstanding the foregoing, subject to Section 13(c), the Company and the Warrant Agent may, without the consent or concurrence of the Holders of the Warrant Certificates, by supplemental agreement or otherwise, amend, modify, waive, or supplement this Agreement for the purpose of making any changes or corrections in this Agreement that (i) are required to cure any ambiguity or to correct or supplement any defective or inconsistent provision or clerical omission or mistake or manifest error herein contained or (ii) add to the covenants and agreements of the Company in this Agreement further covenants and agreements of the Company thereafter to be observed, or surrender any rights or powers reserved to or conferred upon the Company in this Agreement; provided, however, that any amendment, modification, waiver, or supplement to this Agreement which has a material, disproportionate, and adverse effect on any Holder of a Warrant Certificate (as compared to other Holders and without giving effect to such Holder's specific tax or economic position or any other matters personal to such holder) shall also require the approval of such Holder in order to be effective and enforceable against such Holder.

13.1.3 The consent of each Holder of any Warrant Certificate evidencing any Warrants affected thereby shall be required for any supplement or amendment to this Agreement or the Warrants that would: (i) increase the Exercise Price or decrease the number of Common Stock receivable upon exercise of Warrants, in each case other than as provided in Section 5.1; (ii) change the Expiration Time to an earlier date or time; (iii) modify the provisions contained in Section 5.1, Section 5.3 or Section 11.2 (including the definitions used in and material to such Sections) in a manner adverse to the Holders of Warrant Certificates generally with respect to their Warrants; (iv) amend or modify this Section 13 or Section 14 in a manner adverse to the Holders of the Warrant Certificates; or (v) modify the definition of "Required Warrant Holders".

13.1.4The Warrant Agent shall join with the Company in the execution and delivery of any such amendment unless such amendment affects the Warrant Agent's own rights, duties or immunities hereunder, in which case the Warrant Agent may, but shall not be required to, join in such execution and delivery; provided, however, that as a condition precedent to the Warrant Agent's execution of any amendment to this Agreement, the Company shall deliver to the Warrant Agent a certificate from an Appropriate Officer that states that the proposed amendment is in compliance with the terms of this Section 13. Upon execution and delivery of any amendment pursuant to this Section 13, such amendment shall be considered a part of this Agreement for all purposes and every Holder of a Warrant Certificate theretofore or thereafter countersigned and delivered hereunder shall be bound thereby.

13.1.5Promptly after the execution by the Company and the Warrant Agent of any such amendment, unless the Company has made a filing with the SEC, including pursuant to a current report on Form 8-K, which filing discloses such adjustment, the Company shall give notice to the Holders of Warrant Certificates, setting forth in general terms the substance of such amendment, in accordance with the provisions of Section 11.1(b). Any failure of the Company to mail such notice or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

14. Waivers.

The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Warrant Holders as required pursuant to Section 13 and, if Section 13(c) applies, the consent of the Holders of any Warrant Certificates evidencing any Warrants affected thereby.

15. Successor to Company.

So long as Warrants remain outstanding, the Company will not enter into any Non-Surviving Transaction in which Warrants would be outstanding after consummation unless the acquirer (a "**Successor Company**") shall expressly assume by a supplemental agreement, executed and delivered to the Warrant Agent, in form reasonably satisfactory to the Warrant Agent, the due and punctual performance of every covenant of this Agreement on the part of the Company to be performed and observed and shall have provided for exercise rights in accordance with Section 5.1(f). Upon the consummation of such Non-Surviving Transaction, the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Agreement with the same effect as if such Successor Company had been named as the Company herein.

16. Headings.

The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

17. Counterparts.

This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

18. Severability.

The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision hereof will not affect the validity or enforceability of the other provisions hereof; provided, however, that if any provision of this Agreement, as applied to any party or to any circumstance, is adjudged by a court or governmental body not to be enforceable in accordance with its terms, the parties agree that the court or governmental body making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its reduced form, such provision will then be enforceable and will be enforced.

19. No Redemption.

The Warrants shall not be subject to redemption by the Company or any other Person; provided, however, that the Warrants may be acquired by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in accordance with applicable securities laws, so long as such acquisition does not otherwise violate the terms of this Agreement.

20. Persons Benefiting.

This Agreement shall be binding upon and inure to the benefit of the Company, the Warrant Agent and the Holders from time to time. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the Company, the Warrant Agent and the Holders any rights or remedies under or by reason of this Agreement or any part hereof, and all covenants, conditions, stipulations, promises and agreements contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto and of the Holders; provided, however, that the Non-Recourse Parties are express third-party beneficiaries of Section 24. Each Holder, by acceptance of a Warrant Certificate, agrees to all of the terms and provisions of this Agreement applicable thereto.

21. Applicable Law; Venue.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) TO THE EXTENT SUCH RULES OR PROVISIONS WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK. EACH OF THE PARTIES TO THIS AGREEMENT CONSENTS AND AGREES THAT ANY ACTION TO ENFORCE THIS AGREEMENT OR ANY DISPUTE, WHETHER SUCH DISPUTE ARISES IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY NEW YORK STATE COURT SITTING IN NEW YORK CITY. THE PARTIES HERETO CONSENT AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (I) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS OR (II) ANY LITIGATION OR OTHER PROCEEDING COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING TO AN ADDRESS PROVIDED IN WRITING BY THE RECIPIENT OF SUCH MAILING, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE IN THE MANNER HEREIN PROVIDED.

22. Waiver of Jury Trial.

EACH PARTY ACKNOWLEDGES THAT ANY DISPUTE THAT MAY ARISE OUT OF OR RELATING TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE SUCH PARTY HEREBY EXPRESSLY WAIVES ITS RIGHT TO JURY TRIAL OF ANY DISPUTE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL ACTIONS, SUITS AND PROCEEDINGS THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY REPRESENTS THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) SUCH PARTY UNDERSTANDS AND WITH THE ADVICE OF COUNSEL HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND REPRESENTATIONS IN THIS SECTION 22.

23. Entire Agreement.

This Agreement sets forth the entire agreement of the parties hereto as to the subject matter hereof and supersedes all previous agreements among all or some of the parties hereto with respect thereto, whether written, oral or otherwise.

24. Confidentiality.

Except for required disclosures to any regulatory authority or self-regulatory authority with authority to regulate or oversee any aspect of the business of a Holder or its Affiliates, including bank and securities examiners or any other governmental body (provided, disclosures to such regulatory authority or self-regulatory authority shall be made with instructions to maintain confidentiality of the Confidential Information (as defined below)) or as and to the extent as may be required by applicable law, without the prior written consent of the Company, each Holder shall not make, and shall direct its officers, directors, managers, agents, employees and other representatives not to make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise disclose or permit the disclosure of Confidential Information or any of the terms, conditions, or other aspects of this Agreement; provided, however, that each Holder and each of its respective equity owners may disclose Confidential Information (i) to its and their respective attorneys, accountants, consultants, and other advisors or professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company and who are subject to confidentiality obligations to such Holder at least as protective as the terms set forth in this Section 24, provided, such Holder shall be responsible for any breach of such confidentiality provisions by any attorneys, accountants, consultants, or other advisors or professionals of such Holder or such Holder's equity owners or Affiliates that actually receive Confidential Information; (ii) to the extent required under any agreement between such Holder or its respective equity owners and the respective investors, limited partners or other similar Persons of such Holder and its respective equity owners, as applicable, who are subject to obligations of confidentiality and in confidential materials delivered to prospective investors, limited partners or other similar Persons of such Holder and its respective equity owners, as applicable, who are subject to obligations of confidentiality; provided, however, that such Holder will use commercially reasonable best efforts to, and shall direct its respective equity owners, to, enforce their respective rights in connection with a known breach of such confidentiality obligations by any Person receiving Confidential Information pursuant to this clause (ii), and (iii) to a bona fide potential purchaser of Common Stock or Warrants held by such Holder if such bona fide potential purchaser executes a confidentiality agreement with such Holder containing terms at least as protective as the terms set forth in this Section 24 and which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof. Each Holder shall use, and shall direct its officers, directors, managers, agents, employees and other representatives to whom Confidential Information

is disclosed to use, the Confidential Information only in connection with its investment in the Common Stock of the Company and not for any other purpose (including to disadvantage the Company, any equity holder, or any other Holder). As used herein, “**Confidential Information**” means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of the Company and its Subsidiaries and Affiliates (including any of the terms of this Agreement) from whatever source obtained, except for any such information, knowledge, systems or data which at the time of disclosure was (x) in the public domain or otherwise in the possession of the disclosing Person unless such information, knowledge, systems or data was placed into the public domain or became known to such disclosing Person in violation of any non-disclosure obligation, including this Section 24, (y) becomes available to the disclosing Person from a third party on a non-confidential basis, provided that such third party is not known by the disclosing Person to have a contractual, legal or fiduciary obligation of confidentiality with respect thereto, or (z) developed by or on behalf of the disclosing Person without use of or reference to the Confidential Information or breach of this Section 24.

The Warrant Agent and the Company agree that the Warrant Register and the number of Warrants held by each Holder (but not the aggregate number of Warrants outstanding) shall constitute “Confidential Information” and shall not be disclosed by the Warrant Agent or the Company except in compliance with this Section 24, which shall apply to the Warrant Agent and the Company *mutatis mutandis* with respect to such information.

Each Holder, the Warrant Agent and the Company agree that money damages would not be a sufficient remedy for any breach of this Section 24, and that in addition to all other remedies, the non-breaching party shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach. Each Holder, the Warrant Agent and the Company agree not to oppose the granting of such relief and agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

If any Holder is required by applicable law to disclose any Confidential Information (other than to a regulatory or self-regulatory authority), it must, to the extent practicable and permitted by applicable law, first provide notice reasonably in advance to the Company with respect to the content of the proposed disclosure, the reasons that such disclosure is required by law and the time and place that the disclosure will be made. Such Holder shall cooperate, at the Company’s sole cost and expense, with the Company to obtain confidentiality agreements or arrangements with respect to any legally mandated disclosure and in any event shall disclose only such information as is required by applicable law when required to do so.

25. Non-Recourse.

Notwithstanding anything express or implied in this Agreement, each Holder and the Warrant Agent covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any of the former, current or future direct or indirect equityholders, unitholders, directors, officers, employees, agents, Affiliates, members, financing sources, managers, general or limited partners or assignees, in each case, of the Company or any of its subsidiaries (collectively, but not including the Company itself or any of its subsidiaries, the “**Non-Recourse Parties**”), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any of the Non-Recourse Parties, as such, for any obligation or liability of the Company under this Agreement or any documents or instruments delivered in connection herewith for any claim based on, in respect of or by reason of such obligations or liabilities or their creation; provided, however, that nothing in this Section 25 shall relieve or otherwise limit the liability of the Company for any breach or violation of its obligations under this Agreement or such agreements, documents or instruments.

26. Waiver of Certain Damages.

To the extent permitted by applicable law, each of the Company, each Holder and the Warrant Agent agrees not to assert, and hereby waives, any claim against any other party, on any theory of liability, for special,

indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any Warrant or any of the transactions contemplated hereby.

27. Interpretation.

Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, “herein,” “hereto,” “hereof” and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) the word “including” means “including, but not limited to”; (iii) masculine gender shall also include the feminine and neutral genders, and vice versa; and (iv) words importing the singular shall also include the plural, and vice versa. Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation. All references to currency, monetary values, “\$” and dollars set forth herein shall mean United States dollars (USD) and all payments hereunder shall be made in United States dollars. All accounting terms used herein and not expressly defined herein shall have the meaning given to them under GAAP. Except when used together with the word “either” or otherwise for the purpose of identifying mutually exclusive alternatives, the term “or” has the inclusive meaning represented by the phrase “and/or”. The words “will” and “will not” are expressions of command and not merely expressions of future intent or expectation. When used in this Agreement, the word “either” shall be deemed to mean “one or the other”, not “both”. References herein to a party are references to the parties to this Agreement, except to the extent expressly provided otherwise.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

VROOM, INC.

By: /s/ Thomas Shortt

Name: Thomas Shortt
Title: Chief Executive Officer

EQUINITI TRUST COMPANY, LLC, as Warrant Agent

By: /s/ Michael Legregin

Name: Michael Legregin
Title: Senior Vice President,
Corporate Actions Relationship
Management & Operations

[FACE OF WARRANT CERTIFICATE]

VROOM, INC.

WARRANT CERTIFICATE

EVIDENCING

WARRANTS TO PURCHASE COMMON STOCK

[FACE]

No. []

CUSIP No. 92918V117

THE WARRANTS AND SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THE WARRANTS WILL BE ISSUED PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SECTION 1145 OF THE BANKRUPTCY CODE. THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THE WARRANTS MAY BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED WITHOUT REGISTRATION UNDER THE SECURITIES ACT, PROVIDED THAT THE HOLDER IS NOT DEEMED TO BE AN UNDERWRITER AS SUCH TERM IS DEFINED IN SECTION 1145(B) OF THE BANKRUPTCY CODE OR AN AFFILIATE OF THE ISSUER. IF THE HOLDER IS DEEMED TO BE AN UNDERWRITER AS SUCH TERM IS DEFINED IN SECTION 1145(B) OF THE BANKRUPTCY CODE OR AN AFFILIATE OF THE ISSUER, THEN THE SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED UNLESS (1) THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAW OR (2) SUCH DISPOSITION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE SECURITIES ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS AND VROOM, INC., IF IT SO REASONABLY DETERMINES IS NECESSARY, IS IN RECEIPT OF AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO ITS BOARD OF DIRECTORS THAT SUCH TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE SECURITIES ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS.

IN ADDITION, THE WARRANTS AND SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THE WARRANTS MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS SUCH TRANSFER COMPLIES WITH THE PROVISIONS OF THE WARRANT AGREEMENT AND, WITH RESPECT TO THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THE WARRANTS NO REGISTRATION OR TRANSFER OF THE WARRANTS OR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF SUCH WARRANTS MAY BE MADE UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH, INCLUDING, AS APPLICABLE, COMPLIANCE WITH THE WARRANT AGREEMENT, AS APPLICABLE.

THESE LEGENDS MAY NOT BE REMOVED WITHOUT THE WRITTEN CONSENT OF THE COMPANY.

VROOM, INC.

No. []

[, ,] Warrants

CUSIP No. 92918V117

THIS CERTIFIES THAT, for value received, [], or registered assigns, is the registered owner of the number of Warrants to purchase Common Stock of Vroom, Inc., a Delaware corporation (the "**Company**", which term includes any successor thereto under the Warrant Agreement, dated as of January 14, 2025 (as may be supplemented, amended or amended and restated pursuant to the applicable provisions thereof, the "**Warrant Agreement**"), between the Company and Equiniti Trust Company, LLC, as warrant agent (the "**Warrant Agent**", which term includes any successor thereto permitted under the Warrant Agreement)) specified above, and is entitled, subject to and upon compliance with the provisions hereof and of the Warrant Agreement, at such Holder's option, at any time when the Warrants evidenced hereby are exercisable, to purchase from the Company one share of Common Stock of the Company for each Warrant evidenced hereby, at the purchase price of \$60.95 per share of Common Stock (as adjusted from time to time, the "**Exercise Price**"), payable in full at the time of purchase, the number of shares of Common Stock into which and the Exercise Price at which each Warrant shall be exercisable each being subject to adjustment as provided in Section 5 of the Warrant Agreement.

All shares of Common Stock issuable by the Company upon the exercise of Warrants shall, upon such issuance, be duly and validly issued. The Company shall pay any and all taxes (other than income or similar taxes) that may be payable in respect of the issue or delivery of shares of Common Stock on exercise of Warrants. The Company shall not be required, however, to pay any tax or other charge imposed in respect of any transfer involved in the issue and delivery of shares of Common Stock in book-entry form for shares of Common Stock or payment of cash to any Person other than the Holder of the Warrant Certificate evidencing the exercised Warrant, and in case of such transfer or payment, the Warrant Agent and the Company shall not be required to issue or deliver any shares of Common Stock in book-entry form or pay any cash until (a) such tax or charge has been paid or an amount sufficient for the payment thereof has been delivered to the Warrant Agent or to the Company or (b) it has been established to the Company's satisfaction that any such tax or other charge that is or may become due has been paid.

Each Warrant evidenced hereby may be exercised by the Holder hereof at the Exercise Price then in effect on any Business Day from and after the Original Issue Date until the Expiration Time in the Warrant Agreement.

Subject to the provisions hereof and of the Warrant Agreement, the Holder of this Warrant Certificate may exercise all or any whole number of the Warrants evidenced hereby by delivery to the Warrant Agent of the Exercise Form on the reverse hereof, setting forth the number of Warrants being exercised and otherwise properly completed and duly executed by the Holder thereof to the Warrant Agent, and surrendering this Warrant Certificate to the Warrant Agent at its office maintained for such purpose (the "**Corporate Agency Office**"), together with payment in full of the Exercise Price as then in effect for each share of Common Stock receivable upon exercise of each Warrant being submitted for exercise. Any such payment of the Exercise Price is to be by cashier's check payable to the order of the Warrant Agent, or by wire transfer in immediately available funds to such account of the Warrant Agent at such banking institution as the Warrant Agent shall have designated from time to time for such purpose.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless this Warrant Certificate has been countersigned by the Warrant Agent by manual signature of an authorized officer on behalf of the Warrant Agent, this Warrant Certificate shall not be valid for any purpose and no Warrant evidenced hereby shall be exercisable.

IN WITNESS WHEREOF, the Company has caused this certificate to be duly executed.

Dated: [_____] [____], 20[____]

VROOM, INC.

By: _____
[Title]

Countersigned:

EQUINITI TRUST COMPANY, LLC, as
Warrant Agent

By: _____
Authorized Officer

Reverse of Warrant Certificate

VROOM, INC.

WARRANT CERTIFICATE

EVIDENCING

WARRANTS TO PURCHASE COMMON STOCK

The Warrants evidenced hereby are one of a duly authorized issue of Warrants of the Company designated as its Warrants to purchase shares of Common Stock (“*Warrants*”), limited in aggregate number to 364,516 Warrants issued under and in accordance with the Warrant Agreement, to which the Warrant Agreement and all amendments thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Warrant Agent, the Holders of Warrant Certificates and the owners of the Warrants evidenced thereby and of the terms upon which the Warrant Certificates are, and are to be, countersigned and delivered. A copy of the Warrant Agreement shall be available at all reasonable times at the Corporate Agency Office for inspection by the Holder hereof.

The Warrant Agreement provides that, in addition to certain adjustments to the number of shares of Common Stock into which a Warrant is exercisable and the Exercise Price required to be made in certain circumstances, in the case of any Transaction, the Company shall (or, in the case of any such Transaction that is a Non-Surviving Transaction, the Company shall cause the other Person involved in such Transaction to) execute and deliver to the Warrant Agent a written instrument providing that (i) the Warrants evidenced hereby, if then outstanding, will be exercisable thereafter, during the period the Warrants evidenced hereby shall be exercisable as specified herein, only into the Substituted Property that would have been receivable upon such Transaction by a Qualifying Person holding the number of shares of Common Stock that would have been issued upon exercise of such Warrant if such Warrant had been exercised in full immediately prior to such Transaction (upon certain assumptions specified in the Warrant Agreement) and (ii) the rights and obligations of the Company (or, in the case of any such Transaction that is a Non-Surviving Transaction, the other Person involved in such Transaction) and the holders in respect of Substituted Property shall be substantially unchanged to be as nearly equivalent as may be practicable to the rights and obligations of the Company and Holders in respect of shares of Common Stock.

Except as provided in the Warrant Agreement, all outstanding Warrants shall expire, terminate and become void, and all rights of the Holders of Warrant Certificates evidencing such Warrants shall automatically terminate and cease to exist, as of the Expiration Time. The “*Expiration Time*” shall mean the earlier to occur of (x) 5:00 p.m. New York time on January 14, 2030 (the fifth anniversary of the Original Issue Date) or, if not a Business Day, then 5:00 p.m. New York time on the next Business Day thereafter; (y) the date and time of consummation of a Transaction to which clause (ii) of Section 5.1(f) of the Warrant Agreement applies; and (z) the date and time of effectiveness of a Winding Up.

In the event of the exercise of less than all of the Warrants evidenced hereby, a new Warrant Certificate of the same tenor and for the number of Warrants which are not exercised shall be issued by the Company in the name or upon the written order of the Holder of this Warrant Certificate upon the cancellation hereof.

The Warrant Certificates are issuable only in registered form in denominations of whole numbers of Warrants. Upon surrender at the office of the Warrant Agent and payment of the charges specified herein and in the Warrant Agreement, this Warrant Certificate may be exchanged for Warrant Certificates in other authorized denominations or the transfer hereof may be registered in whole or in part in authorized denominations to one or more designated transferees; provided, however, that such other Warrant Certificates issued upon exchange or registration of transfer shall evidence the same aggregate number of Warrants as this Warrant Certificate. The

Company shall cause to be kept at the office of the Warrant Agent the Warrant Register in which, subject to such reasonable regulations as the Warrant Agent may prescribe and such regulations as may be prescribed by law, the Company shall provide for the registration of Warrant Certificates and of transfers or exchanges of Warrant Certificates. No service charge shall be made for any registration of transfer or exchange of Warrant Certificates; provided, however, that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Warrant Certificates.

Prior to due presentment of this Warrant Certificate for registration of transfer, the Company, the Warrant Agent and any agent of the Company or the Warrant Agent may treat the Person in whose name this Warrant Certificate is registered as the owner hereof for all purposes, and neither the Company, the Warrant Agent nor any such agent shall be affected by notice to the contrary.

The Warrant Agreement permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of Warrant Certificates under the Warrant Agreement at any time by the Company and the Warrant Agent with the consent of the Required Warrant Holders.

Until the exercise of any Warrant, subject to the provisions of the Warrant Agreement and except as may be specifically provided for in the Warrant Agreement, (i) no Holder of a Warrant Certificate evidencing any Warrant shall have or exercise any rights by virtue hereof as a holder of shares of Common Stock of the Company, including the right to vote, to receive dividends and other distributions or to receive notice of, or attend meetings of, holders of shares of Common Stock or other equity securities of the Company or any other proceedings of the Company; (ii) the consent of any such Holder shall not be required with respect to any action or proceeding of the Company; (iii) except as provided with respect to a Winding Up of the Company, no such Holder, by reason of the ownership or possession of a Warrant or the Warrant Certificate representing the same, shall have any right to receive any cash dividends, stock or other equity securities dividends, allotments or rights or other distributions (except as specifically provided in the Warrant Agreement), paid, allotted or distributed or distributable to the holders of shares of Common Stock or other equity securities of the Company prior to or for which the relevant record date preceded the date of the exercise of such Warrant; and (iv) no such Holder shall have any right not expressly conferred by the Warrant or Warrant Certificate held by such Holder.

This Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) to the extent such rules or provisions would cause the application of the laws of any jurisdiction other than the State of New York. Any action to enforce this Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement or any dispute, whether such dispute arises in law or equity, arising out of or relating to this Warrant Certificate, each Warrant evidenced thereby and the Warrant Agreement shall be brought exclusively in the United States District Court for the Southern District of New York or any New York State Court sitting in New York City.

The Warrant Agreement provides that each Holder or transferee of any Holder shall provide the Warrant Agent with properly completed and duly executed IRS Form W-9 or the appropriate IRS Form W-8, as applicable.

All terms used in this Warrant Certificate which are defined in the Warrant Agreement shall have the meanings assigned to them in the Warrant Agreement. In the event of any conflict between this Warrant Certificate and the Warrant Agreement, the Warrant Agreement shall control.

Exercise Form

55 Challenger Rd, Suite 200
Ridgefield Park, NJ
Attention: Reorg Department/Warrant Exercise

Email: reorgwarrants@equiniti.com

Re: Vroom, Inc. Warrant Agreement, dated as of January 14, 2025

In accordance with and subject to the terms and conditions hereof and of the Warrant Agreement, the undersigned Holder of this Warrant Certificate hereby irrevocably elects to exercise _____ Warrants evidenced by this Warrant Certificate and represents that for each of the Warrants evidenced hereby being exercised such Holder has:

- tendered the Exercise Price in the aggregate amount of \$ _____ by wire transfer in immediately available funds to such account of the Company at such banking institution as the Company shall have designated from time to time for such purpose.

The Holder shall receive Class A New Common Stock in exchange for the exercise of the Warrants.

The undersigned requests that the shares of Common Stock issuable upon exercise be issued in accordance with Section 3.2(e) of the Warrant Agreement and delivered, together with any other property receivable upon exercise, in such manner as is specified in the instructions set forth below.

If the number of Warrants exercised is less than all of the Warrants evidenced hereby, the undersigned requests that a new Warrant Certificate representing the remaining Warrants evidenced hereby be issued and delivered to the undersigned unless otherwise specified in the instructions below.

[Signature Page Follows]

Dated: _____

Name: _____

(Please Print)

(Insert Social Security or Other Identifying
Number of Holder and Holder Name)

Address: _____

Signature

(Signature must conform in all respects to name of Holder as specified on the face of this Warrant Certificate and must bear a signature guarantee by a bank, trust company or member firm of a U.S. national securities exchange.)

Signature Guaranteed:

Instructions (i) as to denominations and names of shares of Common Stock issuable upon exercise and as to delivery of such securities and any other property issuable upon exercise and (ii) if applicable, as to Warrant Certificates evidencing unexercised Warrants:

Assignment

(Form of Assignment To Be Executed If Holder Desires To Transfer Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

Please insert social security or
other identifying number

(Please print name and address including zip code)

the Warrants represented by the within Warrant Certificate and does hereby irrevocably constitute and appoint _____
Attorney, to transfer said Warrant Certificate on the books of the within-named Company with full power of substitution in the
premises.

Dated: _____

Signature _____

(Signature must conform in all respects to name of Holder
as specified on the face of this Warrant Certificate and
must bear a signature guarantee by a bank, trust company
or member firm of a U.S. national securities exchange.)



Press Release

Vroom Completes Recapitalization Positions the Company for Long-Term Growth

January 14, 2025

NEW YORK--(BUSINESS WIRE)--Vroom, Inc., a leading automotive finance company and a data, AI-powered analytics and digital services platform supporting the automotive industry, today announced that as of January 14, 2025, it has successfully completed its recapitalization of unsecured convertible senior notes and emerged from the prepackaged Chapter 11 case it voluntarily filed in the U.S. Bankruptcy Court for the Southern District of Texas.

- Vroom emerges without any long-term debt at Vroom, Inc., while its subsidiary, UACC, will continue to be obligated to debt related to asset-backed securitizations and their trust-preferred securities. The unsecured convertible senior notes were converted entirely into equity.
- Every 5 shares of the Company's Common Stock issued and outstanding as of immediately prior to the effectiveness of the Bankruptcy emergence issuance adjustment were automatically reclassified into one validly issued, fully-paid and non-assessable new share of Common Stock similar to a 1-for-5 reverse stock split. Following the completion of the transaction there are approximately 5.1 million total shares outstanding.
- Warrants to purchase shares of Common Stock issued in connection with the transaction have an exercise price equal to \$60.95 (\$12.19 prior to the adjustment).
- Trade creditors and all other allowed general unsecured creditors will be paid in full in connection with the Chapter 11 case.

"We move forward with a strengthened balance sheet and are focused on executing our Long-Term Strategic Plan," said Tom Shortt, Chief Executive Officer of Vroom.

Advisors

Porter Hedges LLP served as bankruptcy counsel, Latham & Watkins LLP served as special corporate counsel, Stout Risius Ross, LLC served as financial advisor, and Verita Global served as claims and noticing agent. Wachtell, Lipton, Rosen & Katz and McGuireWoods served as counsel for certain creditors.

About Vroom (Nasdaq: VRM)

Vroom owns and operates United Auto Credit Corporation (UACC), a leading automotive lender serving the independent and franchise dealer market nationwide, and CarStory, a leader in AI-powered analytics and digital services for automotive retail. Prior to January 2024, Vroom also operated an end-to-end ecommerce platform to buy and sell used vehicles. Pursuant to its

previously announced Value Maximization Plan, Vroom discontinued its ecommerce operations and wound down its used vehicle dealership business.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements, including without limitation statements regarding the anticipated prepackaged Chapter 11 case contemplated by the RSA, the recapitalization of debt, their intended benefits, their impact on our ongoing operations and operating subsidiaries, our intention to list New Common Stock on a national securities exchange, our expectations regarding UACC's business, including with respect to its securitizations, our ability to execute on our Long-Term Strategic Plan, and the timing of any of the foregoing. These statements are based on management's current assumptions and are neither promises nor guarantees, but involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Factors that could cause actual results to differ materially from the forward-looking statements in this press release include: we are subject to risks and uncertainties associated with the anticipated prepackaged Chapter 11 case; we may not be able to obtain confirmation of the plan of reorganization contemplated by the RSA; if the RSA is terminated, our ability to confirm and consummate the plan of reorganization contemplated by the RSA could be materially and adversely affected; the RSA is subject to significant conditions and milestones that may be difficult for us to satisfy; trading in our securities is highly speculative and poses substantial risks; if the plan of reorganization contemplated by the RSA becomes effective, the holders of our existing common stock will be diluted; following the effectiveness of the plan of reorganization contemplated by the RSA, certain holders of claims or causes of action relating to the unsecured Notes, if they choose to act together, will have the ability to significantly influence all matters submitted to stockholders of the reorganized company for approval; our business could suffer from a long and protracted restructuring; as a result of the anticipated prepackaged Chapter 11 case, our historical financial information will not be indicative of our future performance; we are subject to claims that will not be discharged in the anticipated prepackaged Chapter 11 case, which could have a material adverse effect on our financial condition and results of operations; the anticipated prepackaged Chapter 11 case has consumed and is expected to continue to consume a substantial portion of the time and attention of our management, which may have an adverse effect on our business and results of operations, and we may experience increased levels of employee attrition; upon our emergence from bankruptcy, the composition of our board of directors may change; the anticipated prepackaged Chapter 11 case raises substantial doubt regarding our ability to continue as a going concern; our indebtedness and liabilities could limit the cash flow available for our operations, expose us to risks that could materially adversely affect our business, financial condition and results of operations and impair our ability to satisfy our debt obligations; we may be unable to satisfy a continued listing rule from Nasdaq, and if we are delisted, we may not be able to satisfy an initial listing rule from Nasdaq or another national securities exchange; our tax attributes and future tax deductions may be reduced or significantly limited as a result of

the consummation of the plan of reorganization contemplated by the RSA and any restructuring or reorganization in connection therewith; there are risks associated with the discontinuance of our ecommerce operations and wind-down of our used vehicle dealership business; we may not generate sufficient liquidity to operate our business; as well as the other important risks and uncertainties identified under the heading “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023, as updated by our Quarterly report on Form 10-Q for the quarter ended September 30, 2024, which is available on our Investor Relations website at ir.vroom.com and on the SEC website at www.sec.gov. All forward-looking statements reflect our beliefs and assumptions only as of the date of this press release. We undertake no obligation to update forward-looking statements to reflect future events or circumstances.

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Source: Vroom, Inc.
