

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ACV Auctions Inc.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

7389
(Primary Standard Industrial
Classification Code Number)

47-2415221
(I.R.S. Employer
Identification Number)

640 Ellicott Street, #321
Buffalo, New York 14203
(512) 632-1200

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

George Chamoun
Chief Executive Officer
ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203
(512) 632-1200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

William Zerella
Chief Financial Officer
ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203
(512) 632-1200

Richard D. Truesdell, Jr.
Pedro J. Bermeo
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

Nicole Brookshire
Alan Hamblton
Shauna Bracher
Trey Reilly
Cooley LLP
55 Hudson Yards
New York, New York 10001
(212) 479-6000

Approximate date of commencement of proposed sale to the public: **As soon as practicable after this registration statement is declared effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price Per Share ⁽²⁾	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee ⁽³⁾
Class A common stock, par value \$0.001 per share	19,032,500	\$20.00	\$380,650,000	\$41,529

(1) Includes 2,482,500 additional shares that the underwriters have the option to purchase from the selling stockholders.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(a) of the Securities Act of 1933, as amended. Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

(3) \$10,910 of this registration fee was previously paid by the Registrant in connection with the filing of its Registration Statement on Form S-1 on February 26, 2021.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant will file a further amendment which specifically states that this Registration Statement will thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement will become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. We and the selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion. Dated March 15, 2021

16,550,000 Shares



CLASS A COMMON STOCK

This is an initial public offering of shares of Class A common stock of ACV Auctions Inc. We are offering 16,550,000 shares of our Class A common stock.

Prior to this offering, there has been no public market for our Class A common stock. It is currently estimated that the initial public offering price for our Class A common stock will be between \$18.00 and \$20.00 per share. We have applied to list our Class A common stock on the The Nasdaq Stock Market under the symbol "ACVA."

Following this offering, we will have two classes of common stock: Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock will be identical, except with respect to voting, conversion and transfer rights. Each share of Class A common stock will be entitled to one vote. Each share of Class B common stock will be entitled to ten votes and may be converted at any time into one share of Class A common stock. All shares of our capital stock outstanding immediately prior to this offering, including all shares held by our executive officers, directors and their respective affiliates, and all shares issuable upon the conversion of our outstanding convertible preferred stock, will be reclassified into shares of our Class B common stock immediately prior to the completion of this offering. Each share of Class B common stock will automatically convert into one share of Class A common stock upon any sale or transfer thereof, subject to certain exceptions. In addition, all shares of Class B common stock will automatically convert into shares of Class A common stock in certain circumstances, including the earlier to occur of (1) the first trading day that the outstanding shares of Class B common stock represent, in the aggregate, less than 5.0% of the then outstanding Class A and Class B common stock or (2) the tenth anniversary of this offering. See "Description of Capital Stock— Class A Common Stock and Class B Common Stock." The holders of our outstanding Class B common stock will hold approximately 98.8% of the voting power of our outstanding capital stock immediately following this offering, assuming no exercise of the underwriters' option to purchase shares of Class A common stock to cover over-allotments.

We are an "emerging growth company" as defined under the federal securities laws and, as such, we have elected to comply with certain reduced reporting requirements for this prospectus and may elect to do so in future filings.

Investing in our Class A common stock involves risks. See "[Risk Factors](#)" beginning on page 19 to read about factors you should consider before buying our Class A common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discounts and commissions ⁽¹⁾	\$	\$
Proceeds, before expenses, to ACV Auctions Inc.	\$	\$
Proceeds, before expenses, to the selling stockholders	\$	\$

(1) See the section titled "Underwriting" for additional information regarding compensation payable to the underwriters.

The selling stockholders identified in this prospectus have granted the underwriters an option for a period of 30 days to purchase up to an additional 2,482,500 shares of Class A common stock at the initial public offering price less the underwriting discounts and commissions. We will not receive any of the proceeds from the sale of any shares of Class A common stock by the selling stockholders upon any such exercise.

The underwriters expect to deliver the shares of Class A common stock to purchasers on _____, 2021.

Goldman Sachs & Co. LLC

J.P. Morgan

Citigroup

BofA Securities

Jefferies

Canaccord Genuity

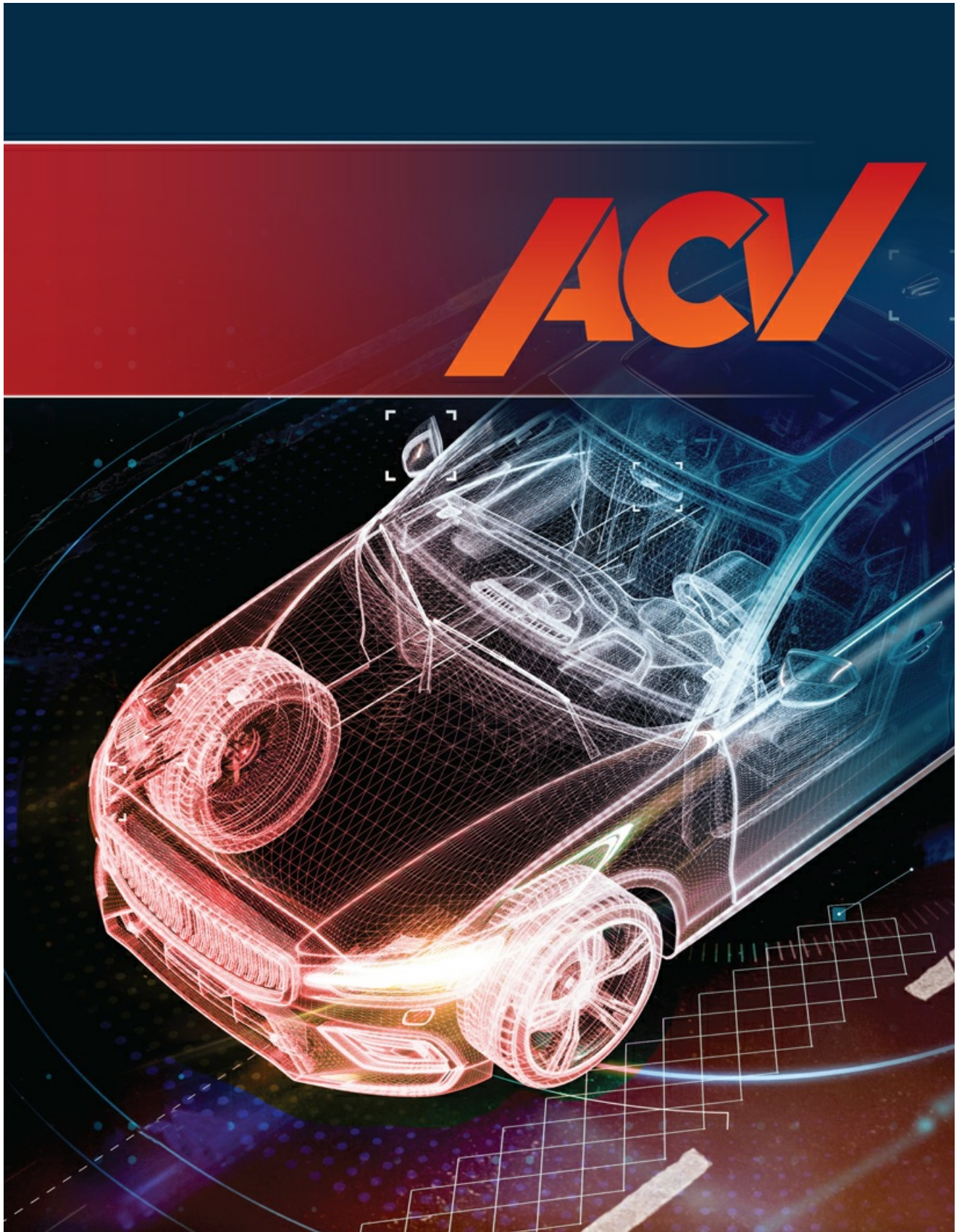
Guggenheim Securities

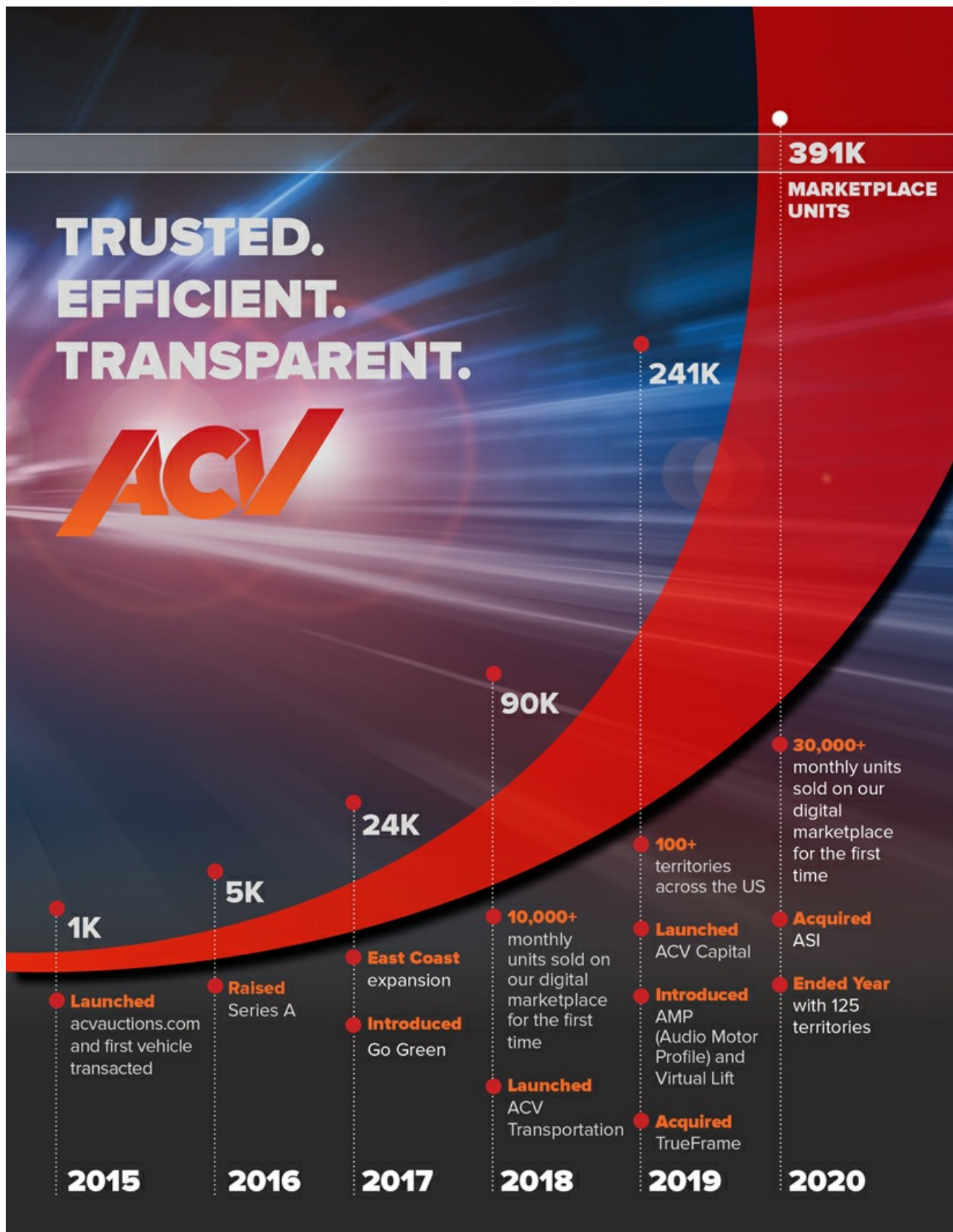
JMP Securities

Piper Sandler

Raymond James

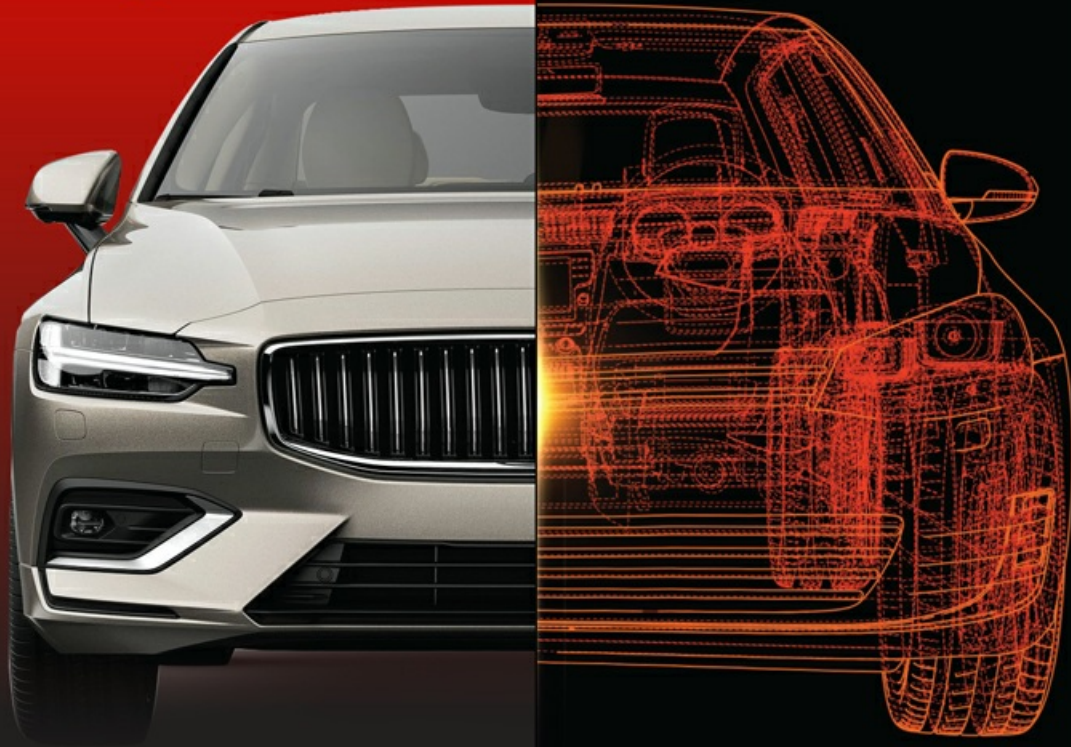
Prospectus dated _____, 2021.





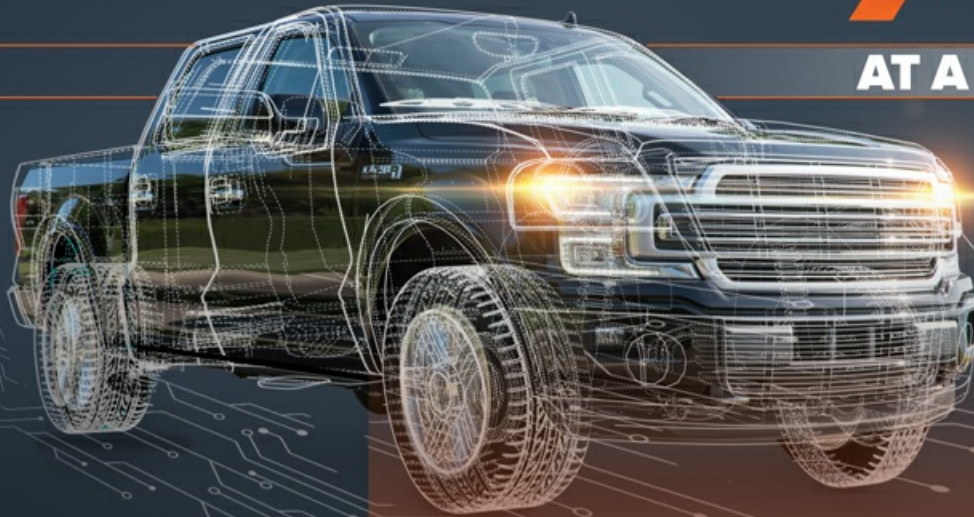
OUR MISSION

To build and enable the **most trusted and efficient digital marketplaces** for buying and selling used vehicles with transparency and comprehensive data that was previously unimaginable





AT A GLANCE



391K+
MARKETPLACE UNITS

16K+
MARKETPLACE PARTICIPANTS

\$3B+
2020 MARKETPLACE GMV

\$208M
2020 REVENUE

95%
2020 YOY REVENUE GROWTH

All data is as of December 31, 2020

1. Our net loss was \$(77.2)M and \$(41.0)M for the years ended December 31, 2019 and 2020, respectively

2. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional information on Marketplace Units, Marketplace Participants and Marketplace GMV

[Table of Contents](#)

TABLE OF CONTENTS

Prospectus

	<u>Page</u>
PROSPECTUS SUMMARY	1
RISK FACTORS	19
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS	51
MARKET, INDUSTRY AND OTHER DATA	53
USE OF PROCEEDS	54
DIVIDEND POLICY	55
CAPITALIZATION	56
DILUTION	58
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS	61
LETTER FROM GEORGE CHAMOUN, CHIEF EXECUTIVE OFFICER	89
BUSINESS	91
MANAGEMENT	119
EXECUTIVE COMPENSATION	128
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS	144
PRINCIPAL AND SELLING STOCKHOLDERS	148
DESCRIPTION OF CAPITAL STOCK	151
SHARES ELIGIBLE FOR FUTURE SALE	158
MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS OF OUR CLASS A COMMON STOCK	161
UNDERWRITING	165
LEGAL MATTERS	173
EXPERTS	173
WHERE YOU CAN FIND ADDITIONAL INFORMATION	173
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS	F-1

Through and including _____, 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Neither we, the selling stockholders nor any of the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. Neither we, the selling stockholders nor any of the underwriters take responsibility for, or can provide any assurance as to the reliability of, any other information that others may give you. We, the selling stockholders and the underwriters are offering to sell, and seeking offers to buy, shares of our Class A common stock only under circumstances and in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our Class A common stock.

For investors outside the United States: neither we, the selling stockholders nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of our Class A common stock and the distribution of this prospectus outside of the United States.

[Table of Contents](#)

“ACV Auctions,” the ACV logo, “True360” and our other registered and common law trade names, trademarks and service marks are the property of ACV Auctions Inc. or our subsidiaries. All other trademarks, trade names and service marks appearing in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus may be referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert their rights thereto.

References in this prospectus to ACV as an “auction” are meant to reflect a potential customer’s understanding of the term since customers may see ACV as an alternative to a traditional auto auction, and are not intended for any other purpose.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our Class A common stock. You should read this entire prospectus carefully, including the sections titled "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business," and our consolidated financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. Unless the context otherwise requires, all references in this prospectus to "ACV Auctions," "ACV," the "company," "we," "our," "us" or similar terms refer to ACV Auctions Inc. and its subsidiaries.

Our Mission

Our mission is to build and enable the most trusted and efficient digital marketplaces for buying and selling used vehicles with transparency and comprehensive data that was previously unimaginable.

Our Company

We provide a vibrant digital marketplace for wholesale vehicle transactions and data services that offer transparent and accurate vehicle information to our customers. Our platform leverages data insights and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. We strive to solve the challenges that the used automotive industry has faced for generations and provide powerful technology-enabled capabilities to our dealers and commercial partners who fulfill a critical role in the automotive ecosystem. Since inception, we have facilitated over 750,000 wholesale transactions between over 21,000 of our dealers and commercial partners. We help dealers source and manage inventory and accurately price their vehicles as well as process payments, transfer titles and manage arbitrations, and finance and transport vehicles. Our platform encompasses:

- **Digital Marketplace.** Connects buyers and sellers of wholesale vehicles in an intuitive and efficient manner. Our core marketplace offering is a 20-minute live auction which facilitates instant transactions of wholesale vehicles, and is accessible across multiple platforms including mobile apps, web, and directly through API integration. We also offer transportation, financing and assurance services to facilitate the entire transaction journey.
- **Data Services.** Offer insights into the condition and value of used vehicles for transactions both on and off our marketplace and help dealers, their end consumers, and commercial partners make more informed decisions to transact with confidence and efficiency.
- **Data and Technology.** Underpins everything we do, and powers our vehicle inspections, comprehensive vehicle intelligence reports, digital marketplace, and operations automation platform.

The U.S. automotive market is a large and complex industry with an estimated 78 million units sold in 2019, generating approximately \$1.7 trillion in sales between retail and wholesale markets. Our primary business focuses on the wholesale market, a key channel for used inventory acquisition and disposition for dealers and commercial consignors. In the wholesale market, there are an estimated 22 million used vehicles that are bought and sold annually, generating over \$230 billion in sales and representing approximately 14% of the total U.S. automotive market and approximately 27% of all units

[Table of Contents](#)

sold. There are approximately 9 million dealer wholesale units that are transacted in the wholesale marketplace annually.¹ We believe there are an additional approximately 5 million dealer wholesale units in the market that are transacted annually outside of established wholesale channels through direct dealer-to-dealer sales. There are also approximately 8 million units in the commercial wholesale market, sourced mainly through off-rental, off-lease, and repossessions.² Traditional auctions play a major role in the wholesale market, which we estimate account for 50% of wholesale transactions, while the remaining transactions are completed directly or through an intermediary outside of a traditional auction.³ Even though many aspects of the automotive industry, such as retail sales and marketing, have adapted to embrace digitization, the wholesale market has been slower to transition and continues to be characterized by significant time wasted, high costs, limited vehicle and condition data, and distrust among buyers and sellers.

We power our marketplace with technology-driven products and value-added services that address the entire transaction journey, ranging from pre-inspection scheduling to post-auction services including title transferability verification, payment processing, financing, and transportation, and facilitate transactions both on and off our marketplace. Our comprehensive suite of services include ACV Transportation, ACV Capital, and our Go Green assurance, which help create a seamless and frictionless buying and selling experience for our customers to further enhance our digital marketplace. We also provide data services to our customers for use outside of our marketplace. Our True360 Reports are used by dealers and commercial partners to provide transparent vehicle information to potential buyers, including dealers as well as consumers. We believe the data and technology services enabled by our platform can bring value to the entire automotive industry and transform both wholesale and retail markets.

Our platform benefits from a virtuous cycle driven by our scaled, digital marketplace and the data and technology we leverage every day. More buyers and sellers engaging on our marketplace drives greater liquidity and greater vehicle selection, which leads to an overall better marketplace experience. This leads to greater scale, driving more vehicle and market data that helps grow our data and technology moat. As we collect more vehicle and market data, we are able to provide greater efficiency to buyers and sellers through more products, which in turn drives greater marketplace supply and scale. For example, our data and technology enables economies of scale that improve our value-added transportation and financing services. As we continue to grow and offer more comprehensive and efficient services, our customers can further benefit from a more streamlined, simple, and consistent experience across the full used vehicle lifecycle. These reinforcing flywheel effects continuously improve our scaled, digital marketplace, and data and technology and data for our customers, resulting in growth for our platform.

Since first going live with our offering in 2015, we have expanded from our first territory in Buffalo, New York to 125 territories, covering a substantial majority of all dealer locations within the continental United States. For the year ended December 31, 2020, 391,466 Marketplace Units were sold on our marketplace, representing a total Marketplace GMV of \$3.3 billion, up 62.1% and 86.2%, respectively, from the same period in 2019. We generate revenue from auction fees charged to customers for transacting on our digital marketplace and we also generate revenue from the sale of value-added and data services such as ACV Transportation, ACV Capital, Go Green assurance, and True360 Reports. Because our definition of Marketplace Units does not include vehicles inspected but not sold on our digital marketplace, Marketplace GMV does not represent revenue earned by us. For the year ended December 31, 2020, we generated revenue of \$208.4 million, up 95.0% from the same period in

¹ Cox Automotive, Industry Insights 2021

² Cox Automotive, Industry Insights 2021

³ Manheim, Used Car Market Report, 2017

2019, a net loss of \$41.0 million and Adjusted EBITDA of \$(30.8) million compared to a net loss of \$77.2 million and Adjusted EBITDA of \$(76.4) million for the same period in 2019. We continue to invest in growth to scale our company responsibly and drive towards profitability. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Operating and Financial Metrics” for additional information on Marketplace Units, Marketplace GMV, and Adjusted EBITDA.

Our Industry

- **The U.S. Automotive Market is Large.** The U.S. automotive market is a large industry with over 78 million units sold, generating approximately \$1.7 trillion in sales between retail and wholesale markets in 2019. The retail market includes sales from dealers to consumers and peer-to-peer transactions. Within the retail market, dealers sold approximately 17 million new vehicles and approximately 29 million used vehicles to consumers in 2019, while peer-to-peer transactions accounted for the sale of approximately 11 million used vehicles. The wholesale market is comprised of dealer wholesale and commercial wholesale, and provides a key channel for used inventory acquisition and disposition for dealers and commercial consignors. There are an estimated 22 million used vehicles that are bought and sold in the wholesale market, generating over \$230 billion in sales and representing approximately 14% of the total U.S. automotive market. See the section titled “Business—Our Industry” for additional information and citation.
- **The Used Automotive Market is Highly Fragmented.** The U.S. used automotive market is highly fragmented with over 50,000 independent and franchise dealers who sell used vehicles. The top 100 used vehicle dealers make up less than 10% of the used automotive market and the largest used vehicle dealer has less than 2% of the market.⁴
- **The Wholesale Auction Market is Complex.** Traditional auctions play a major role in the wholesale market, accounting for an estimated 50% of wholesale transactions, while the remaining transactions are completed directly or through an intermediary outside of a traditional auction.⁵ While most traditional auctions have evolved over time to offer online buying in the form of hybrid auctions, they lack a fully digital experience and remain constrained by the inefficiencies and operational complexities of in-person physical auctions.
- **Online Penetration in the U.S. Wholesale Market is Still in Early Stages.** While dealers are getting increasingly comfortable with buying online, wholesale vehicle online penetration is still in early stages, lagging the consumer automotive market. We expect more dealers to use online solutions to source and manage their inventory in order to maximize cost-efficiency and productivity.
- **The Used Vehicle Market is Growing and Resilient.** U.S. consumers have exhibited resilient vehicle ownership trends, with approximately 290 million registered vehicles on the road projected for 2020, compared to 270 million in 2017. Consumers also show increasing receptivity to purchasing used vehicles. For example, in 2019, 64% of consumers in the market for a vehicle considered buying a used vehicle, up from 59% in 2017.⁶ In addition to enduring consumer demand, the used vehicle industry has shown resilience through recessionary markets and other challenging economic cycles. In fact, from 2007 to 2009, new car transactions decreased by 35%, compared to just 14% for used cars.⁷

⁴ Automotive News, Top 100 Retailers Ranked by Used-Vehicle Sales, April 2019

⁵ Manheim, Used Car Market Report, 2017

⁶ National Independent Automobile Dealers Association, Used Car Industry Report, 2019

⁷ Bureau of Transportation Statistics, New and Used Passenger Car Sales and Leases, December 2019

Our Opportunity

There are an estimated 22 million wholesale units that are transacted in the United States. Based on our average fee per unit sold in 2020 of \$494, we estimate there is a total addressable market opportunity of \$10.7 billion for our core auction marketplace offering, including transportation services. We believe that our digital marketplace addresses the limitations of traditional and hybrid auctions, and enables us to be successful in attracting dealers and commercial partners, including those who have historically not relied on auctions for inventory management.

We have built a robust digital marketplace and data-driven platform that can also address similar dealer challenges across the global wholesale market. While we are currently focused on the U.S. used vehicle market, which represents 36% of the global market,⁸ we believe the international opportunity is at least as large.

As we continue to scale our platform and invest in our business, we expect that our total addressable market will expand with the additional value-added marketplace and data services we provide to dealers and commercial partners. For example, in 2019, there were approximately 29 million vehicles sold by dealers to consumers,⁹ and we believe this represents a significant opportunity for our True360 Reports.

We are actively assessing opportunities to expand internationally and various expansion modes, including organic growth, partnerships and acquisitions. We are initially focused on expansion into Canada, but we plan to assess global expansion opportunities in the future. Based on our international strategy and our research into the Canadian market, we believe we may enter Canada in 2022 or possibly earlier. However, we intend to selectively evaluate potential opportunities for international expansion and cannot make any assurances as to timing. International expansion will come with various corresponding challenges, including new competitors and additional regulatory and legal obligations. International expansion will necessitate that we invest in additional sales, engineering, and administrative personnel, as well as incur additional costs associated with new compliance burdens.

Dealer Challenges

Independent and franchise dealers fulfill a critical role in the automotive industry ecosystem and are the main source of used vehicles for the retail and wholesale markets. Dealers bring ease and convenience to the consumer vehicle buying process, including local availability of vehicles, servicing, and financing. Dealers face a significant number of pain points that oftentimes challenge their ability to run their businesses efficiently and profitably.

⁸ Technavio, Global Used Car Market 2020-2024, Technavio U.S. Used Car Market 2020-2024

⁹ National Independent Automobile Dealers Association, Used Car Industry Report, 2020

Inefficiencies in the Traditional and Hybrid Auction Processes

- Significant time wasted
- Costly process from uncertain appraisals, missed retail sales opportunities, and transport
- Traditional auction services have not been built to enable a fully digital experience

Difficulty Effectively Sourcing and Selling Inventory

- Limited reach to source inventory and difficulty finding the right vehicle
- Turning wholesale inventory quickly and at the right price is challenging

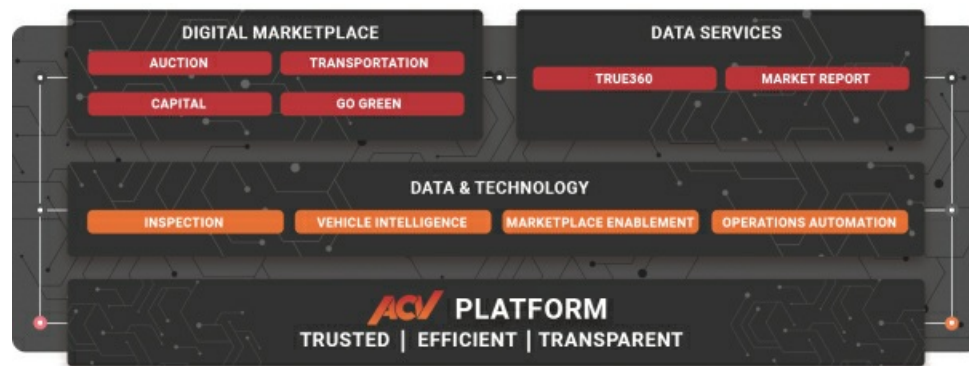
Inability to Fully Assess Vehicle Condition

- Evaluating vehicle condition is complicated due to lack of consistent and unbiased information
- Disputes and mistakes are frequent and can often lead to costly reconditioning or unpredictable arbitration outcomes

Lack of Pricing Guidance

- Every vehicle is unique
- Pricing strategies vary and determining the right price is challenging

Our Platform



Our platform leverages data and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. Our digital marketplace offerings include our core auction offering and value-added services, ACV Transportation, ACV Capital, and our Go Green assurance. Our data services provide insights into the condition and value of used vehicles for transactions both on and off our marketplace. Our data and technology platform includes inspection, vehicle intelligence, marketplace enablement, and operations automation.

Digital Marketplace

- **Auction.** Our core offering is our online auction, which facilitates instant transactions of wholesale vehicles.
- **ACV Transportation.** Through our nationwide network of carrier partners, our technology platform, and dedicated service teams, we move vehicles both locally and long-haul in a cost-efficient and timely manner.
- **ACV Capital.** We offer short-term inventory financing for buyers to purchase vehicles on our digital marketplace. Our financing product includes straightforward pricing, allowing our customers to know their inventory costs upfront.
- **Go Green.** We provide the seller with an assurance against claims related to defects in the vehicle which we did not identify in our condition report and otherwise may have exposed the seller to loss as a result of arbitration with the buyer.

Data Services

- **True360 Report.** We provide proprietary, vehicle-specific intelligence, including cosmetic and structural vehicle assessments that can be integrated into leading vehicle history report providers.
- **ACV Market Report.** We provide transaction data and condition reports for comparable used vehicles, including pricing data from third-party sources.

Data and Technology

- **Inspection**
 - **Condition Report.** Our platform enables thorough, comprehensive inspections and reports that feature approximately 100 details such as cosmetic irregularities including paint quality, as well as structural assessments that identify prior repairs or existing damages.
 - **Virtual Lift.** We offer a high definition look at a vehicle's undercarriage without having to put the vehicle on a lift through Virtual Lift.
 - **AMP.** We allow for the clear recording and immediate sharing of a vehicle's engine sound through our Audio Motor Profile, or AMP, solution.
- **Vehicle Intelligence.** Our platform is fueled by the data we collect through our proprietary technology, inspections, and activity on our marketplace, as well as third-party market data.
- **Marketplace Enablement**
 - **MyACV.** We provide an application that serves as our customers' gateway to our platform through our mobile app, website, or directly leveraging our application programming interfaces, or APIs.
 - **Private Auction.** Our recently launched private auction offering powers private sales for dealer groups, permitting the customization of participants, schedule and duration, bidding, purchasing, and pricing rules.

- **Operations Automation.** Investments in our technology platform have unlocked process workflow optimization and automation for pre- and post-auction services.

Value Proposition to Our Customers

Our competitive advantages are driven by our ability to enable trust, transparency, and confidence in an industry that has historically lacked these qualities. Our aim is to provide a streamlined, simple and consistent experience for our customers so they are able to shift their focus to the upstream parts of their businesses that matter most.

We Provide Unbiased Accuracy and Transparency

- We provide detailed condition information and comprehensive vehicle intelligence that help our customers make the best decisions
- Transparent, third-party objectivity is at our core
- We provide insights into actual vehicle value

We Provide a Quick and Efficient Channel for Sourcing and Selling Inventory

- We believe we provide the fastest means to liquidity at scale for dealers and commercial partners in the wholesale marketplace
- We eliminate the time requirements associated with traditional auctions

We Hold Ourselves Accountable and Responsible

- We are partners to our customers
- Our data and technology help increase buyer confidence and decrease disputes, and bring ease to the arbitration process

We Drive Deeper Insights through Data Aggregation to Value Vehicles Better and Optimize our Marketplace Experience

- We grow our data repository from a multitude of interactions across the entire transaction journey, from pre-inspection scheduling to post-auction services

We Provide a Holistic Solution for Wholesale Vehicle Acquisition and Disposition

- We handle every step of the process
- We reduce the complexity of logistics
- We have financing options that our dealers need

We Supplement Our Digital Platform with Dedicated Account Management and Customer Service

- While we are committed to digitizing the wholesale vehicle auction process, we recognize that some steps still require the human touch to maximize the trust and transparency

- We focus on the highest quality customer service which helps win and keep customers long-term

Why We Win

- **Transparent, Digital Approach Unlocks a More Efficient Market** . Our digital marketplace and comprehensive suite of products and services provides greater access to trusted inventory and speed to liquidity for our dealers and commercial partners. We pioneered what we believe to be the wholesale market's first seller assurance service, Go Green, which provides the seller with an assurance against claims of defects in the vehicle that are not disclosed in our condition report and which otherwise may have exposed the seller to loss as a result of arbitration with the vehicle buyer. We believe our approach instills more confidence for our customers to transact digitally and we enable transactions that may not have happened in the traditional auction process.
- **Industry Leading Digital Marketplace with Significant Scale** . The power of our platform is evidenced through our scale and growth. In 2020, we had 16,215 active Marketplace Participants generating \$3.3 billion Marketplace GMV through our marketplace, which increased by 29.6% and 86.2%, respectively, from the prior year. Our digital marketplace provides sellers with an efficient channel to wholesale their vehicles and access to thousands of dealers nationwide, and provides buyers with a real-time view of extensive vehicle inventory, all at the touch of a button. As of December 31, 2020, our territory managers and VCIs operated across 125 territories. We believe our ability to build vibrant local and regional networks of Marketplace Participants, combined with our nationwide coverage, creates a strong competitive advantage.
- **Comprehensive Suite of Products and Services Deepening Relationships with Our Customers** . We offer a comprehensive suite of products and services that help create a seamless experience and remove the friction and pain points associated with the traditional wholesale process. Through services such as ACV Transportation and ACV Capital, we help our customers manage the entire transaction journey on our platform.
- **Growing Technology and Data Moat** . Our growing repository of data enables transparent, comprehensive, and accurate vehicle information that our customers can trust, powering more efficient and frictionless vehicle transactions both on and off our marketplace. Through the connection of hundreds of discrete data points collected along the entire used vehicle transaction journey, we improve existing products and react dynamically to our customers' needs.
- **Attractive Territory Cohort Economics** . As our territories mature and scale, territory-level economics tend to improve driven by more cost-efficient operations and greater customer affinity for our offerings. As we reach greater scale and higher levels of density in a territory, we typically experience lower inspection cost per vehicle and better overall economics per transaction.
- **Mission-Driven Culture and Proven Team** . We believe the happiness of our teammates leads to successful business operations, and comes from learning and engaging in fulfilling work, which results in ample professional growth opportunities. Additionally, we represent the successful creation of an entrepreneurial ecosystem in our hometown, and our success enables us to attract some of the best talent in the region and across the country. Our

leadership team is composed of seasoned executives with demonstrated track records of scaling businesses across auto, consumer, and marketplace companies.

Our Growth Strategies

- **Increase the Number of Marketplace Participants on Our Platform** . We believe there are significant opportunities to continue to grow the number of dealers and commercial partners on our platform. We intend to attract new dealers and commercial partners with targeted sales and marketing efforts focused on educating potential Marketplace Participants as to the benefits of our offerings.
- **Drive Greater Share of Wholesale Transactions with Existing Customers** . While our industry leading digital marketplace has and will continue to enable us to grow the number of dealers on our platform over time, we believe that we have room to increase the number of wholesale transactions from existing customers. Additionally, in providing inspection services for our commercial partners with True360 Reports we expect a growing number of commercial consignors to utilize our digital marketplace and data services in the future.
- **Introduce New Products** . We plan to leverage our extensive data and technology capabilities to continue to introduce new and complementary products and services. One area of focus is the development of data-powered products that enable our customers to buy and sell used vehicles more effectively in a hyper digital world, and help fuel growth across dealer wholesale, commercial wholesale, and consumer-to-dealer channels. Additionally, we are focused on discovering new products that will continue to power our pricing engine and complement our market reports.
- **Pursue Targeted Acquisitions** . We believe that the complexity of the automotive industry provides substantial opportunity for investment to strengthen our competitive moat.
- **Expand Internationally** . The U.S. used vehicle market represents approximately 36% of the global market. ¹⁰ By leveraging our data and technology platform and our go-to-market expertise developed in the United States, we plan to thoughtfully expand to new countries and offer services that we believe best suit the needs of those markets.

Competition

We mainly compete with large, national offline vehicle auction companies, such as Manheim, a subsidiary of Cox Enterprises, Inc., and KAR Auction Services. The offline vehicle auction market in North America is largely consolidated, with Manheim and KAR Auction Services serving as large players in the market, accounting for an estimated 70% of the wholesale auction market. Both of these traditional offline vehicle auction companies are expanding into the online channel and have launched online auctions in connection with their physical auctions. We also compete with a number of smaller digital auction companies, as well as smaller chains of auctions and independent auctions.

Risk Factors Summary

We have a limited operating history, and have experienced net losses in each annual period since inception. We are not certain whether or when we will achieve or maintain profitability in the future. Our future success depends on our ability to compete successfully and to successfully adapt to

¹⁰ Technavio, Global Used Car Market 2020–2024, U.S. Used Car Market 2020–2024

industry changes over time. For these and other reasons described more fully in the section titled “Risk Factors” below, we may not be able to realize the full benefits of our strengths or be able to successfully execute all or part of our strategy. Accordingly, before investing in our Class A common stock, you should consider our prospects in light of the costs, uncertainties and difficulties frequently encountered by companies in a similar stage of development or industry as ours. Some of the more significant challenges include the following:

- Our recent, rapid growth may not be indicative of our future growth.
- We have a history of operating losses and we may not achieve or maintain profitability in the future.
- We have a limited operating history, and our future results of operations may fluctuate significantly due to a wide range of factors, which makes it difficult to forecast our future results of operations.
- Our ability to expand our products and services may be limited, which could negatively impact our growth rate, revenue and financial performance.
- We participate in a highly competitive industry, and pressure from existing and new companies may adversely affect our business and results of operations.
- Our business is sensitive to changes in the prices of used vehicles.
- Decreases in the supply of used vehicles coming to the wholesale market may impact sales volumes, which may adversely affect our revenue and profitability.
- The loss of sellers could adversely affect our results of operations and financial position, and an inability to increase our sources of vehicle supply could adversely affect our growth rates.
- We may experience seasonal and other fluctuations in our quarterly results of operations, which may not fully reflect the underlying performance of our business.
- Prospective purchasers of vehicles may choose not to shop online, which would prevent us from growing our business.
- Failure to properly and accurately inspect the condition of vehicles sold through our marketplace, or to deal effectively with fraudulent activities on our platform, could harm our business.
- Our operations and employees face risks related to health crises, such as the ongoing COVID-19 pandemic, that could adversely affect our financial condition and operating results.
- General business and economic conditions, and risks related to the larger automotive ecosystem, including customer demand, could reduce auto sales and profitability, which may harm our business.
- We may not properly leverage or make the appropriate investment in technology advancements, which could result in the loss of any sustainable competitive advantage in products, services and processes.
- We rely on third-party technology and information systems to complete critical business functions and such reliance may negatively impact our business.
- A significant disruption in service of, or other performance or reliability issues with, our platform could damage our reputation and result in a loss of customers, which could harm our brand or our business.

- Failure to adequately obtain, maintain, protect and enforce our intellectual property rights, including our technology and confidential information, could harm our business.
- We operate in highly regulated industries and either are or may be subject to a wide range of federal, state and local laws and regulations and our failure to comply with these laws and regulations may force us to change our operations or harm our business.
- We previously identified a material weakness in our internal control over financial reporting, and if we are unable to achieve and maintain effective internal control over financial reporting, the accuracy and timing of our financial reporting may be adversely affected.

Corporate Information

We were incorporated in Delaware in December 2014. Our principal executive offices are located at 640 Ellicott Street, #321, Buffalo, New York 14203, and our telephone number is (800) 553-4070. Our website address is www.acvauctions.com. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

Implications of Being an Emerging Growth Company

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. We may take advantage of certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting audited by our independent registered public accounting firm under Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and any golden parachute payments. We may take advantage of these exemptions for up to five years or until we are no longer an emerging growth company, whichever is earlier. In addition, the JOBS Act provides that an “emerging growth company” can delay adopting new or revised accounting standards until those standards apply to private companies. We have elected to use the extended transition period under the JOBS Act. Accordingly, our financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards.

THE OFFERING

Class A common stock offered by us	16,550,000 shares
Option to purchase additional shares of Class A common stock offered by the selling stockholders	2,482,500 shares
Class A common stock to be outstanding after this offering	16,550,000 shares (19,032,500 shares if the option to purchase additional shares from the selling stockholders is exercised in full)
Class B common stock to be outstanding after this offering	137,601,063 shares (135,118,563 shares if the option to purchase additional shares from the selling stockholders is exercised in full)
Total Class A common stock and Class B common stock to be outstanding after this offering	154,151,063 shares
Use of proceeds	<p>We estimate that our net proceeds from the sale of our Class A common stock that we are offering will be approximately \$290.0 million, assuming an initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of shares of our Class A common stock by the selling stockholders.</p> <p>The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our Class A common stock and facilitate our future access to the capital markets. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to us from this offering. However, we currently intend to use the net proceeds we receive from this offering for general corporate purposes, including working capital, operating expenses and capital expenditures. We may also use a portion of the net proceeds to acquire complementary businesses, products, services or technologies. However, we do not have agreements or commitments to enter into any acquisitions at this time. See the section titled "Use of Proceeds" for additional information.</p>

[Table of Contents](#)

Voting rights

Following this offering, we will have two classes of common stock: Class A common stock and Class B common stock. Class A common stock will be entitled to one vote per share and Class B common stock will be entitled to ten votes per share. Each share of Class B common stock will automatically convert into one share of Class A common stock upon any sale or transfer thereof, subject to certain exceptions. In addition, all shares of Class B common stock will automatically convert into shares of Class A common stock in certain circumstances, including on the earlier to occur of (1) the first trading day that the outstanding shares of Class B common stock represent, in the aggregate, less than 5.0% of the then outstanding Class A and Class B common stock or (2) the tenth anniversary of this offering.

Holders of Class A common stock and Class B common stock will generally vote together as a single class, unless otherwise required by law or our amended and restated certificate of incorporation that will be in effect upon the completion of this offering. The holders of our outstanding Class B common stock will hold approximately 98.8% of the voting power of our outstanding capital stock following this offering (or 98.6% of the voting power of our outstanding capital stock following this offering if the underwriters exercise their option in full to purchase additional shares of Class A common stock from the selling stockholders to cover over-allotments) and will have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of our directors and the approval of any change in control transaction. See the sections titled "Principal and Selling Stockholders" and "Description of Capital Stock" for additional information.

Selling stockholders; concentration of ownership

The selling stockholders identified in this prospectus have granted the underwriters an option to purchase 2,482,500 shares of Class A common stock. Following this offering, the holders of our outstanding Class B common stock will hold approximately 89.3% of our outstanding capital stock and control approximately 98.8% of the voting power of our outstanding capital stock (or 87.7% of our outstanding capital stock and 98.6% of the voting power of the total voting power of our outstanding capital stock following this offering if

[Table of Contents](#)

	<p>the underwriters exercise their option in full to purchase additional shares of Class A common stock from the selling stockholders to cover over-allotments), and our executive officers, directors and stockholders holding more than 5% of our outstanding shares, together with their affiliates, will hold, in the aggregate, approximately 51.9% of our outstanding capital stock and control approximately 57.4% of the voting power of our outstanding capital stock (or 51.9% of our outstanding capital stock and 58.3% of the voting power of the total voting power of our outstanding capital stock following this offering if the underwriters exercise their option in full to purchase additional shares of Class A common stock from the selling stockholders to cover over-allotments), without giving effect to any purchases that these holders may make through our reserved share program or otherwise in this offering. See the section titled “Principal and Selling Stockholders” for additional information.</p>
Reserved share program	<p>At our request, the underwriters have reserved for sale, at the initial public offering price per share, up to 5% of the shares of Class A common stock offered by this prospectus to certain individuals, including our directors, employees and certain friends and family of ACV identified by our directors and management, through a reserved share program. Any shares purchased in the reserved share program will not be subject to a lock-up restriction, except in the case of shares purchased by any director or executive officer. The number of shares of Class A common stock available for sale to the general public will be reduced by the number of reserved shares sold to these individuals. Any reserved shares not purchased by these individuals will be offered by the underwriters to the general public on the same basis as the other shares of Class A common stock offered under this prospectus. See the section titled “Underwriting.”</p>
Risk factors	<p>You should carefully read the section titled “Risk Factors” beginning on page 19 and the other information included in this prospectus for a discussion of facts that you should consider before deciding to invest in shares of our Class A common stock.</p>
Proposed Nasdaq Stock Market trading symbol	“ACVA”

[Table of Contents](#)

The number of shares of Class A common stock and Class B common stock that will be outstanding after this offering is based on no shares of Class A common stock outstanding as of December 31, 2020 and 137,601,063 shares of Class B common stock outstanding as of December 31, 2020, and excludes:

- 9,933,348 shares of Class B common stock issuable on the exercise of stock options outstanding as of December 31, 2020 under our 2015 Long-Term Incentive Plan, or 2015 Plan, with a weighted-average exercise price of \$2.16 per share;
- 633,700 shares of Class B common stock issuable on the exercise of stock options granted subsequent to December 31, 2020 under our 2015 Plan, with a weighted-average exercise price of \$8.10 per share;
- 250,000 shares of Class B common stock issuable upon the vesting and settlement of restricted stock units, or RSUs, outstanding as of December 31, 2020 under our 2015 Plan;
- 1,896,233 shares of Class B common stock issuable upon the vesting and settlement of RSUs granted subsequent to December 31, 2020 under our 2015 Plan;
- 13,600,000 shares of Class A common stock reserved for future issuance under our 2021 Equity Incentive Plan, or 2021 Plan, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled “Executive Compensation—Employee Benefit Plans”; and
- 2,800,000 shares of Class A common stock reserved for issuance under our 2021 Employee Stock Purchase Plan, or ESPP, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled “Executive Compensation—Employee Benefit Plans.”

In addition, unless we specifically state otherwise, the information in this prospectus assumes:

- a 1-for-2 reverse stock split of our common stock and convertible preferred stock effected on March 12, 2021;
- the filing of our amended and restated certificate of incorporation and the effectiveness of our amended and restated bylaws, each of which will occur immediately prior to the completion of this offering;
- the reclassification of our outstanding common stock into an equal number of shares of our Class B common stock and the authorization of our Class A common stock, each of which will occur immediately prior to the completion of this offering;
- the automatic conversion of all outstanding shares of convertible preferred stock into an aggregate of 115,269,221 shares of Class B common stock, which will occur immediately prior to the completion of this offering;
- no exercise of the underwriters’ option to purchase up to an additional 2,482,500 shares of Class A common stock from the selling stockholders in this offering; and
- no exercise of the outstanding stock options or settlement of the outstanding RSUs described above.

SUMMARY CONSOLIDATED FINANCIAL AND OTHER DATA

The summary consolidated statements of operations data for the years ended December 31, 2019 and 2020 and the summary consolidated balance sheet data as of December 31, 2020 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated statement of operations data for the year ended December 31, 2018 has been derived from our audited financial statements not included in this prospectus. You should read the consolidated financial data set forth below in conjunction with our audited consolidated financial statements and the accompanying notes and the information in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results to be expected for any period in the future.

	Year Ended December 31,		
	2018	2019	2020
(in thousands, except share and per share data)			
Consolidated Statements of Operations Data:			
Revenue:			
Marketplace and service revenue	\$ 29,247	\$ 87,750	\$ 173,120
Customer assurance revenue	6,289	19,097	35,237
Total revenue	35,536	106,847	208,357
Operating expenses:			
Marketplace and service cost of revenue (excluding depreciation and amortization) (1)	15,840	65,962	83,553
Customer assurance cost of revenue (excluding depreciation and amortization)	5,680	16,816	29,496
Operations and technology (1)	15,613	39,626	64,998
Selling, general and administrative (1)	34,257	62,439	64,882
Depreciation and amortization	271	1,286	6,075
Total operating expenses	71,661	186,129	249,004
Loss from operations	(36,125)	(79,282)	(40,647)
Other income (expense):			
Interest income	362	2,093	748
Interest expense	—	—	(633)
Total other income (expense)	362	2,093	115
Net loss before income taxes	(35,763)	(77,189)	(40,532)
Provision for income taxes	11	27	489
Net loss	(35,774)	(77,216)	(41,021)
Net per share, basic and diluted (2)	\$ (2.05)	\$ (4.20)	\$ (1.90)
Weighted-average shares used to compute net loss per share, basic and diluted (2)	17,472,255	18,370,224	21,596,379
Pro forma net loss per share, basic and diluted (unaudited) (3)			\$ (0.31)
Weighted-average shares used to compute pro forma net loss per share, basic and diluted (unaudited)(3)			133,749,588

(1) Includes stock-based compensation expense as follows:

[Table of Contents](#)

	Year Ended December 31,		
	2018	2019	2020
	(in thousands)		
Marketplace and service cost of revenue (excluding depreciation and amortization)	\$ 6	\$ 11	\$ 56
Operations and technology	63	172	864
Selling, general and administrative	7,150	815	4,785
Stock-based compensation expense	<u>\$ 7,219</u>	<u>\$ 998</u>	<u>\$ 5,705</u>

- (2) See Note 1 to our consolidated financial statements included elsewhere in this prospectus for an explanation of the calculations of our basic and diluted loss per share attributable to common stockholders and the weighted-average number of shares used in the computation of the per share amounts.
- (3) The unaudited pro forma weighted-average number of shares outstanding used to determine (unaudited) pro forma basic and diluted net loss per share attributable to common stockholders for the year ended December 31, 2020 was 133,749,588 and included the impact of the automatic conversion of all outstanding shares of convertible preferred stock to shares of Class B common stock at a 1-for-1 ratio.

	As of December 31, 2020		
	Actual	Pro Forma (Unaudited)(1)	Pro Forma As Adjusted (Unaudited)(2)(3)
	(in thousands)		
Consolidated Balance Sheet Data:			
Cash and cash equivalents	\$ 233,725	\$ 233,725	\$ 523,736
Working capital(4)	187,704	187,704	477,715
Total assets	404,550	404,550	694,561
Total liabilities	177,910	177,910	177,910
Convertible preferred stock	366,332	—	—
Total stockholders' (deficit) equity	(139,692)	226,640	516,651

- (1) The unaudited pro forma consolidated balance sheet data gives effect to (a) the reclassification of our outstanding common stock into an equal number of shares of Class B common stock, (b) the automatic conversion of all outstanding shares of convertible preferred stock into an aggregate of 115,269,221 shares of Class B common stock and (c) the filing and effectiveness of our amended and restated certificate of incorporation, each of which will occur immediately prior to the completion of this offering.
- (2) The unaudited pro forma as adjusted consolidated balance sheet data gives effect to (a) the items described in footnote (1) above and (b) our receipt of estimated net proceeds from the sale of 16,550,000 shares of Class A common stock that we are offering at an assumed initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.
- (3) A \$1.00 increase (decrease) in the assumed initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) each of cash and cash equivalents, working capital, total assets, and total stockholders' (deficit) equity by \$15.5 million, assuming that the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of Class A common stock offered by us would increase (decrease) each of cash and cash equivalents, working capital, total assets and total stockholders' (deficit) equity by \$17.8 million, assuming the assumed initial public offering price of \$19.00 per share of Class A common stock remains the same, and after deducting the estimated underwriting discounts and commissions.
- (4) Working capital is defined as current assets less current liabilities.

[Table of Contents](#)

Key Operating and Financial Metrics

	Year Ended December 31,		
	2018	2019	2020
Marketplace Units(1)	90,128	241,477	391,466
Marketplace GMV(1)	\$ 635 million	\$ 1.8 billion	\$ 3.3 billion
Marketplace Participants(1)	5,882	12,514	16,215
Adjusted EBITDA(1) (2)	\$ (28.6) million	\$ (76.4) million	\$ (30.8) million

(1) See the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Operating and Financial Metrics" included elsewhere in this prospectus for our definitions of these metrics.

(2) We calculate Adjusted EBITDA as net (loss) income, adjusted to exclude: (a) depreciation and amortization; (b) stock-based compensation expense; (c) interest (income) expense; (d) provision for income taxes; and (e) other (income) expense, net. Adjusted EBITDA is a financial measure which is not calculated in accordance with generally accepted accounting principles in the United States. See section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations —Non-GAAP Financial Measures" for more information, including the limitations of such measure and a reconciliation of Adjusted EBITDA to net loss for the periods presented.

RISK FACTORS

This offering and an investment in our Class A common stock involve a high degree of risk. You should carefully consider the risks described below, together with the financial and other information contained in this prospectus, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, before you decide to purchase shares of our Class A common stock. If any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial actually occurs, our business, financial condition, results of operations and prospects could be materially and adversely affected. Unless otherwise indicated, references in these risk factors to our business being harmed will include harm to our business, reputation, brand, financial condition, results of operations, and prospects. As a result, the trading price of our Class A common stock could decline and you could lose all or part of your investment in our Class A common stock.

Risks Related to Our Growth and Capital Requirements

Our recent, rapid growth may not be indicative of our future growth.

Our revenue was \$106.8 million and \$208.4 million for the years ended December 31, 2019 and 2020, respectively. You should not rely on the revenue growth of any prior period as an indication of our future performance. Even if our revenue continues to increase, we expect that our revenue growth rate will decline in the future as a result of a variety of factors, including the maturation of our business, increased competition, changes to technology, a decrease in the growth of our overall market or our failure, for any reason, to continue to take advantage of growth opportunities. Overall growth of our revenue depends on a number of additional factors, including our ability to:

- increase the number of customers transacting on or through our platform, as well as increase the use of our products and services from new or existing customers;
- further enhance the quality of our platform and value-added products and services, introduce high quality new products and services on our platform, and develop technology related thereto;
- price our products and services effectively so that we are able to attract new customers and expand transactions through our existing customers;
- effectively grow the size of our workforce to address demand for our products and services over time;
- successfully identify and acquire or invest in businesses, products or technologies that we believe could complement or expand our platform;
- successfully achieve our marketing goals and increase awareness of our brand; and
- successfully compete with our competitors.

We may not successfully accomplish any of these objectives, and as a result, it is difficult for us to forecast our future results of operations. If the assumptions that we use to plan our business are incorrect or change in reaction to changes in our market, or if we are unable to maintain consistent revenue or revenue growth, our stock price could be volatile, and it may be difficult to achieve and maintain profitability.

Our business has grown rapidly as new customers have begun to trust and use our online platform and value-added products and services as a new way to buy and sell their vehicles to other dealers. However, our business is relatively new and has operated at substantial scale for only a

Table of Contents

limited period of time. Given this limited history, it is difficult to predict whether we will be able to maintain or grow our business. Our historical revenue or revenue growth should not be considered indicative of our future performance. We have encountered, and will continue to encounter, risks and difficulties frequently experienced by growing companies in rapidly changing industries, including difficulties in our ability to achieve market acceptance of our platform, products and services and attract customers, as well as increasing competition and increasing expenses as we continue to grow our business. We also expect that our business will evolve in ways that may be difficult to predict. For example, over time our investments that are intended to drive new customer traffic to our platform may be less productive than expected. In the event of this or any other adverse developments, our continued success will depend on our ability to successfully adjust our strategy to meet changing market dynamics. If we are unable to do so, our business may be harmed.

In addition, as a result of the ongoing COVID-19 pandemic, our operating results in 2020 may not be indicative of our future performance. Beginning in March 2020, our customers' operations were initially significantly disrupted in certain jurisdictions, causing a temporary significant decrease in activity on our online marketplace. Our operating results were initially negatively impacted by the COVID-19 pandemic at the end of the first quarter and the beginning of the second quarter of 2020. This initial negative disruption began to subside in May 2020 as the demand for used vehicles on a national level began to outpace supply, leading to higher used vehicle valuations and a higher percentage of successful auctions, and as dealers and commercial partners looked to an online marketplace to transact remotely. These market and industry trends combined with the strength of our service offerings drove favorable operating results. You should not rely on our financial performance for any period of 2020 as an indication of our future performance. Moreover, we cannot predict how the COVID-19 pandemic will continue to develop, whether and to what extent government regulations or other restrictions may impact our operations or those of our customers, or whether or to what extent the COVID-19 pandemic or the effects thereof may have longer term unanticipated impacts on our business.

Our recent, rapid growth has placed and may continue to place significant demands on our management and our operational and financial resources. We have experienced significant growth in the number of customers on our platform as well as the amount of data that we analyze. We have hired and expect to continue hiring additional personnel to support our rapid growth. Our organizational structure is becoming more complex as we add staff, and we will need to continue to improve our operational, financial and management controls as well as our reporting systems and procedures. This will require significant capital expenditures and the allocation of valuable management resources to grow and adapt in these areas without undermining our corporate culture of teamwork. If we cannot manage our growth effectively to maintain the quality and efficiency of our customers' experience, our business may be harmed.

We have a history of operating losses and we may not achieve or maintain profitability in the future.

We have experienced net losses in each annual period since inception. We generated a net loss of \$77.2 million and \$41.0 million for the years ended December 31, 2019 and 2020, respectively. As of December 31, 2020, we had an accumulated deficit of \$167.0 million. While we have experienced significant revenue growth in recent periods, we are not certain whether or when we will obtain a high enough volume of revenue to sustain or increase our growth or achieve or maintain profitability in the future. We also expect our costs and expenses to increase in future periods, which could negatively affect our future results of operations if our revenue does not increase sufficiently to cover increased costs. In particular, we intend to continue to expend substantial financial and other resources on:

- our online platform, including systems architecture, scalability, availability, performance and security;

Table of Contents

- the development of new products and services, as well as investments in further optimizing our existing products and services;
- our sales organization, operations teams, and customer support teams to engage our existing and prospective customers, increase usage by existing customers, drive adoption of our products, expand use cases and integrations and support international expansion;
- acquisitions or strategic investments;
- expansion into new territories, including in markets outside of the United States;
- increased headcount; and
- general administration, including increased legal and accounting expenses associated with being a public company.

Our efforts to grow our business may not be successful or may be costlier than we expect, or the rate of our growth in revenue may be slower than we expect, and we may not be able to increase our revenue enough to offset our increased operating expenses. We may incur significant losses in the future for a number of reasons, including the other risks described herein, and unforeseen expenses, difficulties, complications or delays, and other unknown events. If we are unable to achieve and sustain profitability, the value of our business and Class A common stock may significantly decrease.

We have a limited operating history, and our future results of operations may fluctuate significantly due to a wide range of factors, which makes it difficult to forecast our future results of operations.

We commenced operations in 2014. As a result of our limited operating history, our ability to accurately forecast our future results of operations is limited and subject to a number of uncertainties, including our ability to plan for and model future growth. Our revenue and results of operations have historically varied from period to period, and we expect that they will continue to do so; therefore, our historical revenue growth should not be considered indicative of our future performance. Further, in future periods, our revenue growth could slow or our revenue could decline for a number of reasons, many of which are outside of our control, including:

- the level of demand for our online marketplace and our value-added products and services, including fluctuation in our business due to the impact of COVID-19;
- our ability to retain existing customers, as well as our ability to increase sales of our full platform of products and services to existing customers;
- growth rates and variations in the revenue mix of our marketplace and inspection products and services offerings;
- the timing and growth of our business, in particular through our hiring of new employees and expansion into additional markets;
- changes in our business model;
- the timing of our adoption of new or revised accounting pronouncements applicable to public companies and the impact on our results of operations;
- the introduction of new products and services and enhancement of existing products and services by existing competitors or new entrants into our market, and changes in pricing offered by us or our competitors;
- network outages, security breaches, technical difficulties or interruptions with our platform;
- changes in the growth rate of the markets in which we compete;

Table of Contents

- changes in customers' budgets;
- seasonal variations related to sales and marketing and other activities;
- our ability to control costs, including our operating expenses;
- our ability to recruit, train and retain our inspectors;
- the perception of our business and brand among our customer base;
- unforeseen litigation and actual or alleged intellectual property infringement, misappropriation or other violation;
- fluctuations in our effective tax rate; and
- general economic and political conditions, as well as economic conditions specifically affecting the automotive industry.

Any one of these or other factors discussed elsewhere in this prospectus or the cumulative effect of some of these factors may result in fluctuations in our revenue and operating results, meaning that quarter-to-quarter comparisons of our revenue, results of operations and cash flows may not necessarily be indicative of our future performance and may cause us to miss our guidance and analyst expectations and may cause the price of our Class A common stock to decline.

We have also encountered, and will continue to encounter, other risks and uncertainties frequently experienced by growing companies in rapidly changing industries, such as the risks and uncertainties described in this prospectus. If our assumptions regarding these risks and uncertainties and our future revenue growth are incorrect or change, including as a result of changes driven by developments related to the ongoing COVID-19 pandemic, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations, and our business may be harmed.

We may require additional debt and equity capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances. If such capital is not available to us, our business may be harmed.

We may require additional capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances, including to develop new products or services or further improve existing products and services, expand our geographical footprint, enhance our operating infrastructure, increase our marketing and sales expenditures to improve our brand awareness, and acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them, on terms that are acceptable to us, or at all. Moreover, any debt financing that we secure in the future could involve restrictive covenants, which may make it more difficult for us to operate our business, obtain additional capital and to pursue business opportunities. Volatility in the credit markets may also have an adverse effect on our ability to obtain debt financing. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our Class A common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, we may be forced to obtain financing on undesirable terms or our ability to continue to pursue our business objectives and to respond to business opportunities, challenges or unforeseen circumstances could be significantly limited, and our business, results of operations and financial condition may be harmed.

Risks Related to Our Business, Our Brand and Our Industry

Our ability to expand our products and services may be limited, which could negatively impact our growth rate, revenue and financial performance.

Currently, our platform consists of our digital marketplace, including our auction and value-added services, ACV Capital and ACV Transportation, Go Green assurance and data services, including our True360 and ACV Market reports, and data and technology, including our inspection services. If we introduce new products and services or expand existing offerings on our platform, we may incur losses or otherwise fail to enter these markets successfully. Our expansion into these markets may place us in competitive and regulatory environments with which we are unfamiliar and involve various risks, including the need to invest significant resources to familiarize ourselves with such frameworks and the possibility that returns on such investments may not be achieved for several years, if at all. In attempting to establish new offerings, we expect to incur significant expenses and face various other challenges, such as expanding our engineering team, sales team and management personnel to cover these markets and complying with complicated regulations that apply to these markets. In addition, we may not successfully demonstrate the value of these value-added products and services to customers, and failure to do so would compromise our ability to successfully expand into these additional revenue streams. Any of these risks, if realized, may harm our business, results of operations and financial condition.

We participate in a highly competitive industry, and pressure from existing and new companies may adversely affect our business and results of operations.

We mainly compete with large, national offline vehicle auction companies, such as Manheim, a subsidiary of Cox Enterprises, Inc., and KAR Auction Services. The offline vehicle auction market in North America is largely consolidated, with Manheim and KAR Auction Services serving as large players in the market. Both of these traditional offline vehicle auction companies are expanding into the online channel and have launched online auctions in connection with their physical auctions, including Manheim Express and TradeRev/BacklotCars (KAR Auction Services' mobile application). We also compete with a number of smaller digital auction companies. In addition, we compete with smaller chains of auctions and independent auctions. Our dealers also compete on vehicles that may go to peer-to-peer online marketplaces such as Facebook, Craigslist, eBay Motors and Nextdoor.com.

Our future success also depends on our ability to respond to evolving industry trends, changes in customer requirements and new technologies. If new industry trends take hold, the automotive remarketing industry's economics could significantly change, and we may need to incur additional costs or otherwise alter our business model to adapt to these changes. Some of our competitors have much greater financial and marketing resources than we have, may be able to respond more quickly to evolving industry dynamics and changes in customer requirements or may be able to devote greater resources to the development, promotion and sale of new or emerging services and technologies. Our ability to successfully grow through investments in the area of emerging opportunities depends on many factors, including advancements in technology, regulatory changes and other factors that are difficult to predict. If we are unable to compete successfully or to successfully adapt to industry changes, our business may be harmed.

Our business is sensitive to changes in the prices of used vehicles.

Any significant changes in retail prices for new or used vehicles could harm our business. For example, if retail prices for used vehicles rise relative to retail prices for new vehicles, it could make buying a new vehicle more attractive to consumers than buying a used vehicle, which could result in reduced used vehicle wholesale sales and adversely impact our business, results of operations and

[Table of Contents](#)

financial condition. Used vehicle prices may affect the volume of vehicles entered for sale in our marketplace and the demand for those used vehicles, the fee revenue per unit, and our ability to retain customers. When used vehicle prices are high, used vehicle dealers may retail more of their trade-in vehicles on their own rather than selling them through our marketplace. Additionally, manufacturer incentives, including financing, could contribute to narrowing the price gap between new and used vehicles.

Our business depends on growing the share of wholesale transactions from existing customers, and the failure to do so would have a material adverse effect on our business, financial condition and results of operations.

Our business depends on our ability to grow the share of wholesale transactions from existing customers, increasing the number of wholesale transactions they conduct on our platform. Our customers have no obligation to conduct a minimum number of transactions on our platform or to continue using our platform over time. In order for us to maintain or improve our results of operations, it is important that our customers continue using our platform and increase the share of wholesale transactions which they complete on our platform. We cannot accurately predict whether we will grow the share of wholesale transactions from existing customers. The volume of transactions from existing customers may decline or fluctuate as a result of a number of factors, including business strength or weakness of our customers, customer satisfaction with our platform and other offerings, our fees, the capabilities and fees of our competitors or the effects of global economic conditions. These factors may also be exacerbated if, consistent with our growth strategy, our customer base continues to grow to encompass larger enterprises, which may also require more sophisticated and costly sales efforts. If our customers do not continue to use our digital marketplace or purchase additional services from us, our revenue may decline and our business, financial condition and results of operations may be harmed.

Decreases in the supply of used vehicles coming to the wholesale market may impact sales volumes, which may adversely affect our revenue and profitability.

Decreases in the supply of used vehicles coming to the wholesale market could reduce the number of vehicles sold through our marketplace. The number of new and used vehicles that are purchased or leased by consumers affects the supply of vehicles coming to auction in future periods. For example, an erosion of retail demand for new and used vehicles could cause lenders to reduce originations of new loans and leases, and lead to manufacturing capacity reductions by automakers selling vehicles in the United States. Capacity reductions could depress the number of vehicles coming to the wholesale market in the future in the future and could lead to reduced numbers of vehicles from various suppliers, negatively impacting auction volumes. If the supply of used vehicles coming to the wholesale market declines, our revenue and profitability may be harmed.

The loss of sellers could adversely affect our results of operations and financial position, and an inability to increase our sources of vehicle supply could adversely affect our growth rates.

Vehicle sellers may cease to use our marketplace in particular markets from time to time, or may choose to sell some of their vehicles through other auction companies with which we compete, which could affect our revenue in the markets in which such sellers are based. There can be no assurance that our existing customers will continue to sell their vehicles through our marketplace. Furthermore, there can be no assurance that we will be able to obtain new vehicle sellers as customers or that we will be able to retain our existing supply of used vehicles. In addition, a failure to increase our sources of vehicle supply could adversely affect our earnings and revenue growth rates.

[Table of Contents](#)

We may experience seasonal and other fluctuations in our quarterly results of operations, which may not fully reflect the underlying performance of our business.

Our quarterly results of operations, including our revenue, net loss and cash flow have in the past varied, and we expect will in the future vary, significantly based in part on, among other things, vehicle-buying patterns. Vehicle sales typically peak late in the first calendar quarter, with the lowest relative level of industry vehicle sales occurring in the fourth calendar quarter. This seasonality historically corresponds with the timing of income tax refunds, which can provide a primary source of funds for customers' payments on used vehicle purchases. Used vehicle pricing is also impacted by seasonality, with used vehicles depreciating at a faster rate in the last two quarters of each year and a slower rate in the first two quarters of each year.

Other factors that may cause our quarterly results to fluctuate include, without limitation:

- our ability to attract new customers;
- our ability to generate revenue from our value-added products and services;
- changes in the competitive dynamics of our industry;
- the regulatory environment;
- expenses associated with unforeseen quality issues;
- macroeconomic conditions, including, for example, conditions created by the COVID-19 pandemic which led to favorable operating results for us in the third quarter of 2020;
- seasonality of the automotive industry; and
- litigation or other claims against us.

In addition, a significant portion of our expenses are fixed and do not vary proportionately with fluctuations in revenue. As a result of these seasonal fluctuations, our results in any quarter may not be indicative of the results we may achieve in any subsequent quarter or for the full year, and period-to-period comparisons of our results of operations may not be meaningful.

Prospective purchasers of vehicles may choose not to shop online, which would prevent us from growing our business.

Our success will depend, in part, on our ability to attract additional customers who have historically purchased vehicles through physical auctions, which accounted for an estimated 50% of wholesale transactions in 2019. If we fail to convince potential customers who have historically purchased vehicles entirely or primarily through physical auctions to use our digital marketplace, we may not be able to grow at the rate we expect and our business may suffer. Furthermore, we may have to incur significantly higher and more sustained advertising and promotional expenditures or offer more incentives than we currently anticipate in order to attract additional buyers to our platform and convert them into participants on our online auction marketplace. Specific factors that could prevent participants from transacting on our platform include:

- concerns about buying vehicles without the ability to physically examine such vehicles;
- pricing that does not meet the expectations of our auction participants;
- delayed deliveries;
- real or perceived concerns about the quality of our inspection reports;
- inconvenience with returning or exchanging vehicles purchased online;
- concerns about the security of online transactions and the privacy of personal information; and
- usability, functionality and features of our platform.

[Table of Contents](#)

If the online market for vehicles does not continue to develop and grow, our business will not grow and our business, financial condition and results of operations could be materially adversely affected.

Failure to properly and accurately inspect the condition of vehicles sold through our marketplace, or to deal effectively with fraudulent activities on our platform, could harm our business.

We face risks with respect to the condition of vehicles sold through our marketplace. We are engaged to inspect the majority of vehicles sold through our marketplace. We periodically receive complaints from buyers and sellers who believe our inspection reports are not consistent with the condition of the relevant vehicle sold through our marketplace. While our arbitration policy provides that we make no representations or guarantees regarding any vehicles sold through our marketplace, if our inspection reports are found to be inaccurate or otherwise fail to disclose material defects with vehicles, we risk diminished customer confidence in and use of our services. In addition, buyers may be entitled in certain circumstances to cancellation of their purchase, which could reduce the amount of revenue we earn from the relevant sale.

In addition, through our Go Green assurance, we offer sellers an assurance with regard to our vehicle inspection services with increased protection from the provisions of our arbitration policy. When a seller elects to use our Go Green program, we are obligated to stand behind the quality of our inspection services and related inspection report. In situations where we conclude that a buyer has made a valid arbitration claim with respect to inadequate or omitted disclosures of defects in an inspection report, we must make the remedy directly to the buyer on the seller's behalf. If we fail to provide accurate inspection reports for a large number of sellers using our Go Green assurance program, the resulting payment obligations to the buyer may adversely affect our business, results of operations and financial condition. Under the Go Green assurance program, we have the opportunity to resell the vehicle if the original transaction is unwound due to errors in the inspection report. However, the second buyer may only be willing to pay a lower price for the vehicle than the first buyer, and we bear the risk of loss for such resale as well, which may adversely affect our results of operations and financial condition.

In addition, we face risks with respect to fraudulent activities on our platform, including the sale of illegally-acquired vehicles through our auction marketplace, the unauthorized entry into and use of our platform by persons who do not meet our criteria and standards, and participation of buyers in our auctions who have no intention to pay. For example, we have previously received complaints from a small number of buyers who purchased vehicles which were later determined to have been stolen. In addition, allegations of fraudulent activity on our auction marketplace, even if untrue, may adversely impact our reputation and our ability to attract new customers and retain current customers.

Although we have implemented measures designed to detect and reduce the occurrence of fraudulent activities on our platform and combat bad customer experiences, there can be no assurance that these measures will be effective in combating fraudulent transactions or improving overall satisfaction among sellers, buyers, and other participants. Additional measures to address fraud could negatively affect the attractiveness of our services to buyers or sellers, resulting in a reduction in the ability to attract new customers or retain current customers. Any actual or alleged future fraudulent activity may damage our reputation, or diminish the value of our brand name, either of which could adversely impact our business, results of operations and financial condition.

If the quality of our customer experience, our reputation or our brand were negatively affected, our business, results of operations and financial condition may be harmed.

Our business model is primarily based on our ability to enable customers to buy and sell used vehicles through our marketplace in a seamless, transparent and hassle-free transaction. If our

Table of Contents

customers fail to perceive us as a trusted brand with a strong reputation and high standards, or if an event occurs that damages our reputation or our brand, it could adversely affect customer demand and adversely affect our business, results of operations and financial condition. Even the perception of a decrease in the quality of our customer experience or brand could impact results. Our high rate of growth makes maintaining the quality of our customer experience more difficult.

Complaints or negative publicity about our business practices, inspection quality, compliance with applicable laws and regulations, data privacy and security or other aspects of our business, especially on blogs and social media websites, could diminish customer confidence in our platform and adversely affect our brand, irrespective of their validity. The growing use of social media increases the speed with which information and opinions can be shared and thus the speed with which our reputation can be damaged. If we fail to correct or mitigate misinformation or negative information about us, our platform, our customer experience, our brand or any aspect of our business, including information spread through social media or traditional media channels, it may harm our business, results of operations and financial condition.

We rely on third-party carriers to transport vehicles throughout the United States and are subject to business risks and costs associated with such carriers and with the transportation industry, many of which are out of our control.

We rely on third-party carriers to transport vehicles sold through our marketplace to our customers. As a result, we are exposed to risks associated with the transportation industry such as weather, traffic patterns, local and federal regulations, vehicular crashes, gasoline prices and lack of reliability of many independent carriers. Our third-party carriers who deliver vehicles to our customers could adversely affect the customer experience if they do not perform to our standards of timeliness and care while handling the vehicles, which may harm our business.

Our future growth and profitability relies on the effectiveness and efficiency of our sales and marketing efforts, and these efforts may not be successful.

We rely on our sales and marketing organization to increase brand visibility among dealers and attract potential customers. Sales and marketing expenses are and will continue to be a significant component of our operating expenses, and there can be no assurance that we will achieve a meaningful return on investment on such expenditures, particularly as we expand our operations into new geographic areas. We continue to evolve our marketing strategies and no assurance can be given that we will be successful in developing effective messages and in achieving efficiency in our sales and marketing expenditures.

Our marketing initiatives aim to drive brand awareness and engagement among dealers in order to position us as the trusted online wholesale marketplace. We acquire new dealers through a variety of marketing channels including social media, search engine optimization and brand-oriented marketing campaigns, and we have expanded our in-house marketing significantly in recent years. Future growth and profitability will depend in part on the cost and efficiency of our promotional advertising and marketing programs and related expenditures, including our ability to create greater awareness of our platform and brand name, to appropriately plan for future expenditures and to drive the promotion of our platform. If we are unable to recover our marketing costs through increases in customer traffic and incremental sales, or if our marketing campaigns are not successful or are terminated, our growth may suffer and our business may be harmed.

We bear settlement risk for vehicles sold through our auctions.

We bear settlement risk in connection with sales made through our platform. We settle transactions among buyers and sellers using our marketplace, and as a result, the value of each

Table of Contents

vehicle sold passes through our balance sheet. Since revenue for vehicles does not include the gross sales proceeds, failure to collect the receivables in full may result in a net loss up to the gross sales proceeds on a per vehicle basis in addition to any expenses incurred to collect the receivables and to provide the services associated with the vehicle. If we are unable to collect payments on a large number of vehicles, the resulting costs of unwinding the transaction and decreased fee revenue may adversely affect our results of operations and financial condition.

Acquisitions, strategic investments, partnerships, or alliances could be difficult to identify, pose integration challenges, divert the attention of management, disrupt our business, dilute stockholder value, and adversely affect our business, results of operations and financial condition.

We have in the past and may in the future seek to acquire or invest in businesses, joint ventures, products and platform capabilities, or technologies that we believe could complement or expand our services and platform capabilities, enhance our technical capabilities, or otherwise offer growth opportunities. Further, our anticipated proceeds from this offering increase the likelihood that we will devote resources to exploring larger and more complex acquisitions and investments than we have previously attempted. Any such acquisition or investment may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable opportunities, whether or not the transactions are completed, and may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products and platform capabilities, personnel or operations of any acquired companies, particularly if the key personnel of an acquired company choose not to work for us, their software is not easily adapted to work with our platform, or we have difficulty retaining the customers of any acquired business due to changes in ownership, management or otherwise. These transactions may also disrupt our business, divert our resources, and require significant management attention that would otherwise be available for development of our existing business. Any such transactions that we are able to complete may not result in any synergies or other benefits we had expected to achieve, which could result in impairment charges that could be substantial. In addition, we may not be able to find and identify desirable acquisition targets or business opportunities or be successful in entering into an agreement with any particular strategic partner. These transactions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our results of operations. In addition, if the resulting business from such a transaction fails to meet our expectations, our business, results of operations and financial condition may be harmed or we may be exposed to unknown risks or liabilities.

Our insurance may not provide adequate levels of coverage against claims.

We believe that we maintain insurance customary for businesses of our size and type. However, there are types of losses we may incur that cannot be insured against or that we believe are not economically reasonable to insure. Moreover, any loss incurred could exceed policy limits and policy payments made to us may not be made on a timely basis. For example, insurance we maintain against liability claims may not continue to be available on terms acceptable to us and such coverage may not be adequate to cover the types of liabilities actually incurred. A successful claim brought against us, if not fully covered by available insurance coverage, may harm our business.

We depend on key personnel to operate our business, and if we are unable to retain, attract and integrate qualified personnel, our ability to develop and successfully grow our business could be harmed.

We believe our success has depended, and continues to depend, on the efforts and talents of our executives and employees. Our future success depends on our continuing ability to attract, develop, motivate and retain highly qualified and skilled employees. Qualified individuals are in high demand,

[Table of Contents](#)

and we may incur significant costs to attract and retain them. In addition, the loss of any of our key employees or senior management could adversely affect our ability to execute our business plan and strategy, and we may not be able to find adequate replacements on a timely basis, or at all. Our executive officers and other employees are at-will employees, which means they may terminate their employment relationship with us at any time, and their knowledge of our business and industry would be extremely difficult to replace. We may not be able to retain the services of any members of our senior management or other key employees. If we do not succeed in attracting well-qualified employees or retaining and motivating existing employees, our business may be harmed.

Risks Related to Socioeconomic Factors

Our operations and employees face risks related to health crises, such as the ongoing COVID-19 pandemic, that could adversely affect our financial condition and operating results.

In connection with the COVID-19 pandemic, governments have implemented significant measures, including closures, quarantines, travel restrictions and other social distancing directives, intended to control the spread of the virus. Companies have also taken precautions, such as requiring employees to work remotely, imposing travel restrictions and temporarily closing businesses. In response to the risks posed by the COVID-19 pandemic and to comply with applicable governmental orders, we have asked almost all of our office-based employees to work from home. In addition, we have introduced stringent new health and safety requirements for our inspectors out in the field, including use of personal protective equipment, limited travel between states, and mandatory social distancing. These and other operational changes we have implemented may negatively impact productivity and disrupt our business. We may also take further actions that alter our operations as may be required by applicable government authorities or that we determine are in the best interests of our employees.

To the extent that these restrictions remain in place, additional prevention and mitigation measures are implemented in the future, or there is uncertainty about the effectiveness of these or any other measures to contain or treat COVID-19, there is likely to be an adverse impact on global economic conditions and customer confidence and spending, which could materially and adversely affect our operations as well as our relationships with partners and customers and demand for used cars. Our car dealership customers' operations were initially significantly disrupted in certain jurisdictions, causing a temporary significant decrease in activity on our online marketplace. While at this time we are working to manage and mitigate potential disruptions to our operations, and we have experienced increases in demand as compared to prior periods following the initial disruption caused by the COVID-19 pandemic, the fluid nature of the pandemic and uncertainties regarding the related economic impact are likely to result in sustained market turmoil, which may harm our business, results of operations and financial condition. We cannot predict how the COVID-19 pandemic will continue to develop, whether and to what extent government regulations or other restrictions may impact our operations or those of our customers, or whether or to what extent the COVID-19 pandemic or the effects thereof may have longer term unanticipated impacts on our business, and you should not rely on our financial performance for any period of 2020 as an indication of our future performance.

Significant disruptions of global financial markets would reduce our ability to access capital, which could in the future negatively affect our liquidity. For example, our customers may be unable fulfill their obligations to us in a timely manner or at all, and to the extent our customers' operations have been and continue to be negatively impacted, they may delay payments to us, reduce their willingness to sell or purchase vehicles through our marketplace or elect not to use our platform at all. As a result, the COVID-19 pandemic may have an adverse impact on our revenue in the near term.

The extent of COVID-19's effect on our operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are

[Table of Contents](#)

uncertain and difficult to predict considering the rapidly evolving landscape. As a result, it is not currently possible to ascertain the overall impact of COVID-19 on our business. However, if the pandemic continues to persist as a severe worldwide health crisis, the disease may harm our business, and may also have the effect of heightening many of the other risks described in this "Risk Factors" section.

General business and economic conditions, and risks related to the larger automotive ecosystem, including customer demand, could reduce auto sales and profitability, which may harm our business.

Our business is affected by general business and economic conditions. The global economy often experiences periods of instability, and this volatility could increase our exposure to several risks. We are dependent on the supply of used vehicles in the wholesale market, and our financial performance depends, in part, on conditions in the automotive industry. During past global economic downturns, there has been an erosion of retail demand for new and used vehicles that, together with other factors such as financial market instability, led many lenders to reduce originations of new loans and leases and led to significant manufacturing capacity reductions by automakers selling vehicles in the United States and Canada. Capacity reductions could depress the number of vehicles that become part of the wholesale market in the future and could lead to reduced numbers of vehicles from various suppliers, negatively impacting our volumes. In addition, weak growth in or declining new vehicle sales negatively impacts used vehicle trade-ins to dealers and wholesale volumes. These factors could adversely affect our revenue and profitability.

In addition, we may experience a decrease in demand for used vehicles from buyers due to factors including the lack of availability of consumer credit and declines in consumer spending and consumer confidence. Adverse credit conditions also affect the ability of dealers to secure financing to purchase used vehicles on the wholesale market, which further negatively affects buyer demand. In addition, a reduction in the number of franchised and independent used car dealers may reduce dealer demand for used vehicles.

Consumer purchases of new and used vehicles may also be adversely affected by economic conditions such as employment levels, wage and salary levels, trends in consumer confidence and spending, reductions in consumer net worth, interest rates, inflation, the availability of consumer credit and taxation policies. Consumer purchases in general may decline during recessions, periods of prolonged declines in the equity markets or housing markets and periods when disposable income and perceptions of consumer wealth are lower. Changes to U.S. federal tax policy may negatively affect consumer spending.

In addition, the market for used vehicles may be impacted by the significant, and likely accelerating, changes to the broader automotive industry, which may render our existing or future business model or our auction marketplace and value-added products and services less competitive, unmarketable or obsolete. For example, technology is currently being developed to produce automated, driverless vehicles that could reduce the demand for, or replace, traditional vehicles, including the used vehicles that are sold through our marketplace. Additionally, ride-hailing and ride-sharing services are becoming increasingly popular as a means of transportation and may decrease consumer demand for the used vehicles, particularly as urbanization increases. To the extent retail and rental car company demand for new and used vehicles decreases, negatively impacting our volumes, our results of operations and financial position could be materially and adversely affected.

Dealer closures or consolidations could reduce demand for our products, which may decrease our revenue. In the past, the number of U.S. dealers has declined due to dealership closures and consolidations as a result of varying factors, such as increased competitive pressure from online vehicle retailers and global economic downturns. When dealers consolidate, the services they

Table of Contents

previously purchased separately are often purchased by the combined entity in a lesser quantity or for a lower aggregate price than before, leading to volume compression and loss of revenue. Further dealership consolidations or closures could reduce the aggregate demand for our platform and value-added products and services. If dealership closures and consolidations occur in the future, our business may be harmed.

Additionally, due to high fragmentation in the dealer industry, a small number of interested parties have significant influence over the industry. These parties include state and national dealership associations, state regulators, car manufacturers, consumer groups, independent dealers, and consolidated dealer groups. If and to the extent these parties believe that dealerships should not enter into or maintain business with us, this belief could become shared by dealerships and we may lose a number of our paying dealers.

Our business is subject to the risk of natural disasters, adverse weather events and other catastrophic events, and to interruption by manmade problems such as terrorism.

Our business is vulnerable to damage or interruption from earthquakes, fires, floods, power losses, telecommunications failures, terrorist attacks, acts of war, global pandemics, adverse weather events, human errors, infrastructure failures and similar events. For example, the United States experienced record snowfalls affecting millions of people in early 2021, which temporarily adversely affected our operations. The third-party systems and operations on which we rely are subject to similar risks. For example, we rely on FedEx in order to ship and deliver titles in connection with vehicle sales through our marketplace, and the disruption to FedEx's service as a result of a natural disaster could have an adverse effect on our business, financial condition and operating results. Acts of terrorism could also cause disruptions in our businesses, consumer demand or the economy as a whole. We may not have sufficient protection or recovery plans in some circumstances, such as if a natural disaster affects main transportation routes for the delivery of vehicles. Any such disruptions could negatively affect our ability to run our business, which could have an adverse effect on our business, financial condition and operating results.

Risks Related to Information Technology and Intellectual Property

We may not properly leverage or make the appropriate investment in technology advancements, which could result in the loss of any sustainable competitive advantage in products, services and processes.

Our business is dependent on our data-driven platform. Robust information technology systems, platforms and products are critical to our operating environment, digital online products and competitive position. Understanding technology innovation is necessary to retain our competitive advantage. We may not be successful in developing, acquiring or implementing new data-driven products and services which are competitive and responsive to the needs of our customers. We might lack sufficient resources to continue to make the significant investments in information technology to compete with our competitors. Certain information technology initiatives that management considers important to our long-term success will require capital investment, have significant risks associated with their execution, and could take several years to implement. We may not be able to develop or implement these initiatives in a cost-effective, timely manner or at all. There can be no assurance that others will not acquire similar or superior technologies sooner than we do or that we will acquire technologies on an exclusive basis or at a significant price advantage. If we do not accurately predict, prepare and respond to new kinds of technology innovations, market developments and changing customer needs, our business may be harmed.

[Table of Contents](#)

If we are unable to adequately address our customers' increasing reliance on technology or provide a compelling vehicle search experience to customers through both our web and mobile platforms, the number of connections between buying and selling dealers using our marketplace may decline and our business, results of operations and financial condition may be harmed.

As dealers increasingly use technology-based services, including our marketplace and other offerings, our success will depend, in part, on our ability to provide customers with a robust and user-friendly experience on our platform. Given a greater focus on technology in the automotive industry, our future success depends in part on our ability to provide enhanced functionality for dealers who use the web and mobile devices to purchase used vehicles and increase the number of transactions with us that are completed by those dealers. Our ability to provide a compelling user experience, both on the web and through mobile devices, is subject to a number of factors, including:

- our ability to maintain an attractive marketplace for our customers;
- our ability to continue to innovate and introduce products for our marketplace;
- our ability to launch new products that are effective and have a high degree of customer engagement;
- our ability to maintain the compatibility of our mobile application with operating systems, such as iOS and Android, and with popular mobile devices running such operating systems; and
- our ability to access a sufficient amount of data to enable us to provide relevant information to customers, including pricing information and accurate vehicle details which inform our inspection reports.

If use of our web and mobile marketplace is not accepted by the dealer industry, our business may be harmed.

In addition, if we fail to continue to provide a compelling user experience to our customers, the number of connections between buying and selling dealers facilitated through our marketplace could decline, which in turn could lead dealers to stop listing their inventory in our marketplace or cause buyers to look outside our platform for their wholesale purchases. If dealers stop listing their inventory in our marketplace, we may not be able to maintain and grow our customer traffic, which may cause other dealers to stop using our marketplace. This reduction in the number of dealers using our marketplace would likely adversely affect our marketplace and our business, results of operations and financial condition.

We rely on third-party technology and information systems to complete critical business functions and such reliance may negatively impact our business.

We rely on third-party technology for certain critical business functions that help us deliver our products and services and operate our business. Our business is dependent on the integrity, security and efficient operation of these systems and technologies. Our systems and operations or those of our third-party vendors and partners could be exposed to damage or interruption from, among other things, fire, natural disaster, power loss, telecommunications failure, unauthorized entry, computer viruses, denial-of-service attacks, acts of terrorism, human error, vandalism or sabotage, financial insolvency, bankruptcy and similar events. The failure of these systems to perform as designed, the failure to maintain or update these systems as necessary, the failure of these systems to comply with applicable law, the vulnerability of these systems to security breaches or attacks or the inability to enhance our information technology capabilities, and our inability to find suitable alternatives could disrupt our operations and harm our business.

[Table of Contents](#)

A significant disruption in service of, or other performance or reliability issues with, our platform could damage our reputation and result in a loss of customers, which could harm our brand or our business.

Our brand, reputation and ability to attract customers depend on the reliable performance of our platform and the supporting systems, technology and infrastructure. We may experience significant interruptions to our systems in the future. Interruptions in these systems, whether due to system failures, programming or configuration errors, bugs, vulnerabilities, computer viruses, physical or electronic break-ins or similar events, could affect the availability of our inventory on our platform and prevent or inhibit the ability of customers to access our platform. Problems with the reliability or security of our systems could harm our reputation, result in a loss of customers and result in additional costs.

Problems faced by our third-party web-hosting providers, including AWS and Google Cloud, could inhibit the functionality of our platform. For example, our third-party web-hosting providers could close their facilities without adequate notice or suffer interruptions in service caused by cyber-attacks, natural disasters or other phenomena. Disruption of their services could cause our website to be inoperable and could harm our business. Any financial difficulties, up to and including bankruptcy, faced by our third-party web-hosting providers or any of the service providers with whom they contract may have negative effects on our business, the nature and extent of which are difficult to predict. In addition, if our third-party web-hosting providers are unable to keep up with our growing capacity needs, our business may be harmed.

Any errors, defects, disruptions, or other performance or reliability problems with our platform could interrupt our customers' access to our inventory and our access to data that drives our operations, which could harm our reputation and have an adverse effect on our business, financial condition, and operating results.

We are subject to stringent and changing privacy and data security laws, regulations and standards related to data privacy and security.

There are numerous federal, state and local laws regarding privacy and the collection, processing, storing, sharing, disclosing, using and protecting of personal information and other data, the scope of which are changing, subject to differing interpretations, and which may be costly to comply with, inconsistent between jurisdictions or conflicting with other rules. In addition, if we expand into international markets, we will be subject to a new range of detailed and complex laws regarding privacy and the collection, processing, storing, sharing, disclosing, using and protecting of personal information and other data. We must also comply with operating rules and standards imposed by industry organizations such as the National Automated Clearing House Association and the Payment Card Industry Security Standards Council. Additionally, we are also subject to specific contractual requirements contained in third-party agreements governing our use and protection of personal information and other data. We generally comply with industry standards and are subject to the terms of our privacy policies and the privacy- and security-related obligations to third parties. We strive to comply with applicable laws, policies, legal obligations and industry codes of conduct and operating rules and standards relating to privacy and data protection, to the extent possible. However, it is possible that these obligations may be interpreted and applied in new ways or in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Additionally, new regulations could be enacted with which we are not familiar. Any failure or perceived failure by us to comply with our privacy policies, our privacy-related obligations to customers or other third parties, or our privacy-related legal obligations or any compromise of security that results in the unauthorized release or transfer of sensitive information, which may include personally identifiable information or other customer data, may result in governmental enforcement actions, including fines or orders requiring that we change our practices, claims for damages by affected individuals, or litigation or public statements against us by consumer advocacy groups or others and could cause customers and

[Table of Contents](#)

vendors to lose trust in us, which may harm our business. Additionally, if vendors, developers or other third parties that we work with violate applicable laws or our policies, such violations may also put customers' or vendors' information at risk and could in turn harm our business. Even if we are not determined to have violated these laws or other obligations, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity.

Privacy and data security regulation in the United States is rapidly evolving. For example, California recently enacted the California Consumer Privacy Act, or CCPA, which became effective January 1, 2020. The CCPA gives California residents expanded rights to access and require deletion of their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is used. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches, which is expected to increase the volume and success of class action and other data breach litigation. In addition, on November 3, 2020, California voters approved a new privacy law, the California Privacy Rights Act, or CPRA, which significantly modifies the CCPA, including by expanding consumers' rights with respect to certain personal information and creating a new state agency to oversee implementation and enforcement efforts. Many of the CPRA's provisions will become effective on January 1, 2023. Other states are considering the enactment of similar laws, and there is also discussion in Congress of a new comprehensive federal data protection and privacy law to which we likely would be subject if it is enacted. The effects of the CCPA, and other similar state or federal laws, are potentially significant and may require us to modify our data processing practices and policies, incur substantial compliance costs and subject us to increased potential liability.

Additionally, we are subject to the terms of our privacy policies, privacy-related disclosures, and contractual and other privacy-related obligations to our customers and other third parties. Any failure or perceived failure by us or third parties we work with to comply with these policies, disclosures, and obligations to customers or other third parties, or industry oversight organizations, or privacy or data security laws may result in governmental or regulatory investigations, enforcement actions, regulatory or other fines, orders requiring that we change our practices, criminal compliance orders, claims for damages by affected individuals or litigation or public statements against us by consumer advocacy groups or others, and could cause customers to lose trust in us. Any of the foregoing could be costly and have an adverse effect on our business, financial condition, and operating results.

Government regulation of the internet and ecommerce is evolving, and unfavorable changes or failure by us to comply with these regulations could harm our business.

We are subject to general business regulations and laws, as well as regulations and laws specifically governing the internet and ecommerce. Existing and future regulations and laws could impede the growth of the internet, ecommerce or mobile commerce. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, pricing, content protection, electronic contracts and communications, mobile communications, consumer protection, information reporting requirements, unencumbered internet access to our platform, the design and operation of websites and internet neutrality. It is not clear how existing laws governing issues such as property ownership, licensing, sales and other taxes, and consumer privacy apply to the internet as the vast majority of these laws were adopted prior to the advent of the internet and do not contemplate or address the unique issues raised by the internet or ecommerce. It is possible that general business regulations and laws, or those specifically governing the internet or ecommerce, may be interpreted and applied in a manner that is inconsistent from one market segment to another and may conflict with other rules or our practices. For example, federal, state and local regulation regarding privacy, data protection and information security has become more significant, and laws such as the CCPA may increase our costs of compliance. We cannot be sure that our practices have complied, comply or will comply fully with all such laws and regulations. The enactment of new laws and regulations or the interpretation of existing laws and regulations in an unfavorable way may affect the operation of our

[Table of Contents](#)

business, directly or indirectly, which could result in substantial regulatory compliance costs, civil or criminal penalties, including fines, adverse publicity, decreased revenue and increased expenses.

It may be costly for us to comply with any of these laws or regulations, and any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business and proceedings or actions against us by governmental entities or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our sites by customers and suppliers and result in the imposition of monetary liability. We also may be contractually liable to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any such laws or regulations. Adverse legal or regulatory developments could substantially harm our business, our ability to attract new customers may be adversely affected, and we may not be able to maintain or grow our revenue and expand our business as anticipated. Any of the foregoing could have an adverse effect on our business, financial condition, and operating results.

If the security of the personal information that we or our vendors collect, store, use or process is compromised or is otherwise accessed without authorization, or if we fail to comply with our commitments, assurances or other obligations regarding the privacy and security of such information, our reputation may be harmed and we may be exposed to liability and loss of business.

Our platform allows for the storage and transmission of our customers' proprietary or confidential information, which may include personally identifiable information. We may use third-party service providers and subprocessors to help us deliver services, including payment services, to our customers. These vendors may store or process personal information or payment card information, on our behalf.

Cyberattacks and other malicious internet-based activity continue to increase. In addition to traditional computer "hackers," malicious code (such as viruses and worms), employee theft or misuse and denial-of-service attacks, sophisticated nation-state and nation-state supported actors now engage in attacks (including advanced persistent threat intrusions). We may also be the subject of phishing attacks, viruses, denial-of-service attacks, malware installation, server malfunction, software or hardware failures, loss of data or other computer assets, adware or other similar issues. While we have security measures in place designed to protect customer information and prevent data loss and other security breaches, there can be no assurance that our security measures or those of our third-party service providers that store or otherwise process certain of our and our customers' data on our behalf will be effective in protecting against unauthorized access to our platform or our or our customers' information, particularly given that our ability to monitor our third-party service providers' data security is limited. The techniques used to sabotage or to obtain unauthorized access to our platform, systems, networks or physical facilities in which data is stored or through which data is transmitted change frequently and often are not identified until they are launched against a target, and we may be unable to implement adequate preventative measures or stop security breaches while they are occurring. The recovery systems, security protocols, network protection mechanisms and other security measures that we have integrated into our platform, systems, networks and physical facilities, which are designed to protect against, detect and minimize security breaches, may not be adequate to prevent or detect service interruption, system failure or data loss. Our platform, systems, networks, and physical facilities could be breached or personal information could be otherwise compromised due to employee, contractor or customer error, negligence or malfeasance, if, for example, third parties attempt to fraudulently induce our employees, contractors or our customers to disclose information or user names or passwords, or otherwise compromise the security of our platform, networks, systems and physical facilities. Third parties may also exploit vulnerabilities in, or obtain unauthorized access to, platforms, systems, networks or physical facilities utilized by our vendors.

[Table of Contents](#)

We are required to comply with laws, rules and regulations that require us to maintain the security of personal information. We have contractual and legal obligations to notify relevant stakeholders of security breaches. We operate in an industry that is prone to cyber-attacks. Failure to prevent or mitigate cyber-attacks could result in the unauthorized access to personal information. Most jurisdictions have enacted laws requiring companies to notify individuals, regulatory authorities, and others of security breaches involving certain types of data. In addition, our agreements with certain customers and partners may require us to notify them in the event of a security breach. Such mandatory disclosures are costly, could lead to negative publicity, may cause our customers to lose confidence in the effectiveness of our security measures and require us to expend significant capital and other resources to respond to or alleviate problems caused by the actual or perceived security breach.

A security breach may cause us to breach customer contracts. Our agreements with certain customers may require us to use industry-standard or reasonable measures to safeguard personal information. We also may be subject to laws that require us to use industry-standard or reasonable security measures to safeguard personal information. A security breach could lead to claims by our customers or other relevant stakeholders that we have failed to comply with such legal or contractual obligations. As a result, we could be subject to legal action or our customers could end their relationships with us. There can be no assurance that the limitations of liability in our contracts would be enforceable or adequate or would otherwise protect us from liabilities or damages.

Further, security compromises experienced by our customers with respect to data hosted on our platform, even if caused by the customer's own misuse or negligence, may lead to public disclosures, which could harm our reputation, erode customer confidence in the effectiveness of our security measures, negatively impact our ability to attract new customers, or cause existing customers to elect not to renew their subscriptions with us. We may be subject to indemnity demands, regulatory proceedings, audits, penalties or litigation based on our customers' misuse of our platform with respect to such sensitive information and defending against such litigation and otherwise addressing such matters may be expensive, cause distraction and result in us incurring liability, all of which may harm our business.

Litigation resulting from security breaches may adversely affect our business. Actual or alleged unauthorized access to our or our vendors' platform, systems, networks, or physical facilities could result in litigation with our customers or other relevant stakeholders. These proceedings could force us to spend money in defense or settlement, divert management's time and attention, increase our costs of doing business, or adversely affect our reputation. We could be required to fundamentally change our business activities and practices or modify our products and platform capabilities in response to such litigation, which could have an adverse effect on our business. If a security breach were to occur, and the confidentiality, integrity or availability of personal information was disrupted, we could incur significant liability, or our platform, systems or networks may be perceived as less desirable, which could negatively affect our business and damage our reputation.

While we maintain general liability insurance coverage and coverage for errors or omissions, we cannot assure you that such coverage will be adequate or otherwise protect us from liabilities or damages with respect to claims alleging compromises of personal data or that such coverage will continue to be available on acceptable terms or at all. The successful assertion of one or more large claims against us that exceeds our available insurance coverage, or results in changes to our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have an adverse effect on our business. In addition, we cannot be sure that our existing insurance coverage and coverage for errors and omissions will continue to be available on acceptable terms or that our insurers will not deny coverage as to any future claim.

[Table of Contents](#)

Failure to adequately obtain, maintain, protect and enforce our intellectual property rights, including our technology and confidential information, could harm our business.

The protection of intellectual property, including our brand, technology, confidential information and other proprietary rights, is crucial to the success of our business. We rely on a combination of trademark, trade secret, patent, and copyright law, as well as contractual restrictions, to protect our intellectual property. While it is our policy to protect and defend our rights to our intellectual property, monitoring unauthorized use of our intellectual property is difficult and costly, and we cannot predict whether steps taken by us to protect our intellectual property will be adequate to prevent infringement, misappropriation, dilution or other violations of our intellectual property rights. We also cannot guarantee that any measures we take to protect our intellectual property will offer us any meaningful protection or competitive advantage, or that others will not reverse-engineer our technology or independently develop technology that has the same or similar functionality as our technology. Unauthorized parties may also attempt to copy or obtain and use our technology to develop competing solutions, and policing unauthorized use of our technology and intellectual property rights may be difficult and may not be effective. Any of our intellectual property rights could be challenged or invalidated, and any litigation to enforce or defend our intellectual property rights could be costly, divert attention of management and may not ultimately be resolved in our favor. Additionally, uncertainty may result from changes to intellectual property legislation and from interpretations of intellectual property laws by applicable courts and agencies.

As part of our efforts to protect our intellectual property, technology and confidential information, a majority of our employees and consultants have entered into confidentiality and assignment of inventions agreements, and we also require certain third parties to enter into nondisclosure agreements. However, we may fail to enter into such agreements with all applicable parties, and such agreements may also not effectively grant all necessary rights to any inventions that may have been developed by our employees and consultants. In addition, such agreements may not effectively prevent misappropriation or unauthorized use or disclosure of our trade secrets, confidential information, intellectual property or technology and may not provide an adequate remedy in the event of unauthorized use or disclosure of our trade secrets, confidential information, intellectual property or technology. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our website features, software and functionality or obtain and use information that we consider proprietary. Changes in the law or adverse court rulings may also negatively affect our ability to prevent others from using our technology.

We are currently the registrant of various domain names. The regulation of domain names in the United States is subject to change. Regulatory bodies could establish additional top-level domains, appoint additional domain name registrars or modify the requirements for holding domain names. As a result, we may not be able to acquire or maintain domain names that are important for our business.

While software can, in some cases, be protected under copyright law, we have chosen not to register any copyrights in our proprietary software, and instead, primarily rely on unregistered copyrights to protect our proprietary software. In order to bring a copyright infringement lawsuit in the United States, the copyright must be registered. Accordingly, the remedies and damages available to us for unauthorized use of our software may be limited. Our trade secrets, know-how and other proprietary materials may be revealed to the public or our competitors or independently developed by our competitors and no longer provide protection for the related technology. Enforcing a claim that a third party illegally disclosed or obtained and is using any of our internally developed information or technology may be difficult, expensive and time-consuming, and the outcome is unpredictable. Furthermore, our trade secrets, know-how and other proprietary materials may be revealed to the public or our competitors or independently developed by our competitors and no longer provide protection for the related technology. Any of the foregoing could have an adverse effect on our business, financial condition, and operating results.

[Table of Contents](#)

If we are not able to maintain, enhance and protect our reputation and brand recognition through the maintenance and protection of trademarks, our business will be harmed.

We have certain trademarks that are important to our business, such as the ACV Auctions trademark, the ACV Auctions logo and the True360 trademark. If we fail to adequately protect or enforce our rights under these trademarks, we may lose the ability to use those trademarks or to prevent others from using them, which could adversely harm our reputation and our business. While we have secured registration of several of our trademarks in the United States, and are actively seeking additional registrations in the United States and Canada, it is possible that others may assert senior rights to similar trademarks, in the United States and internationally, and seek to prevent our use and registration of our trademarks in certain jurisdictions. Our pending trademark or service mark applications may not result in such marks being registered, and we may not be able to use these trademarks or service marks to commercialize our technologies in the relevant jurisdictions.

Our registered or unregistered trademarks or service marks may be challenged, infringed, circumvented, diluted, declared generic, lapsed or determined to be infringing on or dilutive of other marks. We may not be able to protect our rights in these trademarks and service marks, which we need in order to build name recognition with partners and customers. If we are unable to establish name recognition based on our trademarks and service marks, we may not be able to compete effectively and our brand recognition, reputation, business, financial condition, and operating results may be adversely affected.

Third parties may initiate legal proceedings alleging that we are infringing, misappropriating or otherwise violating their intellectual property rights, the outcome of which would be uncertain and could have a material adverse effect on our business, financial condition and operating results.

Our commercial success depends on our ability to develop and commercialize our products and services and use our internally developed technology without infringing the intellectual property or proprietary rights of third parties. Intellectual property disputes can be costly to defend and may cause our business, operating results and financial condition to suffer. Whether merited or not, we, our partners or parties indemnified by us may face claims of infringement, misappropriation or other violation of third-party intellectual property that could interfere with our ability to market, promote and sell our brands, products and services. Such claims may be made by competitors seeking to obtain a competitive advantage or by other parties. Additionally, in recent years, individuals and groups have begun purchasing intellectual property assets for the purpose of making such claims and attempting to extract settlements from companies like ours. It may be necessary for us to initiate litigation to defend ourselves in order to determine the scope, enforceability, validity or ownership of third-party intellectual property or proprietary rights, or to establish our respective rights. We may not be able to successfully settle or otherwise resolve such adversarial proceedings or litigation. If we are unable to successfully settle future claims on terms acceptable to us we may be required to engage in or to continue claims, regardless of whether such claims have merit, that can be time-consuming, divert management's attention and financial resources and be costly to evaluate and defend. The result of any such litigation is difficult to predict and may require us to stop commercializing or using our technology, obtain licenses, modify our platform, services and technology while we develop non-infringing substitutes or incur substantial damages, settlement costs or face a temporary or permanent injunction prohibiting us from marketing or providing the affected products and services. If we require a third-party license, it may not be available on reasonable terms or at all, and we may have to pay substantial royalties and upfront or ongoing fees, or grant cross-licenses to our own intellectual property rights. Such licenses may also be non-exclusive, which could allow competitors and other parties to use the subject technology in competition with us. We may also have to redesign our platform, services and technology so they do not infringe, misappropriate or otherwise violate third-party intellectual property rights, which

Table of Contents

may not be possible or may require substantial monetary expenditures and time, during which our technology may not be available for commercialization or use. Even if we have an agreement to indemnify us against such costs, the indemnifying party may be unable to uphold its contractual obligations. If we cannot or do not obtain a third-party license to the infringed technology at all, license the technology on reasonable terms or obtain similar technology from another source, our revenue and earnings could be adversely impacted.

From time to time, we may be subject to legal proceedings and claims in the ordinary course of business with respect to intellectual property. Some third parties may be able to sustain the costs of complex litigation more effectively than we can because they have substantially greater resources. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses, and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our Class A common stock. Moreover, any uncertainties resulting from the initiation and continuation of any legal proceedings could have a material adverse effect on our ability to raise the funds necessary to continue our operations. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

We may be subject to claims asserting that our employees, consultants or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.

Although we try to ensure that our employees, consultants and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while it is our policy to require our employees and contractors who may be involved in the creation or development of intellectual property on our behalf to execute agreements assigning such intellectual property to us, we may be unsuccessful in having all such employees and contractors execute such an agreement. The assignment of intellectual property may not be self-executing or the assignment agreement may be breached, and we may be forced to bring claims against third parties or defend claims that they may bring against us to determine the ownership of what we regard as our intellectual property. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

Our use of "open source" software could adversely affect our ability to offer our products and services and subject us to possible litigation.

We use open source software in connection with our products and services. Companies that incorporate open source software into their technologies have, from time to time, faced claims challenging the use of open source software, the ownership of software that such companies believed to be open source and/or compliance with open source license terms. As a result, we could be subject to suits by parties claiming ownership of what we believe to be open source software or claiming noncompliance with open source licensing terms. Some open source software licenses require users who distribute or make available across a network software and services that include open source software to publicly disclose all or part of the source code to such software and/or make available any

[Table of Contents](#)

derivative works of the open source code, which could include valuable proprietary code, on unfavorable terms or at no cost. While we monitor the use of open source software and try to ensure that none is used in a manner that would require us to disclose our internally developed source code, including that of our platform, or that would otherwise breach the terms of an open source agreement, such use could inadvertently occur, in part because open source license terms are often ambiguous and may not have been tested in a court of law, resulting in a dearth of guidance regarding the proper legal interpretation of such licenses. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of software which, thus, may contain security vulnerabilities or infringing or broken code. Use of open source software may also present additional security risks because the public availability of such software may make it easier for hackers and other third parties to determine how to compromise our platform. Any of the foregoing, including a requirement to publicly disclose our internally developed source code or pay damages for breach of contract, could have a material adverse effect on our business, financial condition and results of operations and could help our competitors develop services that are similar to or better than ours.

We rely on third-party providers to perform payment-related services on our behalf, and the failure of such third-parties to adequately perform such services or comply with applicable laws could harm our business.

We rely on third-party service providers to perform services related to payment processing, identity verification and fraud analysis and detection. As a result, we are subject to a number of risks related to our dependence on third-party service providers. If any or some of these service providers fail to perform adequately or if any such service provider were to terminate or modify its relationship with us unexpectedly, it could negatively impact our buyers' ability to pay for some services, drive customers away from our services, result in potential legal liability or heightened risk, and harm our business. In addition, we and our third-party service providers may experience service outages from time to time that could adversely impact payments made on our platform. Additionally, any unexpected termination or modification of those third-party services could lead to a lapse in the effectiveness of certain fraud prevention and detection tools.

Our third-party service providers may increase the fees they charge us in the future, which would increase our operating expenses. This could, in turn, require us to increase the fees we charge to customers and cause some customers to reduce their use of our marketplace or to leave our platform altogether.

Payments are governed by complex and continuously evolving laws and regulations that are subject to change and vary across different jurisdictions in the United States. Any failure or claim of failure on our part or the part of our third-party service providers to comply with applicable laws and regulations relating to payments could require us to expend significant resources, result in liabilities, limit or preclude our ability to enter certain markets and harm our reputation.

Risks Related to Government Regulation and Litigation

We operate in highly regulated industries and either are or may be subject to a wide range of federal, state and local laws and regulations and our failure to comply with these laws and regulations may force us to change our operations or harm our business.

The industry in which we operate is and will continue to be subject to extensive U.S. federal, state and local laws and regulations. The wholesale, financing and transportation of used vehicles are regulated by the states in which we operate and by the U.S. federal government. These laws can vary

Table of Contents

significantly from state to state. In addition, we are subject to regulations and laws specifically governing the internet and ecommerce and the collection, storage, processing, transfer and other use of personal information and other customer data. We are also subject to federal and state laws, such as the Equal Credit Opportunity Act and prohibitions against unfair or deceptive acts or practices. The federal governmental agencies that regulate our business and have the authority to enforce such regulations and laws against us include the U.S. Federal Trade Commission, the U.S. Department of Transportation, the U.S. Occupational Health and Safety Administration, the U.S. Department of Justice and the U.S. Federal Communications Commission. We are subject to regulation by individual state financial regulatory agencies. We also are subject to audit by such state regulatory authorities. Additionally, we may be subject to regulation by individual state dealer licensing authorities and state consumer protection agencies.

The wholesale sale of used vehicles through our platform and financing offerings may be subject to state and local licensing requirements. Despite our belief that we are not subject to the licensing requirements of such jurisdictions, regulators of jurisdictions in which our customers reside for which we do not have a dealer or financing license could require that we obtain a license or otherwise comply with various state regulations. Regulators may seek to impose punitive fines for operating without a license or demand we seek a license in those jurisdictions, any of which may inhibit our ability to do business in those jurisdictions, increase our operating expenses and adversely affect our financial condition and results of operations.

In addition to these laws and regulations, our facilities and business operations are subject to a wide array of federal, state and local laws and regulations relating to occupational health and safety, and other broadly applicable business regulations. We also are subject to laws and regulations involving taxes, privacy and data security, anti-spam, content protection, electronic contracts and communications, mobile communications, unencumbered internet access to our platform, the design and operation of websites and internet neutrality.

After the completion of this offering, we will also be subject to laws and regulations affecting public companies, including securities laws and exchange listing rules. The violation of any of these laws or regulations could result in administrative, civil or criminal penalties or in a cease-and-desist order against our business operations, any of which could damage our reputation and adversely affect our business. We have incurred and will continue to incur capital and operating expenses and other costs to comply with these laws and regulations.

The foregoing description of laws and regulations to which we are or may be subject is not exhaustive, and the regulatory framework governing our operations is subject to evolving interpretations and continuous change. Moreover, if we expand into additional jurisdictions, we will be subject to an increased variety of new and complex laws and regulations.

We are, and may in the future be, subject to legal proceedings in the ordinary course of our business. If the outcomes of these proceedings are adverse to us, it could have an adverse effect on our business.

We are subject to various litigation matters from time to time, the outcomes of which could harm our business. Claims arising out of actual or alleged violations of law could be asserted against us by individuals, either individually or through class actions, by governmental entities in civil or criminal investigations and proceedings or by other entities. These claims could be asserted under a variety of laws, including but not limited to intellectual property laws, privacy laws, labor and employment laws, securities laws and employee benefit laws. These actions could expose us to adverse publicity and to substantial monetary damages and legal defense costs, injunctive relief and criminal and civil fines and penalties, including but not limited to suspension or revocation of licenses to conduct business.

[Table of Contents](#)

Furthermore, defending ourselves against these claims may require us to expend substantial financial resources and divert management's attention, which could adversely impact our business, results of operations and financial condition. See "Business—Legal Proceedings."

We may be limited in our ability to utilize, or may not be able to utilize, net operating loss carryforwards to reduce our future tax liability.

Our net operating loss carryforwards, or NOLs, and certain other tax attributes could expire unused and be unavailable to offset future income tax liabilities because of their limited duration or because of restrictions under U.S. tax law. Our NOLs generated in tax years beginning before January 1, 2018 are only permitted to be carried forward for 20 taxable years under applicable U.S. federal tax law. As of December 31, 2020, we had U.S. federal and state NOLs of \$147.4 million and \$118.2 million, respectively. Of the U.S. federal NOLs, \$12.3 million will expire beginning in the year 2035 and \$135.1 million will carry forward indefinitely.

Under the Tax Cuts and Jobs Act, or the Tax Act, federal NOLs generated in tax years beginning after December 31, 2017 may be carried forward indefinitely. Under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, NOLs arising in tax years beginning after December 31, 2017 and before January 1, 2021 may be carried back for five years prior to such loss. The deductibility of federal NOLs, particularly for tax years beginning after December 31, 2020, may be limited. It is uncertain if and to what extent various states will conform to the Tax Act or the CARES Act.

In addition, our NOLs and tax credit carryforwards are subject to limitations under the Internal Revenue Code of 1986, as amended, or the Code, and similar state tax laws as well as review and possible adjustment by the Internal Revenue Service and state tax authorities. Under Sections 382 and 383 of the Code, if a corporation undergoes an "ownership change" (generally defined as a cumulative change in the corporation's ownership by "5-percent stockholders" that exceeds 50 percentage points over a rolling three-year period), the corporation's ability to use its pre-change NOLs and certain other pre-change tax attributes to offset its post-change income and taxes may be limited. Similar rules may apply under state tax laws. We have not determined whether any such limitations apply to our business. If our ability to utilize those NOLs and tax credit carryforwards becomes limited by an "ownership change" as described above, it may not be able to utilize a material portion of our NOLs and certain other tax attributes, which could adversely affect our cash flows and results of operations.

Risks Related to Being a Public Company

We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.

As a public company, we will incur significant finance, legal, accounting and other expenses, including director and officer liability insurance, that we did not incur as a private company, which we expect to further increase after we are no longer an "emerging growth company." The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of The Nasdaq Stock Market, and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the specific timing of such costs.

Table of Contents

Pursuant to Section 404 of the Sarbanes-Oxley Act, or Section 404, we will be required to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the fiscal year ending December 31, 2022. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting in our first annual report required to be filed with the Securities and Exchange Commission, or SEC, following the date we are no longer an emerging growth company. To prepare for eventual compliance with Section 404, we will be engaged in a costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation needed to comply with Section 404, but we may not be able to complete our evaluation, testing and any required remediation in a timely fashion once initiated. Our compliance with Section 404 will require that we incur substantial expenses and expend significant management efforts. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and compile the system and process documentation necessary to perform the evaluation needed to comply with Section 404.

We previously identified a material weakness in our internal control over financial reporting, and if we are unable to achieve and maintain effective internal control over financial reporting, the accuracy and timing of our financial reporting may be adversely affected.

Prior to this offering, we were a private company with limited accounting personnel and other resources with which to address our internal controls and procedures. In connection with the audit of our financial statements for the year ended December 31, 2018, we identified a material weakness in our internal control over financial reporting. A “material weakness” is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

We determined that we had a material weakness due to the misapplication of generally accepted accounting principles, or GAAP, in the United States as it relates to revenue recognition for our Go Green assurance offering and certain stock-based compensation charges associated with deemed employee compensation in connection with a secondary offering. As a result, there were certain post-close adjustments that were required that were material to the 2018 financial statements. To address this material weakness, we hired our Chief Financial Officer and additional accounting personnel, implemented process level and management review controls and consulted third-party service providers to assist with certain technical accounting matters.

We can give no assurance that this material weakness will not reoccur or that additional material weaknesses in our internal control over financial reporting will not be identified in the future. Our failure to implement and maintain effective internal control over financial reporting could result in errors in our financial statements that could result in a restatement of our financial statements, cause us to fail to meet our reporting obligations.

As a public company, we will be required to further design, document and test our internal controls over financial reporting to comply with Section 404. We cannot be certain that additional material weaknesses and control deficiencies will not be discovered in the future. If material weaknesses or control deficiencies occur in the future, we may be unable to report our financial results accurately on a timely basis or help prevent fraud, which could cause our reported financial results to be materially misstated and result in the loss of investor confidence or delisting and cause the market price of our common stock to decline. If we have material weaknesses in the future, it could affect the financial results that we report or create a perception that those financial results do not fairly state our

[Table of Contents](#)

financial position or results of operations. Either of those events could have an adverse effect on the value of our common stock.

Further, even if we conclude that our internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our results of operations or cause us to fail to meet our future reporting obligations.

We are an “emerging growth company,” and we cannot be certain if the reduced reporting and disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors.

We are an “emerging growth company,” as defined in the JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies,” including the auditor attestation requirements of Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. Pursuant to Section 107 of the JOBS Act, as an emerging growth company, we have elected to use the extended transition period for complying with new or revised accounting standards until those standards would otherwise apply to private companies. As a result, our consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make our Class A common stock less attractive to investors. In addition, if we cease to be an emerging growth company, we will no longer be able to use the extended transition period for complying with new or revised accounting standards.

We will remain an emerging growth company until the earliest of: (1) the last day of the fiscal year following the fifth anniversary of this offering; (2) the last day of the first fiscal year in which our annual gross revenue is \$1.07 billion or more; (3) the date on which we have, during the previous rolling three-year period, issued more than \$1 billion in non-convertible debt securities; and (4) the last day of the fiscal year in which the market value of our Class A common stock held by non-affiliates exceeded \$700 million as of June 30 of such fiscal year.

We cannot predict if investors will find our Class A common stock less attractive if we choose to rely on these exemptions. For example, if we do not adopt a new or revised accounting standard, our future results of operations may not be as comparable to the results of operations of certain other companies in our industry that adopted such standards. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock, and our stock price may be more volatile.

Risks Related to Ownership of Our Class A Common Stock and This Offering

The dual class structure of our common stock will have the effect of concentrating voting control with our executive officers, directors and their affiliates, which will limit your ability to influence the outcome of important decisions.

Our Class B common stock has ten votes per share and our Class A common stock, which is the stock we are offering in this offering, has one vote per share. Our existing stockholders, all of which

Table of Contents

hold shares of Class B common stock, will collectively beneficially own shares representing approximately 98.8% of the voting power of our outstanding capital stock following the completion of this offering. Our directors and executive officers and their affiliates will collectively beneficially own, in the aggregate, shares representing approximately 45.0% of the voting power of our outstanding capital stock immediately following the completion of this offering (or 45.7% if the underwriters' option to purchase additional shares of Class A common stock from the selling stockholders to cover over-allotments is exercised in full), based on the number of shares outstanding as of December 31, 2020 and without giving effect to any purchases that these holders may make through our reserved share program or otherwise in this offering. As a result, the holders of our Class B common stock will be able to exercise considerable influence over matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of our company or our assets, even if their stock holdings represent less than 50% of the aggregate outstanding shares of our capital stock. This concentration of ownership will limit the ability of other stockholders to influence corporate matters and may cause us to make strategic decisions that could involve risks to you or that may not be aligned with your interests. This control may adversely affect the market price of our Class A common stock.

Further, future transfers by holders of our Class B common stock will generally result in those shares converting into shares of our Class A common stock, subject to limited exceptions, such as certain transfers effected for tax or estate planning purposes. The conversion of shares of our Class B common stock into shares of our Class A common stock will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long term.

We cannot predict the impact our dual class structure may have on the market price of our Class A common stock.

We cannot predict whether our dual class structure, combined with the concentrated control of our stockholders who held our capital stock prior to the completion of this offering, including our executive officers, employees and directors and their affiliates, will result in a lower or more volatile market price of our Class A common stock or in adverse publicity or other adverse consequences. For example, certain index providers have announced restrictions on including companies with multiple class share structures in certain of their indexes. In July 2017, FTSE Russell and Standard & Poor's announced that they would cease to allow most newly public companies utilizing dual or multi-class capital structures to be included in their indices. Under the announced policies, our dual class capital structure would make us ineligible for inclusion in any of these indices. Given the sustained flow of investment funds into passive strategies that seek to track certain indexes, exclusion from stock indexes would likely preclude investment by many of these funds and could make our Class A common stock less attractive to other investors. As a result, the market price of our Class A common stock could be adversely affected.

We will have broad discretion in the use of the net proceeds that we receive from this offering and may not use them effectively.

We will have broad discretion in the application of the net proceeds that we receive from this offering, including for any of the purposes described in the section titled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, our ultimate use may vary substantially from our currently intended use. Investors will need to rely upon the judgment of our management with respect to the use of such proceeds. Pending use, we may invest the net proceeds that we receive from this offering in short-term, investment-grade, interest-bearing securities, such as money market accounts, certificates of deposit, commercial paper, and guaranteed obligations of the U.S. government that may not

[Table of Contents](#)

generate a high yield for our stockholders. If we do not use the net proceeds that we receive in this offering effectively, our business, results of operations and financial condition could be harmed, and the market price of our Class A common stock could decline.

You will experience immediate and substantial dilution in the net tangible book value of the shares of Class A common stock you purchase in this offering.

The initial public offering price of our Class A common stock is substantially higher than the pro forma net tangible book value per share of our common stock immediately after this offering. If you purchase shares of our Class A common stock in this offering, you will suffer immediate dilution of \$15.87 per share, representing the difference between our pro forma as adjusted net tangible book value per share after giving effect to the sale of Class A common stock in this offering and the initial public offering price of \$19.00 per share, which is the midpoint of the price range set forth on the cover of this prospectus. See the section titled "Dilution."

Our stock price may be volatile, and the value of our Class A common stock may decline.

The market price of our Class A common stock may be highly volatile and may fluctuate or decline substantially as a result of a variety of factors, some of which are beyond our control, including:

- actual or anticipated fluctuations in our financial condition or results of operations;
- variance in our financial performance from expectations of securities analysts;
- changes in our projected operating and financial results;
- announcements by us or our competitors of significant business developments, acquisitions, or new offerings;
- announcements or concerns regarding real or perceived quality or health issues with our products or similar products of our competitors;
- adoption of new regulations applicable to the food industry or the expectations concerning future regulatory developments;
- our involvement in litigation;
- future sales of our Class A common stock by us or our stockholders, as well as the anticipation of lock-up releases;
- changes in senior management or key personnel;
- the trading volume of our Class A common stock;
- changes in the anticipated future size and growth rate of our market; and
- general economic and market conditions.

Broad market and industry fluctuations, as well as general economic, political, regulatory, and market conditions, may also negatively impact the market price of our Class A common stock.

No public market for our Class A common stock currently exists, and an active public trading market may not develop or be sustained following this offering.

No public market for our Class A common stock currently exists. An active public trading market for our Class A common stock may not develop following the completion of this offering or, if developed, it may not be sustained. The lack of an active market may impair your ability to sell your

[Table of Contents](#)

shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair value of your shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies by using our shares as consideration.

Future sales of our Class A common stock in the public market could cause the market price of our Class A common stock to decline.

Sales of a substantial number of shares of our Class A common stock in the public market following the completion of this offering, or the perception that these sales might occur, could depress the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity securities. Many of our existing equityholders have substantial unrecognized gains on the value of the equity they hold based upon the price of this offering, and therefore they may take steps to sell their shares or otherwise secure the unrecognized gains on those shares. We are unable to predict the timing of or the effect that such sales may have on the prevailing market price of our Class A common stock.

All of our directors and officers, the selling stockholders and the holders of substantially all of our stock and securities convertible into our capital stock are subject to lock-up agreements that restrict their ability to offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise dispose of any of our shares of common stock, any options or warrants to purchase any of our shares of common stock or any securities convertible into or exchangeable for or that represent the right to receive shares of our common stock for 180 days from the date of this prospectus, or the restricted period, subject to certain exceptions; provided that such restricted period will end with respect to 25% of the shares subject to each lock-up agreement if at any time after we have filed our first quarterly report on Form 10-Q, the last reported closing price of our Class A common stock is at least 33% greater than the initial public offering price of our Class A common stock for 10 out of any 15 consecutive trading days ending on or after the date of the filing of our first quarterly report on Form 10-Q; and provided further that if such release were to occur within nine trading days of a regularly scheduled trading black-out period, the above referenced early expiration period will instead be the second trading day immediately following the expiration of such trading black-out period. In addition, with respect to shares not released as a result of such early release, if 180 days after the date of this prospectus occurs within nine trading days of a regularly scheduled trading black-out period, the restricted period will expire on the tenth trading day immediately preceding the commencement of such trading black-out period. Goldman Sachs & Co. LLC may, in its sole discretion, permit our stockholders who are subject to these lock-up agreements to sell shares prior to the expiration of the lock-up agreements, subject to applicable notice requirements. If not earlier released, all of the shares of Class A common stock sold in this offering will become eligible for sale upon expiration of the 180th day lock-up period, except for any shares held by our affiliates as defined in Rule 144 under the Securities Act of 1933, or the Securities Act.

In addition, there were 9,933,348 shares of Class B common stock issuable upon the exercise of options and 250,000 shares of Class B common stock issuable upon the vesting of restricted stock units, or RSUs, outstanding as of December 31, 2020. We intend to register all of the shares of Class A common stock and Class B common stock issuable upon exercise or vesting of outstanding options or RSUs, respectively, or other equity incentives we may grant in the future, for public resale under the Securities Act. The shares of Class A common stock will become eligible for sale in the public market to the extent such options are exercised, subject to the lock-up agreements described above and compliance with applicable securities laws.

Further, based on shares outstanding as of December 31, 2020, holders of approximately 115,453,074 shares, or 74.9% of our capital stock after the completion of this offering, will have rights,

[Table of Contents](#)

subject to some conditions, to require us to file registration statements covering the sale of their shares or to include their shares in registration statements that we may file for ourselves or other stockholders.

Our issuance of additional capital stock in connection with financings, acquisitions, investments, our equity incentive plans or otherwise will dilute all other stockholders.

We expect to issue additional capital stock in the future that will result in dilution to all other stockholders. We expect to grant equity awards to employees, directors and consultants under our equity incentive plans. We may also raise capital through equity financings in the future. As part of our business strategy, we may acquire or make investments in companies and issue equity securities to pay for any such acquisition or investment. Any such issuances of additional capital stock may cause stockholders to experience significant dilution of their ownership interests and the per share value of our Class A common stock to decline.

If securities or industry analysts do not publish research or publish unfavorable or inaccurate research about our business, the market price and trading volume of our Class A common stock could decline.

The market price and trading volume of our Class A common stock following the completion of this offering will be heavily influenced by the way analysts interpret our financial information and other disclosures. We do not have control over these analysts. If few securities analysts commence coverage of us, or if industry analysts cease coverage of us, our stock price would be negatively affected. If securities or industry analysts do not publish research or reports about our business, downgrade our Class A common stock, or publish negative reports about our business, our stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our Class A common stock could decrease, which might cause our stock price to decline and could decrease the trading volume of our Class A common stock.

We do not intend to pay dividends for the foreseeable future and, as a result, your ability to achieve a return on your investment will depend on appreciation in the price of our Class A common stock.

While we have previously paid cash dividends on our capital stock, we do not intend to pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, you may need to rely on sales of our Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on your investment.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our Class A common stock.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws, as they will be in effect upon the completion of this offering, may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws will include provisions that:

- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated preferred stock with terms, rights, and preferences determined by our board of directors that may be senior to our Class A common stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;

Table of Contents

- specify that special meetings of our stockholders can be called only by our board of directors, the chairperson of our board of directors, or our chief executive officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- establish that our board of directors is divided into three classes, with each class serving three-year staggered terms;
- prohibit cumulative voting in the election of directors;
- provide that our directors may be removed for cause only upon the vote of at least 66 2/3% of our outstanding shares of voting stock;
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- require the approval of our board of directors or the holders of at least 66 2/3% of our outstanding shares of voting stock to amend our bylaws and certain provisions of our certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally, subject to certain exceptions, prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder. Any of the foregoing provisions could limit the price that investors might be willing to pay in the future for shares of our Class A common stock, and they could deter potential acquirers of our company, thereby reducing the likelihood that you would receive a premium for your shares of our Class A common stock in an acquisition.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the federal district courts of the United States of America will be the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees.

Our amended and restated certificate of incorporation, as will be in effect upon the completion of this offering, will provide that the Court of Chancery of the State of Delaware is the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative claim or cause of action brought on our behalf;
- any claim or cause of action asserting a breach of fiduciary duty;
- any claim or cause of action against us arising under the Delaware General Corporation Law;
- any claim or cause of action arising under or seeking to interpret our amended and restated certificate of incorporation, or our amended and restated bylaws; and
- any claim or cause of action against us that is governed by the internal affairs doctrine.

The provisions would not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, or the Exchange Act. Furthermore, Section 22 of the Securities Act

[Table of Contents](#)

creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation will further provide that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause or causes of action arising under the Securities Act, including all causes of action asserted against any defendant to such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by us, our officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

These exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers and other employees. If a court were to find either exclusive-forum provision in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could seriously harm our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our expectations regarding our revenue, operating expenses and other operating results, including our key metrics;
- our ability to effectively manage our growth;
- our ability to grow the number of Marketplace Participants on our platform;
- our ability to acquire new customers and successfully retain existing customers and capture a greater share of wholesale transactions from our existing customers;
- our ability to increase usage of our platform and generate revenue from our value-added services;
- anticipated trends, growth rates, and challenges in our business and in the markets in which we operate;
- our ability to achieve or sustain our profitability;
- future investments in our business, our anticipated capital expenditures and our estimates regarding our capital requirements;
- the costs and success of our marketing efforts, and our ability to promote our brand;
- our reliance on key personnel and our ability to identify, recruit and retain skilled personnel;
- our ability to obtain, maintain, protect and enforce our intellectual property rights and any costs associated therewith;
- the effect of COVID-19 or other public health crises on our business and the global economy;
- our ability to compete effectively with existing competitors and new market entrants;
- our ability to expand internationally;
- our ability to identify and complete acquisitions that complement and expand our reach and platform;
- our ability to comply or remain in compliance with laws and regulations that currently apply or become applicable to our business in the United States and other jurisdictions where we elect to do business; and
- the growth rates of the markets in which we compete.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section titled “Risk

[Table of Contents](#)

Factors” and elsewhere in this prospectus. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. The results, events and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements made in this prospectus relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments.

MARKET, INDUSTRY AND OTHER DATA

This prospectus contains statistical data, estimates and forecasts that are based on independent industry publications or other publicly available information, as well as other information based on our internal sources. While we believe the industry and market data included in this prospectus are reliable and are based on reasonable assumptions, these data involve many assumptions and limitations, and you are cautioned not to give undue weight to these estimates. We have not independently verified the accuracy or completeness of the data contained in these industry publications and other publicly available information. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the sections titled "Risk Factors" and "Special Note Regarding Forward-Looking Statements." Among other items, certain of the market research included in this prospectus was published prior to the outbreak of the COVID-19 pandemic and did not anticipate the virus or the impact it has caused on our industry. We have utilized this pre-pandemic market research in the absence of updated sources. These and other factors could cause results to differ materially from those expressed in the projections and estimates made by the independent third parties and us.

The sources of certain statistical data, estimates and forecasts contained in this prospectus are the following independent industry publications or reports:

- Automotive News, Top 100 Retailers Ranked by Used-Vehicle Sales, April 2019;
- Bureau of Transportation Statistics, New and Used Passenger Car Sales and Leases, December 2019;
- Cox Automotive, Industry Insights 2021;
- Hedges & Company, U.S. Vehicle Registration Statistics, November 2020;
- IAA, Investor Presentation, November 2020;
- iSeeCars, Used Car Sales Study, 2020;
- J.D. Power, COVID-19 Used Update, May 2020;
- J.D. Power Valuation Services, June 2020;
- Manheim, Used Car Market Report, 2017;
- National Automobile Dealers Association, Average Dealership Profile, 2019;
- National Automobile Dealers Association, Mid Year Report, 2020;
- National Independent Automobile Dealers Association, Used Car Industry Report, 2019;
- National Independent Automobile Dealers Association, Used Car Industry Report, 2020; and
- Technavio, Global Used Car Market 2020–2024, U.S. Used Car Market 2020–2024.

Certain statistical information in this prospectus is also based on a 2020 survey we conducted of independent and franchise dealers, which we refer to as our 2020 ACV Survey. Each of the dealers was, at the time of response, a user of our platform and services.

Unless otherwise noted, in this prospectus we cite a source the first time a statement relying upon that source is made, and do not include citations subsequently when that statement is repeated.

USE OF PROCEEDS

We estimate that we will receive net proceeds from this offering of approximately \$290.0 million based on an assumed initial public offering price of \$19.00 per share of Class A common stock, the midpoint of the estimated price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any of the proceeds from the sale of Class A common stock in this offering by the selling stockholders identified in this prospectus in the event that the underwriters exercise their option to purchase additional shares.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$19.00 per share of Class A common stock, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately \$15.5 million, assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of Class A common stock offered by us would increase (decrease) the net proceeds to us from this offering by approximately \$17.8 million, assuming the assumed initial public offering price of \$19.00 per share of Class A common stock remains the same, and after deducting estimated underwriting discounts and commissions.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our Class A common stock and facilitate our future access to the capital markets. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds we receive from this offering. However, we currently intend to use the net proceeds we receive from this offering for general corporate purposes, including working capital, operating expenses and capital expenditures. We may also use a portion of the net proceeds we receive from this offering to acquire complementary businesses, products, services or technologies. However, we do not have agreements or commitments to enter into any acquisitions at this time.

We will have broad discretion over how to use the net proceeds we receive from this offering. We intend to invest the net proceeds we receive from this offering that are not used as described above in investment-grade, interest-bearing instruments.

DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and future earnings, if any, to fund the development and expansion of our business, and we do not anticipate declaring or paying any cash dividends in the foreseeable future. Any future determination regarding the declaration and payment of dividends, if any, will be at the discretion of our board of directors and will depend on then-existing conditions, including our financial condition, operating results, contractual restrictions (including any restrictions in our then-existing debt arrangements), capital requirements, business prospects and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of December 31, 2020:

- on an actual basis;
- on a pro forma basis, giving effect to (1) the reclassification of our common stock into an equal number of shares of Class B common stock, (2) the automatic conversion of all outstanding shares of convertible preferred stock into an aggregate of 115,269,221 shares of Class B common stock and (3) the filing and effectiveness of our amended and restated certificate of incorporation, each of which will occur immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis, giving effect to (1) the pro forma adjustments described above and (2) our receipt of \$290.0 million in estimated net proceeds from the sale of shares of Class A common stock that we are offering at an assumed initial public offering price of \$19.00 per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table together with the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus.

	December 31, 2020		
	Actual	Pro Forma (Unaudited)	Pro Forma As Adjusted (Unaudited)
	(in thousands, except share and per share amounts)		
Cash and cash equivalents	\$ 233,725	\$ 233,725	\$ 523,736
Convertible preferred stock, \$0.001 par value, 230,538,501 shares authorized, 115,269,221 shares issued and outstanding, actual, and no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	366,332	—	—
Stockholders’ (deficit) equity:			
Preferred stock, \$0.001 par value, no shares authorized, issued, and outstanding, actual, and 20,000,000 shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	—	—	—
Common stock, \$0.001 par value, 311,100,000 authorized, 22,331,842 shares issued and outstanding, actual, and no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	22	—	—
Class A common stock, \$0.001 par value, no shares authorized, issued and outstanding, actual, 2,000,000,000 shares authorized and no shares issued and outstanding, pro forma, 2,000,000,000 shares authorized and 16,550,000 shares issued and outstanding, pro forma as adjusted	—	—	17
Class B common stock, \$0.001 par value, no shares authorized, issued and outstanding, actual, 160,000,000 shares authorized and 137,601,063 shares issued and outstanding, pro forma and pro forma as adjusted	—	138	138
Additional paid-in capital	27,322	393,538	683,532
Accumulated deficit	(166,979)	(166,979)	(166,979)
Accumulated other comprehensive loss	(57)	(57)	(57)
Total stockholders’ (deficit) equity	\$ (139,692)	\$ 226,640	\$ 516,651
Total capitalization	\$ 226,640	\$ 226,640	\$ 516,651

Table of Contents

A \$1.00 increase (decrease) in the assumed initial public offering price of \$19.00 per share of Class A common stock, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) each of our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately \$15.5 million, assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of Class A common stock offered by us would increase (decrease) each of our pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately \$17.8 million, assuming the assumed initial public offering price of \$19.00 per share of Class A common stock remains the same, and after deducting estimated underwriting discounts and commissions.

The number of shares of Class A common stock and Class B common stock that will be outstanding after this offering is based on no shares of Class A common stock outstanding and 137,601,063 shares of Class B common stock outstanding as of December 31, 2020, and excludes:

- 9,933,348 shares of Class B common stock issuable on the exercise of stock options outstanding as of December 31, 2020 under our 2015 Plan, with a weighted-average exercise price of \$2.16 per share;
- 633,700 shares of Class B common stock issuable on the exercise of stock options granted subsequent to December 31, 2020 under our 2015 Plan, with a weighted-average exercise price of \$8.10 per share;
- 250,000 shares of Class B common stock issuable upon the vesting and settlement of RSUs outstanding as of December 31, 2020 under our 2015 Plan;
- 1,896,233 shares of Class B common stock issuable upon the vesting and settlement of RSUs granted subsequent to December 31, 2020 under our 2015 Plan;
- 13,600,000 shares of Class A common stock reserved for future issuance under our 2021 Plan, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled "Executive Compensation—Employee Benefit Plans"; and
- 2,800,000 shares of Class A common stock reserved for issuance under our ESPP, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled "Executive Compensation—Employee Benefit Plans."

DILUTION

If you invest in our Class A common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of Class A common stock and the pro forma as adjusted net tangible book value per share immediately after this offering.

Our pro forma net tangible book value as of December 31, 2020 was \$192.5 million, or \$1.40 per share of common stock. Our pro forma net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the number of our shares of common stock outstanding as of December 31, 2020, after giving effect to the automatic conversion of all outstanding shares of convertible preferred stock into an aggregate of 115,269,221 shares of Class B common stock immediately prior to the completion of this offering.

After giving effect to the sale by us of 16,550,000 shares of Class A common stock in this offering at an assumed initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of December 31, 2020 would have been \$482.5 million, or \$3.13 per share. This amount represents an immediate increase in pro forma as adjusted net tangible book value of \$1.73 per share to our existing stockholders and an immediate dilution of \$15.87 per share to new investors purchasing Class A common stock in this offering. We determine dilution by subtracting the pro forma as adjusted net tangible book value per share after this offering from the initial public offering price per share paid by investors purchasing Class A common stock in this offering. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		\$ 19.00
Historical net tangible book value per share as of December 31, 2020	\$ (1.26)	
Increase per share attributable to the pro forma adjustments described above	<u>2.66</u>	
Pro forma net tangible book value per share as of December 31, 2020	1.40	
Increase in pro forma as adjusted net tangible book value per share attributable to new investors purchasing shares in this offering	<u>1.73</u>	
Pro forma as adjusted net tangible book value per share after giving effect to this offering		<u>3.13</u>
Dilution per share to new investors in this offering		<u>\$ 15.87</u>

The dilution information discussed above is illustrative only and may change based on the actual initial public offering price and other terms of this offering. A \$1.00 increase (decrease) in the assumed initial public offering price of \$19.00 per share of Class A common stock, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value per share after this offering by \$0.10 per share and increase (decrease) the immediate dilution to new investors by \$0.90 per share, in each case assuming the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions. Similarly, each increase of 1,000,000 shares in the number of shares of Class A common stock offered by us would increase our pro forma as adjusted net tangible book value by approximately \$0.09 per share and decrease the dilution to new investors by approximately \$0.09 per share, and each decrease of 1,000,000 shares in the number of shares of Class A common stock offered by us would decrease our pro forma as adjusted net tangible book value by approximately \$0.10 per share and increase the dilution to new investors by approximately \$0.10 per share, in each case assuming the assumed initial public offering price of \$19.00 per share of Class A common stock remains the same, and after deducting estimated underwriting discounts and commissions.

Table of Contents

The following table summarizes, as of December 31, 2020, on a pro forma as adjusted basis as described above, the number of shares of our Class A common stock, the total consideration and the average price per share (1) paid to us by existing stockholders and (2) to be paid by new investors acquiring our Class A common stock in this offering at an assumed initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders	137,601,063	89.3%	\$ 394,239,702	55.6%	\$ 2.87
New investors	16,550,000	10.7	314,450,000	44.4	19.00
Totals	154,151,063	100.0%	\$ 708,689,702	100.0%	\$ 4.60

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$19.00 per share, the midpoint of the estimated price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors and total consideration paid by all stockholders by approximately \$15.5 million, assuming that the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares of Class A common stock offered by us would increase (decrease) the total consideration paid by new investors and total consideration paid by all stockholders by \$17.8 million, assuming the assumed initial public offering price of \$19.00 per share of Class A common stock remains the same, and after deducting estimated underwriting discounts and commissions.

The number of shares of Class A common stock and Class B common stock that will be outstanding after this offering is based on no shares of Class A common stock and 137,601,063 shares of Class B common stock outstanding as of December 31, 2020, and excludes:

- 9,933,348 shares of Class B common stock issuable on the exercise of stock options outstanding as of December 31, 2020 under our 2015 Plan, with a weighted-average exercise price of \$2.16 per share;
- 633,700 shares of Class B common stock issuable on the exercise of stock options granted subsequent to December 31, 2020 under our 2015 Plan, with a weighted-average exercise price of \$8.10 per share;
- 250,000 shares of Class B common stock issuable upon the vesting and settlement of RSUs outstanding as of December 31, 2020 under our 2015 Plan;
- 1,896,233 shares of Class B common stock issuable upon the vesting and settlement of RSUs granted subsequent to December 31, 2020 under our 2015 Plan;
- 13,600,000 shares of Class A common stock reserved for future issuance under our 2021 Plan, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled "Executive Compensation—Employee Benefit Plans"; and
- 2,800,000 shares of Class A common stock reserved for issuance under our ESPP, plus any future increases in the number of shares of Class A common stock reserved for issuance thereunder, as more fully described in the section titled "Executive Compensation—Employee Benefit Plans."

[Table of Contents](#)

To the extent that any outstanding options or RSUs are exercised or settled, respectively, or new options or RSUs are issued under our stock-based compensation plans, or that we issue additional shares of capital stock in the future, there will be further dilution to investors participating in this offering. If all outstanding options and RSUs under our 2015 Plan as of December 31, 2020 were exercised or settled, respectively, then our existing stockholders, including the holders of these options and RSUs, would own 90.0%, and our new investors would own 10.0%, of the total number of shares of our capital stock outstanding following the completion of this offering.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

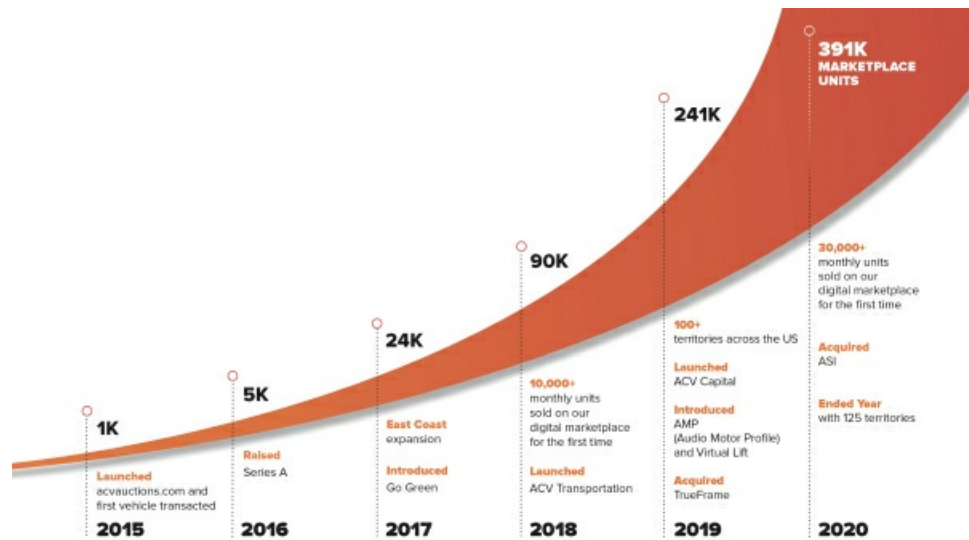
Our mission is to build and enable the most trusted and efficient digital marketplace for buying and selling used vehicles with transparency and comprehensive data that was previously unimaginable.

We provide a highly efficient and vibrant digital marketplace for wholesale vehicle transactions and data services that offer transparent and accurate vehicle information to our customers. Our platform leverages data insights and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. We strive to solve the challenges that the used automotive industry has faced for generations and provide powerful technology-enabled capabilities to our dealers and commercial partners who fulfill a critical role in the automotive ecosystem. Since inception, we have facilitated over 750,000 wholesale transactions between over 21,000 of our dealers and commercial partners. We help dealers source and manage inventory and accurately price their vehicles as well as process payments, transfer titles, manage arbitrations, and finance and transport vehicles. Our platform encompasses:

- **Digital Marketplace.** Connects buyers and sellers of wholesale vehicles in an intuitive and efficient manner. Our core marketplace offering is a 20-minute live auction, which facilitates instant transactions of wholesale vehicles, and is available across multiple platforms including mobile apps, desktop, and directly through API integration. We also offer transportation and financing services to facilitate the entire transaction journey.
- **Data Services.** Offer insights into the condition and value of used vehicles for transactions both on and off our marketplace and help dealers, their end consumers, and commercial partners make more informed decisions and transact with confidence and efficiency.
- **Data and Technology.** Underpins everything we do, and powers our vehicle inspections, comprehensive vehicle intelligence reports, digital marketplace, and operations automation.

Table of Contents

Since first going live with our offering in 2015, we have expanded from our first territory in Buffalo, New York to 125 territories as of December 31, 2020. As we have expanded our geographic footprint, our marketplace has scaled significantly, with Marketplace GMV growing from \$22.9 million to \$3.3 billion and Marketplace Participants from 4,995 to 16,215 between 2016 and 2020, respectively. See the section titled “—Key Operating and Financial Metrics” for additional information on Marketplace GMV and Marketplace Units.



We have historically generated the majority of our revenue from our digital marketplace where we earn auction and ancillary fees from both buyers and sellers in each case only upon a successful auction. Buyer auction fees are variable based on the price of the vehicle, while seller auction fees include a fixed auction fee and an optional fee for the elective condition report associated with the vehicle. We also earn ancillary fees through additional value-added services to buyers and sellers in connection with the auction. These value-added services currently include:

- **ACV Transportation.** Through our nationwide network of carrier partners, our technology platform, and dedicated service teams, we move vehicles both locally and long-haul in a cost efficient and timely manner.
- **ACV Capital.** We offer short-term inventory financing for buyers to purchase vehicles on our digital marketplace. Our financing product includes straightforward pricing, allowing our customers to know their inventory costs upfront.
- **Go Green.** We provide the seller with an assurance against claims related to defects in the vehicle that we did not identify in our condition report and otherwise may have exposed the seller to loss as a result of arbitration with the buyer.

For ACV Transportation, we earn a fee from the buyer that varies depending on the distance traveled for the vehicle transported. For ACV Capital, our fee varies based on the amount and term of the inventory financing provided to the buyer. We charge a fixed fee for our Go Green assurance on a per vehicle basis if the seller is enrolled in the service.

[Table of Contents](#)

We continue to innovate and build on our platform to provide a full suite of offerings for dealers and commercial consignors in the used vehicle market. In 2019, we began to generate data services revenue through our True360 Reports, which expanded our proprietary, vehicle specific intelligence, including cosmetic and structural assessments and vehicle history. We charge a fixed fee for True360 Reports on a per vehicle basis. Dealers utilize our True360 Reports to make wholesale and retail transaction decisions with confidence both on and off our marketplace. In 2020, through our acquisition of ASI, we extended this offering to serve commercial partners as well who use True360 Reports to better price and sell their used vehicle inventory.

Our customers include participants on our marketplace and purchasers of our data services. Certain dealers and commercial partners purchase our True360 Report in connection with vehicle assessments and transactions that do not occur on our marketplace. Our dealer customers include a majority of the top 100 used vehicle dealers in the United States. For the year ended December 31, 2020, we had 16,215 Marketplace Participants, up from 12,514 for the year ended December 31, 2019. See the section titled “—Key Operating and Financial Metrics” for additional information on Marketplace Participants.

For the year ended December 31, 2020, 391,466 Marketplace Units were sold on our marketplace, representing a total Marketplace GMV of \$3.3 billion, an increase of 62.1% and 86.2%, respectively, from the same period in 2019. For the year ended December 31, 2020, we generated total revenue of \$208.4 million, an increase of 95.0% from the same period in 2019, a net loss of \$41.0 million and Adjusted EBITDA of \$(30.8) million compared to a net loss of \$77.2 million and Adjusted EBITDA of \$(76.4) million for the same period in 2019. We continue to invest in growth to scale our company responsibly and drive towards profitability. See the section titled “—Key Operating and Financial Metrics” for additional information on Marketplace Units, Marketplace GMV and Adjusted EBITDA.

Impact of COVID-19 on Our Business

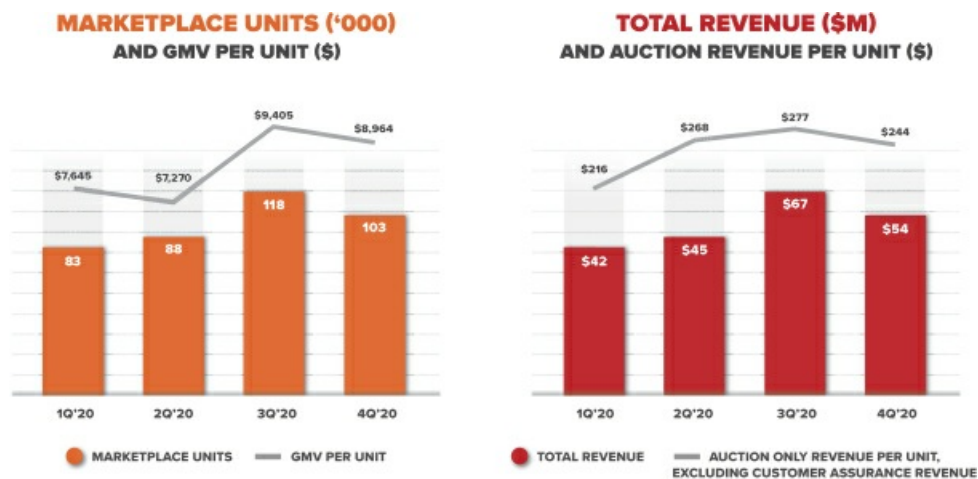
Overview

Beginning in March 2020, our business and operations began to experience the effects of the worldwide COVID-19 pandemic. Initially, COVID-19 significantly disrupted the operations of our customers, most of whom are automotive dealers who sell both new and used vehicles to consumers in physical dealership stores. As a result of the COVID-19 pandemic, governments in many of jurisdictions in which we operate instituted shelter-in-place orders, forcing many physical automotive dealership stores to close in March and April and cutting off consumer foot traffic, which led to a decline in overall vehicle sales to consumers. In the United States, retail automotive sales for used vehicles declined by 38%¹¹ year over year in April 2020.

¹¹ iSeeCars, Used Car Sales Study, 2020

[Table of Contents](#)

The slowdown in the retail sales of used vehicles subsequently impacted the market for wholesale automotive transactions. Wholesale is one of the most common supply sources through which dealers acquire used vehicle inventory to sell retail. With a sudden decline in retail sales of these dealerships, dealers' demand for wholesale transactions also decreased sharply. In addition, most automotive wholesale transactions in the United States are conducted through physical or hybrid auctions that still require physical operations, and shelter-in-place orders forced these traditional auctions to temporarily shut down operations. According to J.D. Power, in April 2020 automotive wholesale auction sales in the United States decreased by 49% sequentially compared to the prior month of March 2020 and by 66% compared to April 2019.¹²



Negative trends in transaction volume driven by COVID began to be observed near the end of the first quarter of 2020. For the month ended March 31, 2020, our Marketplace Units decreased 20% month-over-month. This decline accelerated early in the second quarter; in the month ended April 30, 2020, Marketplace Units were down approximately 29% month-over-month. In addition to declining transaction volumes, because supply of wholesale vehicles exceeded the market demand during these months, we saw the average sales price per unit decline by over 31% from the month ended February 29, 2020 to the month ended April 30, 2020.

This initial disruption began to subside in May 2020 as the demand for used vehicles on a national level began to outpace supply, leading to higher used vehicle valuations and a higher percentage of successful auctions on our marketplace. By June 2020, within 9 weeks of the trough levels seen in April 2020, automotive wholesale auction sales had rebounded to 80% of pre-COVID-19 levels.¹³ Moreover, an increasing number of dealers and commercial partners looked to a fully digital marketplace to transact remotely as traditional, in-person wholesale auctions continued to experience COVID-19-related disruptions and faced challenges in restoring normal operations.

As a result, starting in May 2020, our marketplace activity rebounded strongly to reach levels higher than the months of January and February 2020 prior to the impact of COVID-19. For the month ended May 31, 2020, both our Marketplace Units and our revenue approximately doubled compared to the month ended April 30, 2020. Driven by both higher demand for used vehicles leading to less

¹² J.D. Power, COVID-19 Used Update, May 2020
¹³ J.D. Power Valuation Services, June 2020

[Table of Contents](#)

discounting and increased overall valuations, the average sale price of our Marketplace Unit, and subsequently our auction revenue per unit, also increased starting in May 2020 and reached peak levels in August 2020. As supply constraints began to ease and the demand and supply for used vehicles reached a better equilibrium in the fourth quarter of 2020, the growth in our transaction volume and revenue normalized. In the fourth quarter of 2020, Marketplace Units and total revenue represented strong year-over-year growth of 37% and 52%, respectively, but were down by 13% and 20% respectively, compared to the peak levels in the third quarter of 2020.

Adjusted EBITDA

In March and April of 2020, we implemented a temporary reduction in workforce and closure of certain territories to reduce our costs in light of the meaningful disruption we saw across our customer base and the significant decrease in our marketplace activity. These cost reduction measures, combined with the strong recovery in our marketplace activity towards the second half of the second quarter of 2020, amplified operating leverage in our business. This improved our Adjusted EBITDA in the second quarter of 2020, driving smaller Adjusted EBITDA losses of \$1.5 million compared to Adjusted EBITDA losses of \$24.4 million in the first quarter of 2020. In the third quarter of 2020, our profitability continued to improve to achieve positive \$3.3 million of Adjusted EBITDA, driven by the continued strength in our marketplace activity, a higher percentage of vehicles listed for sale successfully selling on the marketplace, and increased operating leverage. For a reconciliation of our Adjusted EBITDA for the quarters presented to the most directly comparable GAAP measure, net loss, please see “—Results of Operations—Quarterly Results of Operations.”

We cannot predict how the pandemic will continue to develop, whether and to what extent government regulations or other restrictions may impact our operations or those of our customers, or whether and to what extent the pandemic or the effects thereof may have longer term unanticipated impacts on our business.

Our Business Model

We believe dealers and commercial consignors can benefit from our digital marketplace and comprehensive suite of services to buy and sell their vehicles, due to the inefficiencies and operational complexities that exist in the traditional wholesale auction market. Our business model is based on shared success and we only generate buyer and seller auction and ancillary fees in the case of a successful auction.

For any auction transaction on our marketplace, we generate auction fees from both buyers and sellers. Buyer auction fees are variable based on the price of the vehicle while seller auction fees include a fixed auction fee and a fee for the condition report associated with the vehicle. In 2018, 2019 and 2020, we generated \$19.0, \$49.2 and \$99.2 million of revenue, respectively, from such auction fees. In 2018, 2019 and 2020, we incurred \$3.1, \$8.2 and \$11.1 million, respectively, of expenses attributable to the cost of generating auction marketplace revenue.

Below describes a typical live auction on our digital marketplace within any of our 125 territories:

- An inspector is dispatched to the dealer’s lot and produces a condition report on each vehicle the dealer would like to offer for sale, including undercarriage pictures using Virtual Lift, an audio recording of the engine using AMP, and details of any accident history.
- This condition report is then uploaded to our marketplace by the inspector and the selling dealer is given the opportunity to review the condition report before determining whether to launch the auction and set a reserve price.
- Buyers are typically notified of a pending auction based on their filter preferences.

Table of Contents

- Once the auction commences buyers bid on the vehicle during a 20-minute auction and a final price is determined based on the highest bid with respect to the vehicle.
- Upon completion of the auction, title of the vehicle is transferred to the successful buyer, and that buyer pays the sale price of the vehicle as well as the buyer auction fee on our marketplace. We keep the buyer auction fee and transfer the sale value of the vehicle, after deducting the seller auction fee, to the seller.

We also earn ancillary fees through additional value-added services to buyers and sellers in connection with the auction:

- Certain buyers use ACV Transportation to enable delivery of the vehicle purchased, and we collect a fee from such buyers upon completion of the auction. The fee varies depending on the distance traveled for the vehicle transported.
- Certain other buyers, who we have pre-approved, use ACV Capital to obtain financing for their purchases, after which the buyer repays the loan with interest. Our fee varies based on the amount and the term of financing provided to the buyer.
- For sellers who have enrolled in the service, we collect a fixed Go Green fee on a per vehicle basis simultaneously with the auction fee, which provides an assurance on the price of the vehicle for the seller. In the event the buyer challenges the accuracy of the condition report through arbitration and we determine the claim is valid, we will bear the cost to the buyer to remediate the defect or find a new buyer on the seller's behalf in the event the auction is cancelled.

We scale our platform through a territory model by employing a multi-pronged go-to-market strategy to establish and expand our relationships with dealers and commercial partners. Each territory we build is cultivated by a dedicated team, including territory managers, vehicle condition inspectors, and other operations staff, who target and onboard dealers to achieve an appropriate balance of buyers and sellers and to encourage local vibrancy in the marketplace. As customers experience success on our platform and awareness for our digital marketplace increases, we focus on growing our revenue and scale within a territory by bringing more customers onto our platform, increasing our share of their wholesale transactions and selling them additional value-added and data services. We have expanded from our first territory in Buffalo, New York in 2015 to 125 territories today. We have a demonstrated history of growing transaction volume on our digital marketplace within territories over time, driven by growth from both the addition of new customers and the expansion of relationships with existing customers.

Attractive Unit Economics and Cohort Trends

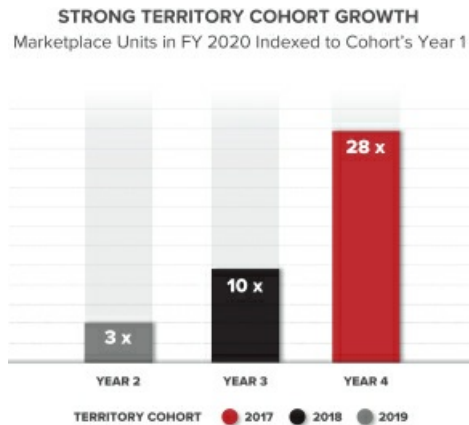
Improved Unit Economics as Territories Mature and Scale

We typically experience improving operational efficiency in our territories as they mature and scale. At the launch of a new territory, we incur a certain amount of costs to establish presence, which are largely fixed costs in nature. These costs include adding a territory manager and a team of our vehicle condition inspectors, or VCIs, who carry out inspections on our customers' lots, help drive stronger relationships with our customers and increase their use of our platform. As our territories mature and scale, territory-level economics tend to improve driven by more cost-efficient operations and greater customer affinity for our offerings.

This cost structure allows us to support strong transaction growth without significant incremental fixed costs as territories mature. The chart below shows Marketplace Units transacted in the 12 months ended December 31, 2020 across three cohorts of territories indexed to the cohort's first year, each representing different levels of maturity. A cohort refers to all territories launched during a given period. The comparison

[Table of Contents](#)

of a cohort's transaction volume in 2020 to its volume in the initial year of launch demonstrates substantial unit growth to date. For example, the cohort of territories launched in 2019 saw its Marketplace Units grow by nearly three times between 2019, its year of launch, and 2020. An older cohort composed of territories launched in 2017 saw its Marketplace Units grow by over 28 times between 2017 and 2020.



As our territories reach greater scale and higher levels of network density, we typically achieve lower inspection costs per vehicle and improved overall economics per transaction. To assess operational efficiency at the territory level, we examine our auction expenses as a percentage of our auction revenue. Auction expenses consist of all auction-related costs, including Go Green arbitration and auction related processing costs, expenses related to auction operations and wholesale inspections, and field sales, among others, but excluding corporate overhead. Auction revenue consists of auction and customer assurance revenue but excludes revenue from ACV Transportation and ACV Capital.

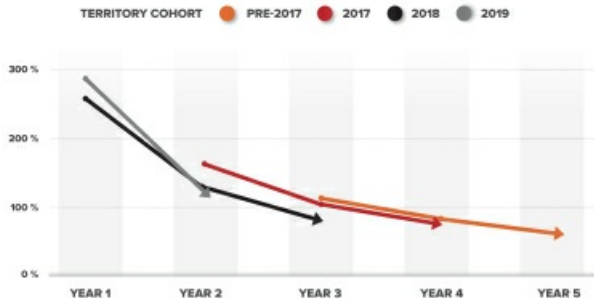
The table below shows total auction revenue and auction expenses incurred in the 12 months ended December 31, 2020 across three individual territories launched in different years, each representing different levels of maturity. For example, in Territory A, which was launched in 2018, our auction expenses accounted for 88% of our auction revenue in 2020, the third year since its launch. However, in Territory C, which was launched in 2016 and is more mature, auction expense accounted for 62% of auction revenue in 2020. These operational efficiencies translate to superior economics per Marketplace Unit. The difference between auction revenue per unit and auction expenses per unit was \$38 for the three-year old Territory A, compared to \$131 for the five-year old Territory C.

	Territory A	Territory B	Territory C
INCEPTION YEAR	2018	2017	2016
YEARS SINCE INCEPTION	3	4	5
AUCTION UNITS IN FY 2020	4,010	5,585	13,143
AUCTION UNITS GROWTH SINCE INCEPTION	3.5 x	5.7 x	7.5 x
AUCTION REVENUE	\$1.2M	\$1.8M	\$4.5M
PER UNIT	\$311	\$315	\$342
AUCTION EXPENSES	\$1.0M	\$1.4M	\$2.8M
PER UNIT	\$273	\$256	\$211
AUCTION EXPENSES AS % OF AUCTION REVENUE	88 %	81 %	62 %
UNIT ECONOMICS	\$38	\$59	\$131

[Table of Contents](#)

The improving operational efficiency demonstrated by these case studies is consistent across all our territory cohorts. While auction expenses exceed auction revenue in the early years after we enter a new territory, as territories scale and mature we typically achieve improved operating leverage, and auction revenues typically exceed auction expenses after the third or fourth year after we have entered a territory. For example, our 2018 territory cohort's auction expenses amounted to 258% of auction revenue in year one but by year three, expenses decreased to 86% of revenue. We also benefit from our continuously growing repository of data, greater liquidity and brand awareness nationwide, which has allowed our newer cohorts to achieve operating leverage faster than older cohorts.

INCREASING COST EFFICIENCY ACROSS TERRITORIES
 Auction Expenses as a % of Auction and Customer Assurance Revenue as of FY 2020



The Pre-2017 Cohort includes all territories launched in 2016, which constitutes a substantial majority of the aggregated cohort, and the portion of 2015 following our offering first going live in June 2015. All years following the initial year for this cohort are treated as if the 2015 territories were launched in 2016.

Auction Expenses as a % of Auction and Customer Assurance Revenue

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
PRE-2017 COHORT	N/A	N/A	115 %	84 %	64 %
2017 COHORT	N/A	164 %	106 %	81 %	
2018 COHORT	258 %	130 %	86 %		
2019 COHORT	285 %	123 %			

The Pre-2017 Cohort includes all territories launched in 2016, which constitutes a substantial majority of the aggregated cohort, and the portion of 2015 following our offering first going live in June 2015. All years following the initial year for this cohort are treated as if the 2015 territories were launched in 2016.

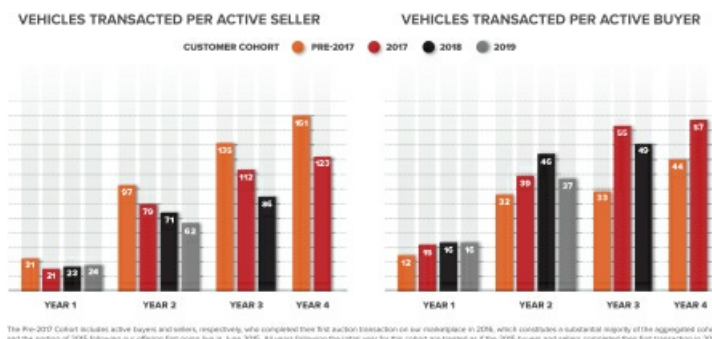
Marketplace Participants Exhibit Increasing Engagement and Spend over Time.

Our success relies in part on our ability to grow our share of wholesale transactions from existing customers and drive greater engagement on our digital marketplace. We evaluate this trend by tracking annual customer cohorts, defined as buyers or sellers who completed their first auction transaction on our marketplace in a specific year.

For example, sellers in our 2017 cohort sold an average of 21 vehicles in 2017. The sellers that continued to remain on our platform sold an increasing number of vehicles in subsequent years, selling an average of 79 vehicles in 2018, 112 vehicles in 2019, and 123 vehicles in 2020. We observe a similar trend with our buyers. Buyers in our 2017 cohort purchased an average of 15 vehicles in 2017 compared to 39 in 2018, 55 in 2019, and 57 vehicles in 2020. We look at such increases in buyer and seller engagement as an indicator of the strength of our marketplace and improving customer satisfaction.

[Table of Contents](#)

While we view trends in vehicles transacted per customer as an indicator of the strength of our marketplace, the number of customers within a cohort can vary significantly. For example, the 2019 cohort had approximately 7 times as many sellers as the 2017 cohort in their respective first year. The 2017 seller cohort is also concentrated in a smaller number of territories in a more condensed geographic area as compared to the 2019 cohort. While all of our seller cohorts have demonstrated robust growth in transactions per active seller, the larger and more geographically diverse cohorts, like the 2019 cohort, tend to have lower rates of growth when compared to smaller, more condensed cohorts, like the 2017 cohort. Additionally, we have historically had more buyers than sellers on our marketplace, which contributes to a lower number of average vehicles transacted per active buyer relative to active seller.



The Pre-2017 Cohort includes active buyers and sellers, respectively, who completed their first auction transaction on our marketplace in 2016, which constitutes a substantial majority of the aggregated cohort, and the portion of 2016 following our offering first going live in June 2016. All years following the year year for the cohort are in respect as if the 2016 buyers and sellers completed their first transaction in 2016.

Key Operating and Financial Metrics

We regularly monitor a number of operating and financial metrics in order to measure our current performance and estimate our future performance. Our business metrics may be calculated in a manner different than similar business metrics used by other companies.

	Year Ended December 31,	
	2019	2020
Marketplace Units	241,477	391,466
Marketplace GMV	\$ 1.8 billion	\$ 3.3 billion
Marketplace Participants	12,514	16,215
Adjusted EBITDA	\$ (76.4) million	\$ (30.8) million

Marketplace Units

Marketplace Units is a key indicator of our potential for growth in Marketplace GMV and revenue. It demonstrates the overall engagement of our customers on the ACV platform, the vibrancy of our digital marketplace and our market share of wholesale transactions in the United States. We define Marketplace Units as the number of vehicles transacted on our digital marketplace within the applicable period. Marketplace Units transacted includes any vehicle that successfully reaches sold status, even if the auction is subsequently unwound, meaning the buyer or seller does not complete the transaction. These instances have been immaterial to date. Marketplace Units exclude vehicles that were inspected by ACV, but not sold on our digital marketplace. Marketplace Units have increased over time as we have expanded our territory coverage, added new Marketplace Participants and increased our share of wholesale transactions from existing customers. Since we only earn auction and ancillary fees in the case of a successful auction, Marketplace Units will remain a critical driver of our revenue growth.

[Table of Contents](#)

Marketplace GMV

Marketplace GMV is primarily driven by the volume and dollar value of Marketplace Units transacted on our digital marketplace. We believe that Marketplace GMV acts as an indicator of the success of our marketplace, signaling satisfaction of dealers and buyers on our marketplace, and the health, scale, and growth of our business. We define Marketplace GMV as the total dollar value of vehicles transacted through our digital marketplace within the applicable period, excluding any auction and ancillary fees. Because our definition of Marketplace Units does not include vehicles inspected but not sold on our digital marketplace, GMV does not represent revenue earned by us. We expect that Marketplace GMV will continue to grow as Marketplace Units grow, though at a varying rate within a given applicable period, as Marketplace GMV is also impacted by the value of each vehicle transacted.

Marketplace Participants

We monitor the growth in Marketplace Participants as it promotes a more vibrant and healthy marketplace by expanding the selection of vehicles and buyer demand on our digital marketplace. We define Marketplace Participants as dealers or commercial partners with a unique customer ID that have transacted at least once in the last 12 months as either a buyer or seller on our digital marketplace. For the year ended December 31, 2020 our largest seller accounted for less than 0.6% of the Marketplace Units transacted on our digital marketplace. Marketplace Participants include independent and franchise dealers buying and selling on our marketplace, as well as commercial partners, consisting of commercial leasing companies, rental car companies, bank or other finance companies, who use our marketplace to sell their inventory. We believe that our growth in Marketplace Participants over time has been driven by the value proposition of our offerings, and our sales and marketing success, including our ability to attract new dealers and commercial partners to our digital marketplace. Based on our existing territory coverage, we believe that we have significant opportunity to continue to increase the number of Marketplace Participants.

Adjusted EBITDA

Adjusted EBITDA is a performance measure that we use to assess our operating performance and the operating leverage in our business. We define Adjusted EBITDA as net income (loss), adjusted to exclude: depreciation and amortization, stock-based compensation expense, interest expense (income), other expense (income), provision for income taxes, and other one-time, non-recurring items, when applicable. We monitor Adjusted EBITDA as a non-GAAP financial measure to supplement the financial information we present in accordance with generally accepted accounting principles, or GAAP, to provide investors with additional information regarding our financial results. For further explanation of the uses and limitations of this measure and a reconciliation of our Adjusted EBITDA to the most directly comparable GAAP measure, net loss, please see “—Non-GAAP Financial Measures.”

We expect Adjusted EBITDA to fluctuate in the near term as we continue to invest in our business and improve over the long term as we achieve greater scale in our business and efficiencies in our operating expenses.

Non-GAAP Financial Measures

We report our financial results in accordance with GAAP. However, management believes that Adjusted EBITDA, a non-GAAP financial measure, provides investors with additional useful information in evaluating our performance.

Adjusted EBITDA is a financial measure that is not required by or presented in accordance with GAAP. We believe that Adjusted EBITDA, when taken together with our financial results presented in

Table of Contents

accordance with GAAP, provides meaningful supplemental information regarding our operating performance and facilitates internal comparisons of our historical operating performance on a more consistent basis by excluding certain items that may not be indicative of our business, results of operations or outlook. In particular, we believe that the use of Adjusted EBITDA is helpful to our investors as it is a measure used by management in assessing the health of our business and evaluating our operating performance, as well as for internal planning and forecasting purposes.

Adjusted EBITDA is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. Some of these limitations include that: (i) it does not properly reflect capital commitments to be paid in the future; (ii) although depreciation and amortization are non-cash charges, the underlying assets may need to be replaced and Adjusted EBITDA does not reflect these capital expenditures; (iii) it does not consider the impact of stock-based compensation expense; (iv) it does not reflect other non-operating expenses, including interest expense; (v) it does not consider the impact of any contingent consideration liability valuation adjustments and (vi) it does not reflect tax payments that may represent a reduction in cash available to us. In addition, our use of Adjusted EBITDA may not be comparable to similarly titled measures of other companies because they may not calculate Adjusted EBITDA in the same manner, limiting its usefulness as a comparative measure. Because of these limitations, when evaluating our performance, you should consider Adjusted EBITDA alongside other financial measures, including our net income and other results stated in accordance with GAAP.

The following table presents a reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure stated in accordance with GAAP, for the periods presented:

	Year Ended December 31,		
	2018	2019	2020
	(in thousands)		
Adjusted EBITDA Reconciliation			
Net loss	\$ (35,774)	\$ (77,216)	\$ (41,021)
Depreciation and amortization	271	1,839	7,244
Stock-based compensation	7,219	998	5,705
Interest (income) expense	(362)	(2,093)	(115)
Provision for income taxes	11	27	489
Other (income) expense, net	—	23	(3,054)
Adjusted EBITDA	<u>\$ (28,635)</u>	<u>\$ (76,422)</u>	<u>\$ (30,752)</u>

Factors Affecting Our Performance

We believe that the growth and future success of our business depend on many factors. While each of these factors presents significant opportunities for our business, they also pose important challenges that we must successfully address in order to sustain our growth, improve our results of operations, and increase profitability.

Increasing Marketplace Units

Increasing Marketplace Units is a key driver of our revenue growth. The transparency, efficiency and vibrancy of our marketplace is critical to our ability to grow our share of wholesale transactions from existing customers and attract new buyers and sellers to our digital marketplace. There are an estimated 22 million used vehicles in the wholesale market sold by dealers or commercial consignors

[Table of Contents](#)

through auctions and private sales directly between dealers compared to 391,466 Marketplace Units sold through our digital marketplace in 2020. Failure to increase the number of Marketplace Units would adversely affect our revenue growth, operating results, and the overall health of our marketplace.

Grow Our Share of Wholesale Transactions from Existing Customers

Our success depends in part on our ability to grow our share of wholesale transactions from existing customers, increasing their engagement and spend on our platform. For example, buyers who completed their first auction transaction on our marketplace in 2017 purchased an average of 15 vehicles in 2017. The buyers in this cohort who continued to remain on our platform purchased an increasing number of vehicles in subsequent years, purchasing an average of 39 vehicles in 2018, 55 in 2019, and 57 in 2020. We remain in the early stages of penetrating our Marketplace Participants' total number of wholesale transactions. As of December 31, 2020, we had 16,215 Marketplace Participants on our platform compared to the over 50,000 automotive dealers in the United States, while 391,466 Marketplace Units were transacted on our marketplace for the year ended December 31, 2020 compared to the estimated 22 million used vehicles that are bought and sold in the wholesale market each year. As we continue to invest in eliminating key risks of uncertainty related to the auction process through our trusted and efficient digital marketplace, we expect that we will capture an increasing share of transactions from our existing Marketplace Participants. Our ability to increase share from existing customers will depend on a number of factors, including our customers' satisfaction with our platform, competition, pricing and overall changes in our customers' engagement levels.

Add New Marketplace Participants

We believe we have a significant opportunity to add new Marketplace Participants. There are over 50,000 automotive dealers in the United States and as of December 31, 2020, we had 16,215 Marketplace Participants. We estimate that our 125 existing territories cover a substantial majority of all dealership locations within the continental United States. As we expand our presence within our existing territories, we are able to drive increased liquidity and greater vehicle selection, which in turn improves our ability to attract new Marketplace Participants. Additionally, we intend to add more commercial consignors to our digital marketplace and capture a greater share of the approximately 8 million vehicles in the wholesale market that are sold to dealers by commercial consignors through auctions and private sales.

Our ability to attract new Marketplace Participants will depend on a number of factors including: the ability of our sales team to onboard dealers and commercial consignors onto our platform and ensure their satisfaction, the ability of our territory managers to build awareness of our brand, the ability of our VCI to cultivate relationships with our customers in their respective territories, and the effectiveness of our marketing efforts.

Grow Awareness for Our Offerings and Brand

Wholesale vehicle online penetration is just beginning, lagging the consumer automotive market, and we expect more dealers and commercial partners to source and manage their inventory online. As the digitization of the wholesale automotive market accelerates, we believe that our digital marketplace is well positioned to capture a disproportionate share of that growth. We plan to use targeted sales and marketing efforts to educate potential Marketplace Participants as to the benefits of our offerings and drive adoption of our platform. Our ability to grow awareness of our offerings and brand depend on a number of factors, including:

- **Secure Trusted Supply.** The more trusted supply on our marketplace, the more buyers we can attract to our platform.

[Table of Contents](#)

- **Deepen Relationships with Dealers and Commercial Partners.** We have a team of over 740 VCIs who work on our customers' lots to not only provide inspection services, but also to develop strong client relationships and ensure the highest quality service.
- **Drive Customer Loyalty.** Our loyal customers and referrals serve as a highly effective customer acquisition tool, and help drive our growth in a given territory.
- **Grow Brand Awareness.** We plan to invest in promoting our brand by targeted marketing spend and increase customer awareness in the territories in which we operate.

Our future success is dependent on our ability to successfully grow our market presence and market and sell existing and new products to both new and existing customers.

Grow Value-Added and Data Services

We plan to continue to drive customer adoption of our existing value-added and data services and introduce new and complementary products. Our ability to drive higher attachment rates of existing value-added services, such as ACV Transportation and ACV Capital, will help grow our revenue. In 2019 we launched our financing arm, ACV Capital, in an industry where auction floorplanning is a critical element of sourcing and managing dealer's inventory.¹⁴ We also plan to drive customer adoption of our data services such as our True360 Reports that bring transparency and offer insights into the condition and value of used vehicles. These data services enable our customers to make more informed inventory management decisions both on and off our digital marketplace. In addition, we will continue to focus on developing new products and services that enhance our platform in areas including new data-powered products. Our ability to drive customer adoption of these products and services is dependent on the pricing of our products, the offerings of our competitors and the effectiveness of our marketing efforts.

Investment in Growth

We are actively investing in our business. In order to support our future growth and expanded product offerings, we expect this investment to continue. We anticipate that our operating expenses will increase as we continue to build our sales and marketing efforts, expand our employee base and invest in our technology development. The investments we make in our platform are designed to grow our revenue opportunity and to improve our operating results in the long term, but these investments could also delay our ability to achieve profitability or reduce our profitability in the near term. Our success is dependent on making value-generative investments that support our future growth.

Used Car Demand

Our success depends in part on sufficient demand for used vehicles. Our recent growth has coincided with an increase in consumer demand for used vehicles. For example, in 2019, 64% of consumers in the market for a vehicle considered buying a used vehicle, up from 59% in 2017. In addition to enduring consumer demand, the used vehicle industry has shown resilience through recessionary markets and other challenging economic cycles. In fact, from 2007 to 2009, new car transactions decreased by 35%, compared to just 14% for used cars.¹⁵

Used vehicle sales are also seasonal. Sales typically peak late in the first calendar quarter and early in the second quarter, with the lowest relative level of industry vehicle sales occurring in the fourth calendar quarter. Due to our rapid growth since launch, our sales patterns to date have not been entirely reflective of the general seasonality of the used vehicle market, but we expect this to normalize

¹⁴ National Independent Automobile Dealers Association, Used Car Industry Report, 2020

¹⁵ Bureau of Transportation Statistics, New and Used Passenger Car Sales and Leases, December 2020

[Table of Contents](#)

as our business matures. Seasonality also impacts used vehicle pricing, with used vehicles depreciating at a faster rate in the last two quarters of each year and a slower rate in the first two quarters of each year. We may experience seasonal and other fluctuations in our quarterly results of operations, which may not fully reflect the underlying performance of our business. See the section titled “—Seasonality” for additional information on the impacts of seasonality on our business.

Components of Results of Operations

Revenue

Marketplace and Service Revenue

We have historically generated the majority of our revenue from our digital marketplace where we earn auction and ancillary fees from both buyers and sellers, in each case only upon a successful auction. Our marketplace and service revenue consists principally of revenue earned from facilitating auctions and arranging for the transportation of vehicles purchased in such auctions.

We act as an agent when facilitating a vehicle auction through the marketplace. Auction and related fees charged to the buyer and seller are reported as revenue on a net basis, excluding the price of the auctioned vehicle in the transaction.

We act as a principal when arranging for the transportation of vehicles purchased on the marketplace and leverage our network of third-party transportation carriers to secure the arrangement. Transportation fees charged to the buyer are reported on a gross basis.

We also generate data services revenue through our True360 reports and offer short-term, inventory financing to eligible customers purchasing vehicles through the marketplace, which has been immaterial to date.

Customer Assurance Revenue

We also generate revenue by providing our Go Green assurance to sellers on the condition of certain vehicles sold on the marketplace, which is considered a guarantee under GAAP. This assurance option is only available for sellers who have enrolled in the service on qualifying vehicles for which we have prepared the vehicle condition report. Customer assurance revenue also includes revenue from other price guarantee products offered to sellers. Customer assurance revenue is measured based upon the fair value of the Go Green assurance that we provide. We expect the fair value per vehicle assured to decrease over time as we continue to improve the quality of our inspection product, which in turn reduces the costs of satisfying such assurance.

Operating Expenses

Marketplace and Service Cost of Revenue

Marketplace and service cost of revenue consists of third-party transportation carrier costs, titles shipping costs, customer support, website hosting costs, inspection costs related to data services and various other costs. These costs include salaries, benefits, bonuses and related stock-based compensation expenses, which we refer to as personnel-related expenses. We expect our marketplace and service cost of revenue to continue to increase as we continue to scale our business and introduce new product and service offerings.

Customer Assurance Cost of Revenue

Customer assurance cost of revenue consists of the costs related to satisfying claims against the vehicle condition guarantees, and other price guarantees. We expect that our customer assurance cost

[Table of Contents](#)

of revenue will increase in absolute dollars as our business grows, particularly as we provide guarantees on an increasing number of vehicles.

Operations and Technology

Operations and technology expense consists of costs for wholesale auction inspections, personnel costs related to payments and titles processing, transportation processing, product and engineering and other general operations and technology expenses. These costs include personnel-related expenses and other allocated facility and office costs. We expect that our operations and technology expense will increase in absolute dollars as our business grows, particularly as we incur additional costs related to continued investments in our marketplace, transportation capabilities and other technologies.

Selling, General and Administrative

Selling, general and administrative expense consists of costs resulting from sales, accounting, finance, legal, marketing, human resources, executive, and other administrative activities. These costs include personnel-related expenses, legal and other professional services expenses and other allocated facility and office costs. Also included in selling, general and administrative expense is advertising and marketing costs to promote our services.

Following the completion of this offering, we expect to incur additional expenses as a result of operating as a public company, including costs to comply with the rules and regulations applicable to companies listed on a national securities exchange, costs related to compliance and reporting obligations, and increased expenses for insurance, investor relations and professional services. We expect that our selling, general and administrative expense will increase in absolute dollars as our business grows. However, we expect that our selling, general and administrative expense will decrease as a percentage of our revenue as our revenue grows over the longer term.

Depreciation and Amortization

Depreciation and amortization expense consists of depreciation of fixed assets, and amortization of acquired intangible assets and internal-use software.

Other Income (Expense)

Other income (expense) consists primarily of interest income earned on our cash and cash equivalents.

Provision for Income Taxes

Provision for income taxes consists of U.S. federal, state and foreign income taxes.

[Table of Contents](#)**Results of Operations**

The following table sets forth our consolidated statements of operations data for the periods presented:

	Year Ended December 31,	
	2019	2020
	(in thousands)	
Revenue:		
Marketplace and service revenue	\$ 87,750	\$ 173,120
Customer assurance revenue	19,097	35,237
Revenue	106,847	208,357
Operating expenses:		
Marketplace and service cost of revenue (excluding depreciation & amortization)	65,962	83,553
Customer assurance cost of revenue (excluding depreciation & amortization)	16,816	29,496
Operations and technology	39,626	64,998
Selling, general, and administrative	62,439	64,882
Depreciation and amortization	1,286	6,075
Total operating expenses	186,129	249,004
Loss from operations	(79,282)	(40,647)
Other income (expense):		
Interest income	2,093	748
Interest expense	—	(633)
Total other income (expense)	2,093	115
Loss before income taxes	(77,189)	(40,532)
Provision for income taxes	27	489
Net loss	\$ (77,216)	\$ (41,021)

The following table sets forth our consolidated statements of comprehensive loss for the periods presented:

	Year Ended December 31,	
	2019	2020
	(in thousands)	
Net loss	\$ (77,216)	\$ (41,021)
Other comprehensive loss:		
Foreign currency translation loss	(1)	(56)
Comprehensive loss	\$ (77,217)	\$ (41,077)

Table of Contents

The following table sets forth our consolidated statements of operations data expressed as a percentage of total revenue for the periods presented:

	Year Ended December 31,			
	2019		2020	
	Amount	% of Revenue	Amount	% of Revenue
(in thousands)				
Revenue:				
Marketplace and service revenue	\$ 87,750	82%	\$173,120	83%
Customer assurance revenue	19,097	18%	35,237	17%
Revenue	106,847	100%	208,357	100%
Operating expenses:				
Marketplace and service cost of revenue (excluding depreciation & amortization)	65,962	62%	83,553	40%
Customer assurance cost of revenue (excluding depreciation & amortization)	16,816	16%	29,496	14%
Operations and technology	39,626	37%	64,998	31%
Selling, general, and administrative	62,439	58%	64,882	31%
Depreciation and amortization	1,286	1%	6,075	3%
Total operating expenses	186,129	174%	249,004	120%
Loss from operations	(79,282)	(74)%	(40,647)	(20)%
Other Income:				
Interest income	2,093	2%	748	—%
Interest expense	—	—%	(633)	—%
Total other income	2,093	2%	115	—%
Net loss before income taxes	(77,189)	(72)%	(40,532)	(19)%
Provision for income taxes	27	—%	489	—%
Net loss	<u>\$ (77,216)</u>	<u>(72)%</u>	<u>\$ (41,021)</u>	<u>(20)%</u>

Comparison of the Years Ended December 31, 2020 and December 31, 2019

Revenue

Marketplace and Service Revenue

	Year Ended December 31,		\$	% Change
	2019	2020		
	(in thousands)			
Marketplace and service revenue	\$87,750	\$173,120	\$85,370	97%

Marketplace and service revenue was \$173.1 million for the year ended December 31, 2020, compared to \$87.8 million for the year ended December 31, 2019. The increase of \$85.4 million, or 97%, was primarily driven by an increase in auction marketplace revenue earned from our buyers and sellers, as well as an increase in revenue earned from arranging for the transportation of vehicles to buyers, data and other service revenue. Revenue increases were primarily volume-driven as a result of the expansion of our marketplace platform across the United States and a deeper penetration of markets where we do business. For the year ended December 31, 2020, auction marketplace revenue increased to \$99.2 million from \$49.2 million in the year ended December 31, 2019, and transportation, data and other services revenue increased to \$73.9 million from \$38.6 million.

[Table of Contents](#)

Customer Assurance Revenue

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Customer assurance revenue	\$19,097	\$35,237	\$16,140	85%

Customer assurance revenue was \$35.2 million for the year ended December 31, 2020, compared to \$19.1 million for the year ended December 31, 2019. The increase of \$16.1 million, or 85%, primarily consisted of an increase in revenue generated from Go Green assurance offerings sold to the seller in marketplace transactions. Revenue increases were primarily volume-driven as a result of the expansion of our marketplace platform across the United States and a deeper penetration of markets where we do business.

Operating Expenses

Marketplace and Service Cost of Revenue

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Marketplace and service cost of revenue (excluding depreciation & amortization)	\$65,962	\$83,553	\$17,591	27%
Percentage of revenue	62%	40%		

Marketplace and service cost of revenue was \$83.6 million for the year ended December 31, 2020, compared to \$66.0 million for the year ended December 31, 2019. The increase of \$17.6 million, or 27%, primarily consisted of an increase in the cost of generating auction marketplace revenue and an increase attributable to the cost of generating transportation, data and other services revenue, which were primarily due to increased sales volume. For the year ended December 31, 2020, total costs attributable to generating auction marketplace revenue increased to \$11.1 million from \$8.2 million in the year ended December 31, 2019 and total cost of generating transportation, data and other services revenue increased to \$72.5 million from \$57.8 million. Direct and allocated personnel-related costs included in auction marketplace cost of revenue increased to \$4.2 million for the year ended December 31, 2020 from \$3.1 million in the year ended December 31, 2019, and direct and allocated personnel-related costs included in transportation, data and other services increased to \$9.9 million from \$0.1 million.

Customer Assurance Cost of Revenue

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Customer assurance cost of revenue (excluding depreciation & amortization)	\$16,816	\$29,496	\$12,680	75%
Percentage of revenue	16%	14%		

Customer assurance cost of revenue was \$29.5 million for the year ended December 31, 2020, compared to \$16.8 million for the year ended December 31, 2019. The increase of \$12.7 million, or 75%, primarily consisted of costs attributable to our Go Green and other assurance offerings, and was

Table of Contents

primarily driven by increased sales volume. For the year ended December 31, 2020, Go Green assurance cost of revenue increased to \$27.1 million from \$16.3 million in the year ended December 31, 2019, and other assurance cost of revenue increased to \$2.4 million from \$0.5 million.

Operations and Technology Expenses

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Operations and technology	\$39,626	\$64,998	\$25,372	64%
Percentage of revenue	37%	31%		

Operations and technology expenses were \$65.0 million for the year ended December 31, 2020, compared to \$39.6 million for the year ended December 31, 2019. The increase of \$25.4 million, or 64%, primarily consisted of an increase in personnel related costs, software and technology, and facilities and other expenses. For the year ended December 31, 2020 compared to the year ended December 31, 2019, personnel-related costs increased to \$55.2 million from \$32.3 million as a result of increased headcount, software and technology expenses increased to \$6.3 million from \$4.3 million as a result of continued investment in our technology infrastructure, facility and office expenses increased to \$3.0 million from \$2.8 million, and other expenses increased to \$0.5 million from \$0.2 million, all inclusive of direct and allocated expenses.

Selling, General, and Administrative Expenses

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Selling, general, and administrative	\$62,439	\$64,882	\$ 2,443	4%
Percentage of revenue	58%	31%		

Selling, general, and administrative expenses were \$64.9 million for the year ended December 31, 2020, compared to \$62.4 million in for the year ended December 31, 2019. The increase of \$2.5 million, or 4%, primarily consisted of increases in personnel-related costs, software and technology expenses and facility and office expenses, offset by a decrease in advertising and marketing expenses. For the year ended December 31, 2020 compared to December 31, 2019, personnel related costs increased to \$56.3 million from \$54.0 million due to increased headcount, software and technology expenses increased to \$1.4 million from \$0.4 million as a result of continued investment in our technology infrastructure, facility and office expenses increased to \$1.6 million from \$1.0 million and advertising and marketing decreased to \$2.0 million from \$3.4 million, all inclusive of direct and allocated expenses. Other expenses remained consistent at \$3.6 million year over year.

Depreciation and Amortization

	Year Ended December 31,		\$ Change	% Change
	2019	2020		
	(in thousands)			
Depreciation and amortization	\$1,286	\$6,075	\$ 4,789	372%
Percentage of revenue	1%	3%		

Depreciation and amortization costs were \$6.1 million for the year ended December 31, 2020, compared to \$1.3 million for the year ended December 31, 2019. For the year ended December 31,

[Table of Contents](#)

2020, depreciation increased to \$1.7 million from \$0.8 million in the year ended December 31, 2019, amortization of capitalized internal-use software costs increased to \$1.4 million from \$0.4 million and amortization of acquired intangible assets increased to \$3.0 million from \$0.1 million.

Interest Income

	<u>Year Ended December 31,</u>		<u>\$ Change</u>	<u>% Change</u>
	<u>2019</u>	<u>2020</u>		
	<u>(in thousands)</u>			
Interest income	\$2,093	\$748	\$ (1,345)	(64)%
Percentage of revenue	2%	—%		

Interest income decreased to \$0.7 million for the year ended December 31, 2020 from \$2.1 million for the year ended December 31, 2019.

Interest Expense

	<u>Year Ended December 31,</u>		<u>\$ Change</u>	<u>% Change</u>
	<u>2019</u>	<u>2020</u>		
	<u>(in thousands)</u>			
Interest expense	\$—	\$(633)	\$ (633)	—%
Percentage of revenue	—%	—%		

Interest expense on revolving lines of credit was \$0.6 million for the year ended December 31, 2020. No interest expense recorded for the year ended December 31, 2019.

Provision for Income Taxes

	<u>Year Ended December 31,</u>		<u>\$ Change</u>	<u>% Change</u>
	<u>2019</u>	<u>2020</u>		
	<u>(in thousands)</u>			
Provision for income taxes	\$ 27	\$ 489	\$ 462	1711%
Percentage of revenue	—%	—%		

Provision for income taxes was \$0.5 million for the year ended December 31, 2020, compared to less than \$0.1 million for the year ended December 31, 2019 due to a \$0.4 million non-cash tax charge related to changes in our long-term deferred tax liability for indefinite lived intangibles that are not available to offset certain deferred tax assets.

[Table of Contents](#)

Quarterly Results of Operations

The following table sets forth our unaudited condensed consolidated statement of operations data for each of the last eight fiscal quarters in the period ended December 31, 2020. The unaudited quarterly consolidated statements of operations data set forth below have been prepared on a basis consistent with our audited consolidated financial statements included elsewhere in this prospectus and include, in the opinion of management, all normal recurring adjustments necessary for the fair statement of the results of operations for the periods presented. Our historical quarterly results are not necessarily indicative of the results that may be expected in any future period. The following unaudited quarterly financial data should be read in conjunction with our audited consolidated financial statements and the related notes and other financial information included elsewhere in this prospectus.

	Three Months Ended (Unaudited)							
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020
	(in thousands, except share and per share data)							
Revenue:								
Marketplace and service revenue	\$ 14,882	\$ 18,773	\$ 25,486	\$ 28,609	\$ 34,596	\$ 38,310	\$ 56,367	\$ 43,847
Customer assurance revenue	2,820	3,294	6,330	6,653	7,641	6,587	11,093	9,916
Revenue	17,702	22,067	31,816	35,262	42,237	44,897	67,460	53,763
Operating expenses:								
Marketplace and service cost of revenue (excluding depreciation & amortization)	9,663	12,455	21,677	22,167	21,607	15,323	25,064	21,559
Customer assurance cost of revenue (excluding depreciation & amortization)	2,806	2,890	5,105	6,015	7,280	4,654	8,765	8,797
Operations and technology	7,108	8,715	10,919	12,884	16,946	13,875	16,792	17,385
Selling, general, and administrative	12,322	14,046	17,264	18,807	23,071	13,891	11,639	16,281
Depreciation and amortization	146	281	347	512	1,209	1,463	1,665	1,738
Total operating expenses	32,045	38,387	55,312	60,385	70,113	49,206	63,925	65,760
Income (loss) from operations	(14,343)	(16,320)	(23,496)	(25,123)	(27,876)	(4,309)	3,535	(11,997)
Other Income:								
Interest income	464	524	454	651	509	141	69	29
Interest expense	—	—	—	—	(111)	(180)	(159)	(183)
Total other income (expense)	464	524	454	651	398	(39)	(90)	(154)
Net income (loss) before income taxes	(13,879)	(15,796)	(23,042)	(24,472)	(27,478)	(4,348)	3,445	(12,151)
Provision for income taxes	5	7	7	8	47	48	286	108
Net income (loss)	\$ (13,884)	\$ (15,803)	\$ (23,049)	\$ (24,480)	\$ (27,525)	\$ (4,396)	\$ 3,159	\$ (12,259)
Weighted average common shares outstanding								
Basic	17,946,656	18,030,302	18,440,330	19,050,727	21,197,244	21,369,825	21,742,708	22,069,024
Diluted	17,946,656	18,030,302	18,440,330	19,050,727	21,197,244	21,369,825	139,240,687	22,069,024
Net income (loss) per common share								
Basic	\$ (0.77)	\$ (0.88)	\$ (1.25)	\$ (1.28)	\$ (1.30)	\$ (0.21)	\$ 0.15	\$ (0.56)
Diluted	(0.77)	(0.88)	(1.25)	(1.28)	(1.30)	(0.21)	0.02	(0.56)

Table of Contents

	Three months ended							
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020
	(dollars in thousands)							
Key Operating and Financial Metrics								
Adjusted EBITDA ⁽¹⁾	\$ (13,900)	\$ (15,639)	\$ (22,704)	\$ (24,179)	\$ (24,364)	\$ (1,522)	\$ 3,316	\$ (8,182)
Total Marketplace Units	40,151	56,007	70,163	75,156	82,588	87,888	118,373	102,617
Total GMV	\$ 285,150	\$ 422,217	\$ 529,410	\$ 537,098	\$ 631,364	\$ 638,911	\$ 1,113,313	\$ 919,813

- (1) We calculate Adjusted EBITDA as net loss, adjusted to exclude: (a) depreciation and amortization; (b) stock-based compensation expense; (c) interest (income) expense; (d) provision for income taxes; and (e) other (income) expense, net. Adjusted EBITDA is a financial measure which is not calculated in accordance with GAAP. Below is a reconciliation of Adjusted EBITDA to net (loss) income, the most directly comparable financial measure stated in accordance with GAAP, for the periods presented.

	Three months ended							
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020
	(dollars in thousands)							
Adjusted EBITDA Reconciliation								
Net (loss) income	\$ (13,884)	\$ (15,803)	\$ (23,049)	\$ (24,480)	\$ (27,525)	\$ (4,396)	\$ 3,159	\$ (12,259)
Depreciation and amortization	214	431	513	681	1,446	1,733	2,025	2,040
Stock-based compensation	229	250	278	241	2,097	1,033	343	2,232
Interest (income) expense	(464)	(524)	(454)	(651)	(398)	39	90	154
Provision for income taxes	5	7	7	8	47	48	286	108
Other (income) expense, net	—	—	1	22	(31)	21	(2,587)	(457)
Adjusted EBITDA	<u>\$ (13,900)</u>	<u>\$ (15,639)</u>	<u>\$ (22,704)</u>	<u>\$ (24,179)</u>	<u>\$ (24,364)</u>	<u>\$ (1,522)</u>	<u>\$ 3,316</u>	<u>\$ (8,182)</u>

Quarterly Revenue Trends

Our revenues have generally increased sequentially in each quarter presented due to increased sales volume resulting from the expansion of our marketplace platform across the United States and a deeper penetration of markets where we do business. Revenues were initially negatively impacted by the COVID-19 pandemic at the end of the first quarter of 2020 continuing into the beginning of the second quarter of 2020. This initial disruption began to subside later in the second and third quarters of 2020 as the demand for used vehicles on a national level began to outpace supply, leading to higher used vehicle valuations and a higher percentage of successful auctions, and as dealers and commercial partners looked to an online marketplace to transact remotely. Strong used vehicle demand continued through the third quarter of 2020, leading to robust sales volume, less discounting and increased overall used vehicle valuations, the average sale price of our Marketplace Unit, and ultimately our auction revenue per unit. The decrease in revenue during the fourth quarter of 2020 is indicative of stabilizing trends in used vehicle demand as well as the seasonality of traditional vehicle-buying patterns across the industry, in which the lowest relative level of industry vehicle sales occur in the fourth calendar quarter of the year. Please see “—Impact of COVID-19 on Our Business” for a further discussion of COVID-related impacts.

Quarterly Operating Expense Trends

Our quarterly cost of revenue has generally increased sequentially in each period presented, primarily driven by overall volume increases on our marketplace and in our other offerings, including increases in personnel costs to support volume increases for other services. In the second quarter of 2020, our operating expenses generally benefited from a temporary reduction in workforce and closure of territories to reduce our costs in light of the meaningful disruption we saw across our customer base and the significant decrease in our marketplace activity towards the end of the first quarter of 2020 due to the COVID-19 pandemic. In the fourth quarter 2020, further declines in cost of revenue were correlated with revenue decreases over the same period. The general increases in selling, general and administrative operating expenses are primarily personnel-related and are the result of headcount additions to support our business growth including costs incurred in preparation of becoming a public company.

Liquidity and Capital Resources

We have financed operations since our inception primarily through our marketplace revenue and the net proceeds we have received from sales of equity securities as further detailed below. As of December 31, 2020, our principal sources of liquidity were cash and cash equivalents totaling \$233.7 million. We believe that our existing cash and cash equivalents and cash flow from operations will be sufficient to support working capital and capital expenditure requirements for at least the next 12 months. Our future capital requirements will depend on many factors, including volume of sales with existing customers, expansion of sales and marketing activities to acquire new customers, timing and extent of spending to support development efforts and introduction of new and enhanced services. We may, in the future, enter into arrangements to acquire or invest in complementary businesses, products, and technologies. We may be required to seek additional equity or debt financing. In the event that we require additional financing, we may not be able to raise such financing on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in continued innovation, we may not be able to compete successfully, which would harm our business, operations and financial condition.

A substantial amount of our working capital is generated from the payments received for services which we provide. We settle transactions among buyers and sellers using the marketplace, and as a result the value of the vehicles passes through our balance sheet. Because our receivables typically have been, on average, settled faster than our payables, our cash position at each balance sheet date has been bolstered by marketplace float. Changes in working capital vary from quarter-to-quarter as a result of the timing of collections and disbursements of funds related to auctions held near period end.

Our Debt Arrangements

We currently have a revolving credit facility with Credit Suisse AG, New York Branch, our 2019 Revolver, which we entered into in December 2019.

One of our wholly-owned indirect subsidiaries, ACV Capital Funding LLC is the borrower under the 2019 Revolver, which provides for a revolving line of credit in the aggregate amount of up to \$50.0 million, with borrowing availability subject to a borrowing base calculated as a percentage of ACV Capital Funding LLC's eligible receivables. The 2019 Revolver is secured by the borrowing base of eligible receivables. In addition, we entered into a separate indemnity agreement in connection with the 2019 Revolver under which we provided an unsecured guaranty of (a) 10% of the outstanding loans under the 2019 Revolver at the time of any event of default and (b) any losses, damages or other expenses incurred by the lenders under the 2019 Revolver, payable in the event of certain specified acts by ACV Capital Funding LLC. The interest rate on any outstanding borrowings will be at LIBOR plus 5.00%, subject to a LIBOR floor of 1.00%, and interest payments are payable monthly. The 2019 Revolver has a maturity date of June 20, 2022. The 2019 Revolver also contains customary covenants that limit ACV Capital Funding LLC's ability to enter into indebtedness, make distributions and make investments, among other restrictions.

The 2019 Revolver contains a liquidity covenant based on cash on hand, a tangible net worth covenant based on ACV Capital's consolidated net worth, a tangible net worth covenant based on the our consolidated net worth, a leverage covenant based on our consolidated leverage and certain other financial covenants tied to ACV Capital's eligible receivables.

We were in compliance with all such applicable covenants as of December 31, 2020, and believe we are in compliance as of the date of this prospectus. As of December 31, 2020, we had \$4.8 million drawn down under the 2019 Revolver.

Cash Flows from Operating, Investing, and Financing Activities

The following table shows a summary of our cash flows for the periods presented:

	Year Ended December 31,	
	2019	2020
	(in thousands)	
Net cash provided by (used in) operating activities	\$ (72,460)	\$ 10,368
Net cash used in investing activities	(24,681)	(19,673)
Net cash provided by financing activities	161,526	60,755
Net increase in cash and equivalents	<u>\$ 64,385</u>	<u>\$ 51,450</u>

Operating Activities

Our largest source of operating cash is cash collection from auction fees earned on our marketplace services. Our primary uses of cash from operating activities are for personnel expenses, marketing expenses and overhead expenses. Before 2020, we had generated negative operating cash flows and had supplemented working capital requirements through net proceeds from the sale of equity securities.

In the year ended December 31, 2020, net cash provided by operating activities of \$10.4 million was primarily related to our net loss of \$41.0 million, adjusted for net cash inflows of \$35.4 million due to changes in our operating assets and liabilities, and for non-cash charges of \$16.0 million. Non-cash charges primarily consisted of bad debt expense, stock-based compensation, and depreciation and amortization of property and equipment, partially offset by contingent gains. The change in operating assets and liabilities were the result of a \$29.2 million increase in accounts receivable and \$6.4 million increase in other operating assets, which were offset by a \$66.2 million increase in accounts payable and a \$4.8 million increase in other current and non-current liabilities.

In the year ended December 31, 2019, net cash used in operating activities of \$72.5 million was primarily related to our net loss of \$77.2 million, adjusted for net cash outflows of \$1.3 million due to changes in our operating assets and liabilities, and for non-cash charges of \$6.0 million. Non-cash charges primarily consisted of bad debt expense, stock-based compensation, and depreciation and amortization of property and equipment. The change in operating assets and liabilities were the result of a \$52.0 million increase in accounts receivable and \$2.4 million increase in other operating assets, which were partially offset by a \$46.4 million increase in accounts payable and a \$6.7 million increase in other current liabilities.

Investing Activities

In the year ended December 31, 2020, net cash used in investing activities was \$19.7 million, primarily related to the acquisition of a business, capital expenditures to purchase property and equipment to support remote work and field operations, along with capitalized software development costs, and increases in financing receivables.

In the year ended December 31, 2019, net cash used in investing activities was \$24.7 million, primarily related to the acquisition of a business, capital expenditures to purchase property and equipment to support additional office space and site operations, along with capitalized software development costs, and increases in financing receivables.

[Table of Contents](#)

Financing Activities

In the year ended December 31, 2020, net cash provided by financing activities was \$60.8 million and was primarily the result of proceeds from the issuance of preferred stock and long-term debt. This was partially offset by \$2.7 million of payments for other financing costs and repayments toward long term debt.

In the year ended December 31, 2019 net cash provided by financing activities was \$161.5 million and was primarily the result of proceeds from the issuance of preferred stock. This amount was partially offset by payment of \$0.8 million for debt issuance costs.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2020:

	Payments Due by Period			
	Total	Less than 1 year	1 to 3 years	More than 3 years
	(in thousands)			
Operating lease commitments	\$2,281	\$ 878	\$ 1,403	\$ —
Long-term debt obligations	4,832	—	4,832	—
Other promissory notes	2,799	—	2,799	—
Total contractual obligations	<u>\$9,912</u>	<u>\$ 878</u>	<u>\$ 9,034</u>	<u>\$ —</u>

The commitment amounts in the table above are associated with contracts that are enforceable and legally binding and that specify all significant terms, including fixed or minimum services to be used, fixed, minimum or variable price provisions, and the approximate timing of the actions under the contracts. The table does not include obligations under agreements that we can cancel without a significant penalty.

Seasonality

The volume of vehicles sold through our auctions generally fluctuates from quarter to quarter. This seasonality is caused by several factors, including holidays, weather, the seasonality of the retail market for used vehicles and the timing of federal tax returns, which affects the demand side of the auction industry. As a result, revenue and operating expenses related to volume will fluctuate accordingly on a quarterly basis. In the fourth quarter, we typically experience lower used vehicle auction volume as well as additional costs associated with the holidays.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet financing arrangements or any relationships with unconsolidated entities or financial partnerships, including entities sometimes referred to as structured finance or special purpose entities, that were established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates.

Interest Rate Risk

We had cash and cash equivalents of \$233.7 million as of December 31, 2020, which consisted of interest-bearing investments with maturities of three months or less. Interest-earning instruments carry a degree of interest rate risk. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. We had borrowings from banks of \$4.8 million as of December 31, 2020. The interest rate paid on these borrowings is variable, indexed to LIBOR. A hypothetical 10% change in interest rates would not result in a material impact on our consolidated financial statements.

Critical Accounting Policies and Estimates

We believe that the following accounting policies involve a high degree of judgment and complexity. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our consolidated financial condition and results of our operations. See note 1 to our consolidated financial statements appearing elsewhere in this prospectus for a description of our other significant accounting policies. The preparation of our consolidated financial statements in conformity with GAAP requires us to make estimates and judgments that affect the amounts reported in those financial statements and accompanying notes. Although we believe that the estimates we use are reasonable, due to the inherent uncertainty involved in making those estimates, actual results reported in future periods could differ from those estimates.

Revenue Recognition

We generate revenue from contracts with customers. Revenue is recognized when control of the promised services is transferred to customers in an amount that reflects the consideration that we expect to receive in exchange for those services. Determining whether performance obligations should be accounted for separately or combined may require significant judgment. For each performance obligation within a contract, we evaluate whether we act as the principal or as an agent. When we act as the principal, revenue is recognized in the gross amount of the consideration received from the customer recognized at the point in time the services are completed. When we act as the agent, revenue is recognized net of the consideration due to a third party at the point in time when the services are provided.

In contracts with multiple performance obligations, we allocate the transaction price to each distinct performance obligation proportionately based on the estimated stand-alone selling price, or SSP, of each performance obligation. We use an observable price to determine the SSP for each performance obligation. Where observable prices are not available, an expected cost-plus margin approach is used. We then determine how the services are transferred to the customer to determine the timing of revenue recognition.

From time to time we provide promotions and incentives to buyers and sellers in various forms including discounts on fees, credits and rebates. Promotions and incentives which are consideration payable to a customer are recognized as a reduction of revenue when revenue is recognized.

[Table of Contents](#)

Commissions paid to sales representatives and related payroll taxes are considered costs to obtain a contract. Financial Accounting Standard Board Accounting Standards Codification, or ASC, Topic 340, Other Assets and Deferred Costs, requires costs to obtain a contract with a customer within the scope of Accounting Standards Update No. 2014-09, Topic 606, Revenue from Contracts with Customers, or ASC 606, to be capitalized and amortized over the period of benefit. We have elected the practical expedient available under ASC 340-40-25-4 to immediately expense the incremental cost of obtaining a contract when the underlying related asset would have been amortized over one year or less.

We have utilized the practical expedient available under ASC 606-10-50-14 and do not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.

Stock-Based Compensation

We use the fair value recognition provisions of ASC Topic 718, *Compensation – Stock Compensation*. The estimated fair value of each common stock option award is calculated on the date of grant using the Black-Scholes option pricing model. Application of the Black-Scholes option pricing model requires significant judgment, and involves the use of subjective assumptions including:

- **Expected Term**—The expected term represents the period that the stock-based awards are expected to be outstanding. As we do not have sufficient historical experience for determining the expected term of the stock option awards granted, the simplified method was used to determine the expected term for awards issued to employees.
- **Risk-Free Interest Rate**—The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury constant maturity notes with terms approximately equal to the stock-based awards' expected term.
- **Expected Volatility**—Since we are privately held and do not have a trading history of common stock, the expected volatility is derived in part from the average historical stock volatilities of the common stock of several public companies considered to be comparable to us over a period equivalent to the expected term of the stock-based awards.
- **Dividend Rate**—The expected dividend rate is zero as we have not paid and do not anticipate paying any dividends in the foreseeable future.
- **Fair Value of Common Stock**—Because our common stock is not yet publicly traded, we must estimate the fair value of the common stock. Our board of directors, with input from management, considers numerous objective and subjective factors to determine the fair value of our common stock at each meeting in which awards are approved.

Valuations of the common stock performed by a third-party valuation specialist are in accordance with the guidance outlined in the American Institute of Certified Public Accountants' Accounting and Valuation Guide, Valuation of Privately Held Company Equity Securities Issued as Compensation. Factors taken into consideration in assessing the fair value of our common stock include but are not limited to: (i) the results of contemporaneous independent third-party valuations of our common stock; (ii) the prices, rights, preferences, and privileges of our convertible preferred stock relative to those of our common stock; (iii) the likelihood and timing of achieving a qualifying event such as an initial public offering or sale of ACV given prevailing market conditions; (iv) actual operating and financial results; and (v) precedent transactions involving our shares.

We measure all stock options and other stock-based awards granted to employees, directors, consultants and other nonemployees based on the fair value on the date of the grant. The options vest

Table of Contents

based on a graded scale over the stated vesting period, and compensation expense is recognized based on their grant date fair value on a straight-line basis over the vesting period. Forfeitures are recognized as they occur.

The fair value of restricted stock awards and restricted stock units are determined based on the estimated market price of our common stock on the grant date. The awards and units vest over time and compensation expense is recognized based on their grant fair value ratably over the vesting period.

For valuations after the completion of this offering, the board of directors will determine the fair value of the common stock underlying our stock-based awards based on the closing price of our common stock as reported on the date of grant. Future expense amounts for any particular period could be affected by changes in our assumptions or market conditions.

We classify stock-based compensation expense in our Consolidated Statement of Operations in the same way the payroll costs or service payments are classified for the related stock-based award recipient.

Goodwill and Intangible Assets

Goodwill represents the excess of the aggregate purchase price paid over the fair value of the net tangible and intangible assets acquired. Intangible assets that are not considered to have an indefinite useful life are amortized over their useful lives. We evaluate the estimated remaining useful lives of purchased intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization. Goodwill is not amortized, but rather is subject to an impairment test.

We evaluate goodwill for impairment annually as one singular reporting unit on October 1 or more frequently when an event occurs or circumstances change that indicates the carrying value may not be recoverable. Our policy is to first perform a qualitative assessment to determine whether it is more likely or not that the reporting unit's carrying value is less than its fair value, indicating the potential for goodwill impairment. If the reporting unit fails the qualitative test, then we proceed with a quantitative test. We then determine whether the reporting unit fair value is less than its carrying amount, and if it is, we recognize a goodwill impairment equal to the difference between the carrying amount of the reporting unit and its fair value, not to exceed the carrying amount of goodwill.

Recently Adopted Accounting Pronouncements

See note 1 to our consolidated financial statements included elsewhere in this prospectus for more information on our recently adopted accounting pronouncements.

Emerging Growth Company Status

We are an emerging growth company, as defined in the Jumpstart Our Business Startups, or the JOBS Act. The JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an emerging growth company to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act for the adoption of certain accounting standards until the earlier of the date we (1) are no longer an emerging growth company or (2) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

LETTER FROM GEORGE CHAMOUN, CHIEF EXECUTIVE OFFICER

ACV has come a long way - from a single desk in a Buffalo, NY incubator just six years ago to a national presence in 125 territories across the country. In 2020, over \$3 billion in gross merchandise value was transacted on our marketplace, and we are just getting started.

Used vehicles are extremely complex; each vehicle has its own story. I originally became involved with the company as an angel investor and then joined as CEO because I believed ACV would reimagine the industry. One simple analogy helped me understand the massive opportunity. Can you imagine buying a diamond online without knowing its cut, color, clarity, and carat weight? The same challenge needs to be solved when a dealer or consumer buys a used vehicle online.

ACV is focused on bringing trust and transparency to the entire used vehicle industry. Our best-in-class digital marketplace and data services enable our dealers and commercial partners to buy and sell used vehicles more effectively and efficiently. We are delivering data and technology services that power our competitive differentiation.

Our founders created ACV from first-hand dealer experience, where they identified the opportunity and had the conviction to change the industry. Today, the drive to transform the industry is embodied within every single teammate at ACV; we are passionate innovators. I am proud to lead ACV and believe we have built the best team and culture to deliver our long-term vision.

We see a massive opportunity for us to transform the industry

Our industry continues to be plagued by wasted time, high costs, limited vehicle and condition data, and distrust among buyers and sellers. We are built to solve this. We are committed to leading the industry's evolution with transparency powered by data, technology and a world class team.

There are an estimated 22 million used vehicles bought and sold in the US wholesale market annually, generating over \$230 billion in sales and representing approximately 27% of all units sold.

Traditional auctions currently play a major role in the wholesale market. We estimate that 50% of wholesale transactions occur through traditional auctions; the remaining transactions are completed directly or through an intermediary outside of a traditional auction. While many aspects of the automotive industry, such as retail sales and marketing, are adapting to embrace digital solutions, the wholesale market has been slower to evolve. We are seeing dealers become increasingly comfortable with transacting online, and we expect more dealers to use online solutions to source and manage their inventory.

In 2020, we transacted nearly 400,000 vehicles, establishing lasting relationships with over 16,000 marketplace participants, composed of independent and franchise dealers and commercial partners. This represents less than 2% of the total wholesale opportunity in the United States. We expect to further penetrate the US market and also see significant future opportunity to bring trust and transparency worldwide to the entire used vehicle market.

ACV is on a deliberate path to offer the most trusted and transparent digital marketplaces within a data enabled platform to transact all things that move. Our significant scale, combined with our expanding suite of products and technologies and growing data moat, set the foundation for sustained growth. We are not focused on short-term profit; we are transforming a massive analog industry and aiming for long-term market leadership.

[Table of Contents](#)

We are revolutionizing the status quo

We are digitally native by design, placing us in a powerful position to challenge our industry's previous status quo. Everything we do is underpinned by data and technology. Data fuels our competitive edge, gives our customers more confidence in transacting, and helps drive our customers' businesses.

Our digital marketplace connects buyers and sellers locally, regionally and nationally, enabling them to buy and sell vehicles more quickly and efficiently. We enhance our marketplace with technology-driven products and value-added services that address the entire used vehicle journey. Our data and technology solutions provide deep insights into vehicle condition, and vehicle value, to best serve our dealers and commercial partners.

With hundreds of discrete data points captured along the entire used vehicle transaction journey, we continue to improve our products and services, and we seek to anticipate our customers' needs. Our back-end technology, which leverages machine learning to reduce manual processes, enables our services and operations to become more streamlined and efficient.

We believe that our people and relationships define our culture

Our "people first" mindset drives everything we do, including how we recruit, develop and retain world class talent, how we work together, and how we work with our dealers and commercial partners. We respect and listen to one another, and we apply this same genuine care to our relationships with our dealers and commercial partners. Our dealers and commercial partners are more than just our customers; they collaborate with us and provide invaluable input to our platform. Our team is trained to build long-term relationships, and our approach is centered around a mantra of "calm persistence" as a means for all team members to stay focused on the long game.

We would not be where we are today without the dedicated hard work and creativity of our people, our partnerships with our dealers and commercial partners, and the support and encouragement from our shareholders.

We remain true to our beliefs

We will continue to invest in our people and culture.

We will continue to keep the needs of our dealers and commercial partners at the center of our decision-making.

We will continue to pursue sustainable growth, which includes our investment in training, tools, technology and our product roadmap.

We will continue to innovate and expand the breadth of our marketplace and data offerings, both organically and through targeted acquisitions.

We will continue to deliver on our mission to bring transparency, trust and efficiency to the markets we serve.

Join us on our journey.

George Chamoun
CEO, ACV

BUSINESS

Overview

Our mission is to build and enable the most trusted and efficient digital marketplaces for buying and selling used vehicles with transparency and comprehensive data that was previously unimaginable.

We provide a vibrant digital marketplace for wholesale vehicle transactions and data services that offer transparent and accurate vehicle information to our customers. Our platform leverages data insights and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. We strive to solve the challenges that the used automotive industry has faced for generations and provide powerful technology-enabled capabilities to our dealers and commercial partners who fulfill a critical role in the automotive ecosystem. Since inception, we have facilitated over 750,000 wholesale transactions between over 21,000 of our dealers and commercial partners. We help dealers source and manage inventory and accurately price their vehicles as well as process payments, transfer titles and manage arbitrations, and finance and transport vehicles. Our platform encompasses:

- **Digital Marketplace.** Connects buyers and sellers of wholesale vehicles in an intuitive and efficient manner. Our core marketplace offering is a 20-minute live auction which facilitates instant transactions of wholesale vehicles, and is accessible across multiple platforms including mobile apps, web, and directly through API integration. We also offer transportation, financing and assurance services to facilitate the entire transaction journey.
- **Data Services.** Offer insights into the condition and value of used vehicles for transactions both on and off our marketplace and help dealers, their end consumers, and commercial partners make more informed decisions to transact with confidence and efficiency.
- **Data and Technology.** Underpins everything we do, and powers our vehicle inspections, comprehensive vehicle intelligence reports, digital marketplace, and operations automation platform.

The U.S. automotive market is a large and complex industry with an estimated 78 million units sold in 2019, generating approximately \$1.7 trillion in sales between retail and wholesale markets. Our primary business focuses on the wholesale market, a key channel for used inventory acquisition and disposition for dealers and commercial consignors. In the wholesale market, there are an estimated 22 million used vehicles that are bought and sold annually, generating over \$230 billion in sales and representing approximately 14% of the total U.S. automotive market and approximately 27% of all units sold. There are approximately 9 million dealer wholesale units that are transacted in the wholesale marketplace annually.¹⁶ We believe there are an additional approximately 5 million dealer wholesale units in the market that are transacted annually outside of established wholesale channels through direct dealer-to-dealer sales. There are also approximately 8 million units in the commercial wholesale market, sourced mainly through off-rental, off-lease, and repossessions.¹⁷ Traditional auctions play a major role in the wholesale market, which we estimate account for 50% of wholesale transactions, while the remaining transactions are completed directly or through an intermediary outside of a traditional auction.¹⁸ Even though many aspects of the automotive industry, such as retail sales and marketing, have adapted to embrace digitization, the wholesale market has been slower to transition and continues to be characterized by significant time wasted, high costs, limited vehicle and condition data, and distrust among buyers and sellers.

¹⁶ Cox Automotive, Industry Insights 2021
¹⁷ Cox Automotive, Industry Insights 2021
¹⁸ Manheim, Used Car Market Report, 2017

[Table of Contents](#)

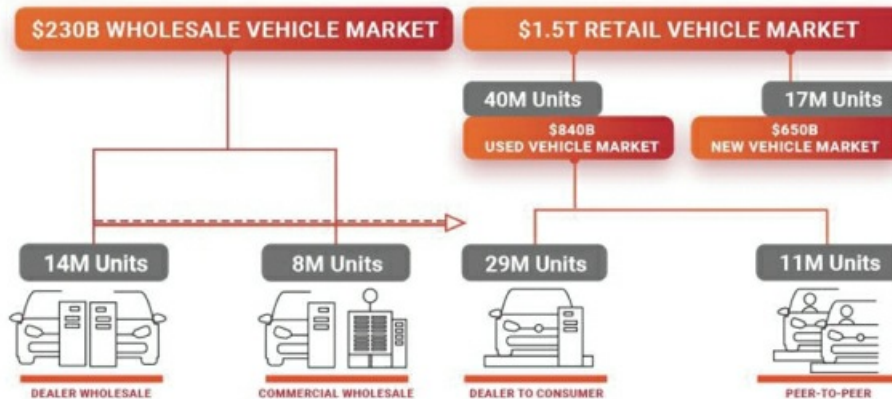
We power our marketplace with technology-driven products and value-added services that address the entire transaction journey, ranging from pre-inspection scheduling to post-auction services including title transferability verification, payment processing, financing, and transportation, and facilitate transactions both on and off our marketplace. Our comprehensive suite of services include ACV Transportation, ACV Capital, and our Go Green assurance, which help create a seamless and frictionless buying and selling experience for our customers to further enhance our digital marketplace. We also provide data services to our customers for use outside of our marketplace. Our True360 Reports are used by dealers and commercial partners to provide transparent vehicle information to potential buyers, including dealers as well as consumers. We believe the data and technology services enabled by our platform can bring value to the entire automotive industry and transform both wholesale and retail markets.

Our platform benefits from a virtuous cycle driven by our scaled, digital marketplace and the data and technology we leverage every day. More buyers and sellers engaging on our marketplace drives greater liquidity and greater vehicle selection, which leads to an overall better marketplace experience. This leads to greater scale, driving more vehicle and market data that helps grow our data and technology moat. As we collect more vehicle and market data, we are able to provide greater efficiency to buyers and sellers through more products, which in turn drives greater marketplace supply and scale. For example, our data and technology enables economies of scale that improve our value-added transportation and financing services. As we continue to grow and offer more comprehensive and efficient services, our customers can further benefit from a more streamlined, simple, and consistent experience across the full used vehicle lifecycle. These reinforcing flywheel effects continuously improve our scaled, digital marketplace, and data and technology for our customers, resulting in growth for our platform.

Since first going live with our offering in 2015, we have expanded from our first territory in Buffalo, New York to 125 territories, covering a substantial majority of all dealer locations within the continental United States. For the year ended December 31, 2020, 391,466 Marketplace Units were sold on our marketplace, representing a total Marketplace GMV of \$3.3 billion, up 62.1% and 86.2%, respectively, from the same period in 2019. We generate revenue from auction fees charged to customers for transacting on our digital marketplace and we also generate revenue from the sale of value-added and data services such as ACV Transportation, ACV Capital, Go Green assurance, and True360 Reports. For the year ended December 31, 2020, we generated revenue of \$208.4 million, up 95.0% from the same period in 2019, a net loss of \$41.0 million and Adjusted EBITDA of \$(30.8) million compared to a net loss of \$77.2 million and Adjusted EBITDA of \$(76.4) million for the same period in 2019. We continue to invest in growth to scale our company responsibly and drive towards profitability. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Operating and Financial Metrics” for additional information on Marketplace Units Marketplace GMV, and Adjusted EBITDA.

Our Industry

The U.S. Automotive Market is Large



The U.S. automotive market is a large industry with over 78 million units sold, generating approximately \$1.7 trillion in sales between retail and wholesale markets in 2019.

The retail market includes sales from dealers to consumers and peer-to-peer transactions. Within the retail market, dealers sold approximately 17 million new vehicles and approximately 29 million used vehicles to consumers in 2019, while peer-to-peer transactions accounted for the sale of approximately 11 million used vehicles.¹⁹ The overall retail market generated approximately \$1.5 trillion of sales in 2019, accounting for 86% of sales of the total U.S. vehicle market.

In the wholesale market, there are an estimated 22 million used vehicles that are bought and sold annually, generating over \$230 billion in sales and representing approximately 14% of the total U.S. automotive market. The wholesale market is comprised of dealer wholesale and commercial wholesale and provides a key channel for used inventory acquisition and disposition for dealers and commercial consignors. The majority of a dealer's wholesale inventory is sourced from other dealers' inventory. Approximately 9 million dealer wholesale units are transacted in the wholesale marketplace annually.²⁰ We believe there are an additional approximately 5 million dealer wholesale units in the market that are transacted annually outside of established wholesale channels through direct dealer-to-dealer sales. There are also approximately 8 million units in the commercial wholesale market.²¹ The vehicles in the commercial wholesale market are sourced mainly through off-rental, off-lease, and repossessions, which are sold directly from a commercial consignor to a dealer through a wholesaler or auction.

While there are approximately 290 million vehicles in operation, approximately 13 million vehicles are removed from operation each year. ²² We estimate that approximately 5 million of these vehicles enter the salvage auctions market, and are not included in the estimated 22 million used vehicles that are transacted in the wholesale market.^{23, 24}

¹⁹ National Independent Automobile Dealers Association, Used Car Industry Report, 2020
²⁰ Cox Automotive, Industry Insights 2021
²¹ Cox Automotive, Industry Insights 2021
²² IAA, Investor Presentation, November 2020
²³ Cox Automotive, Industry Insights 2021
²⁴ IAA, Investor Presentation, November 2020

The Used Automotive Market is Highly Fragmented

The U.S. used automotive market is highly fragmented with over 50,000 independent and franchise dealers who sell used vehicles. The top 100 used vehicle dealers make up less than 10% of the used automotive market and the largest used vehicle dealer has less than 2% of the market.²⁵ Key stakeholders in the ecosystem include:

Independent dealers. Independent dealers only sell used vehicles. There are over 38,000 independent dealers in the United States. ²⁶

Independent dealers typically source vehicles from consumer trade-ins, the wholesale auction market, and directly from other dealers. Independent dealers collectively serve a wide demographic and are focused on a broader selection of used vehicles than franchise dealers, including lower priced vehicles. Given the nature of their business is focused on used vehicles, independent dealers rely heavily on auctions to source and manage their inventory.

Franchise dealers. Franchise dealers sell both new and used vehicles. In 2019, there were over 16,500 franchise dealers in the United States. ²⁷ Additionally, used vehicles represented 46% of average units sold for franchise dealers and we believe they are more profitable for these dealers than new vehicles due to the higher margins associated with used vehicles.²⁸ All in, used vehicles represented approximately 33% of total franchise dealership sales in 2019.²⁹ According to our 2020 ACV Survey, 64% of franchise dealers noted they are selling more used vehicles over time relative to new vehicles.

Franchise dealers source their new inventory from original equipment manufacturers, or OEMs, and their used vehicle inventory from the wholesale market and from consumers. Acquisitions from consumers consist of trade-in vehicles and curb purchases, which represented 68% of total franchise dealership inventory sources in 2019.³⁰ Dealers generally decide to keep and recondition vehicles acquired through trade-ins and curb purchases if the vehicle is an ideal match to what the dealer may retail. Alternatively, if the vehicle does not match a dealer's retail inventory, the dealer may decide to sell the vehicle in the wholesale market.

Commercial. The commercial market is largely made up of four different categories: off-lease, off-rental, repossessions, and fleets.

- *Off-lease.* Off-lease vehicles are those that have been returned to the lessor at the end of the lease term.
- *Off-rental.* Off-rental vehicles are fleets of vehicles that are sold through an auction or directly to dealers or consumers.
- *Repossessions.* Repossessions are vehicles that are repossessed by banks or other finance companies from consumers and sold to dealers or directly to consumers.
- *Fleets.* Company vehicles and fleets are vehicles owned by companies for company use that are pulled out of service at the end of their useful life and sold in the wholesale market.

In each category, commercial consignors sell their used vehicles in either the retail or wholesale market. These vehicles generally require an inspection to assess their condition before they can be sold.

²⁵ Automotive News, Top 100 Retailers Ranked by Used-Vehicle Sales, April 2019
²⁶ National Independent Automobile Dealers Association, October 2020
²⁷ National Automobile Dealers Association, Mid Year Report, 2020
²⁸ National Automobile Dealers Association, Average Dealership Profile, 2019
²⁹ National Automobile Dealers Association, Mid Year Report, 2020
³⁰ National Independent Automobile Dealers Association, Used Car Industry Report, 2020

[Table of Contents](#)

The Wholesale Auction Market is Complex

Traditional auctions play a major role in the wholesale market, accounting for an estimated 50% of wholesale transactions, while the remaining transactions are completed directly or through an intermediary outside of a traditional auction.³¹ Traditional auctions involve in-person buying and selling of used vehicles, with sellers needing to transport their vehicles to physical auction sites. The vehicles are then listed with a starting price and a buyer who is interested has only minutes to quickly inspect and place a bid on the vehicle. While most traditional auctions have evolved over time to offer online buying in the form of hybrid auctions, they lack a fully digital experience and remain constrained by the inefficiencies and operational complexities of in-person physical auctions. These hybrid auctions, which are simulcast over the internet and broadcasted for buyers to place bids on, still involve many of the same operational inefficiencies as traditional in-person physical auctions. Sellers still need to transport their vehicles to the auction lot and buyers are still unable to thoroughly inspect the conditions of the vehicles on which they are bidding. According to our ACV 2020 Survey, 85% of dealers noted that they value detailed condition reports most, over pricing or images for example, when deciding whether to buy a vehicle.

Online Penetration in the U.S. Wholesale Market is Still in Early Stages

While dealers are getting increasingly comfortable with buying online, wholesale vehicle online penetration is still in early stages, lagging the consumer automotive market. For example, for independent dealers, approximately 17% indicated that they sold wholesale vehicles online and 36% indicated that they bought wholesale vehicles online.³² We expect more dealers to use online solutions to source and manage their inventory in order to maximize cost-efficiency and productivity.

The Used Vehicle Market is Growing and Resilient

U.S. consumers have exhibited resilient vehicle ownership trends, with approximately 290 million registered vehicles on the road projected for 2020, compared to 270 million in 2017.³³ Consumers also show increasing receptivity to purchasing used vehicles. For example, in 2019, 64% of consumers in the market for a vehicle considered buying a used vehicle, up from 59% in 2017.³⁴ In addition to enduring consumer demand, the used vehicle industry has shown resilience through recessionary markets and other challenging economic cycles. In fact, from 2007 to 2009, new car transactions decreased by 35%, compared to just 14% for used cars.³⁵

Our Opportunity

We believe dealers and commercial consignors can benefit from our truly digital marketplace and comprehensive suite of services to buy and sell their vehicles, due to the inefficiencies and operational complexities that exist in the traditional wholesale auction market. There are an estimated 22 million wholesale units that are transacted in the United States. Based on our average fee per unit sold in 2020 of \$494, we estimate there is a total addressable market opportunity of \$10.7 billion for our core auction marketplace offering, including transportation services. We believe that our digital marketplace addresses the limitations of traditional and hybrid auctions, and enables us to be successful in attracting dealers and commercial partners, including those who have historically not relied on auctions for inventory management.

³¹ Manheim, Used Car Market Report, 2017

³² National Independent Automobile Dealers Association, Used Car Industry Report, 2020

³³ Hedges & Company, U.S. Vehicle Registration Statistics, November 2020

³⁴ National Independent Automobile Dealers Association, Used Car Industry Report, 2019

³⁵ Bureau of Transportation Statistics, New and Used Passenger Car Sales and Leases, December 2020

[Table of Contents](#)

We have built a robust digital marketplace and data-driven platform that can also address similar dealer challenges across the global wholesale market. While we are currently focused on the U.S. used vehicle market, which represents 36% of the global market,³⁶ we believe the international opportunity is at least as large.

As we continue to scale our platform and invest in our business, we expect that our total addressable market will expand with the additional value-added marketplace and data services we provide to dealers and commercial partners. For example, in 2019, there were approximately 29 million vehicles sold by dealers to consumers,³⁷ and we believe this represents a significant opportunity for our True360 Reports.

We are actively assessing opportunities to expand internationally and various expansion modes, including organic growth, partnerships and acquisitions. We are initially focused on expansion into Canada, but we plan to assess global expansion opportunities in the future. Based on our international strategy and our research into the Canadian market, we believe we may enter Canada in 2022 or possibly earlier. However, we intend to selectively evaluate potential opportunities for international expansion and cannot make any assurances as to timing. International expansion will come with various corresponding challenges, including new competitors and additional regulatory and legal obligations. International expansion will necessitate that we invest in additional sales, engineering, and administrative personnel, as well as incur additional costs associated with new compliance burdens.

Dealer Challenges

Independent and franchise dealers fulfill a critical role in the automotive industry ecosystem and are the main source of used vehicles for the retail and wholesale markets. Dealers bring ease and convenience to the consumer vehicle buying process, including local availability of vehicles, servicing, and financing. Dealers face a significant number of pain points that oftentimes challenge their ability to run their businesses efficiently and profitably. Dealers are focused on making the wholesale process as streamlined and simple as possible in order to sell inventory quickly, efficiently, and at fair values. Additionally, being able to source the right vehicle with ease, and with few surprises as it relates to the condition of the vehicle, is a top priority for dealers.

Inefficiencies in the Traditional and Hybrid Auction Processes

- **Significant time wasted.** It can often take weeks before vehicle inventory is sold in the traditional auction process. The vehicle is transported to and held at the auction location until the scheduled sale. If the vehicle is not sold, this inefficient process continues, and the vehicle is hauled back to the dealership, stored at the auction site, or transported to another auction location until the next scheduled sale. Additionally, dealers must commit significant time attending traditional auctions and buyers are limited to the inventory offered on the day of the scheduled sale.
- **Costly.** Traditional auctions are costly and many of the costs involved can never be recouped and thereby diminish dealer profits. These costs include transportation costs, sunk costs of uncertain appraisals, and opportunity costs of missing retail sales on a dealer's own lot since the vehicles are held at the auction site. Dealers want every available moment to retail a vehicle before selling it at an auction and the traditional process forces dealers to take their key assets, their vehicles, as well as their most valuable managers, away from their dealerships for lengthy periods of time. The process is also costly for buyers, who are faced with the burden of making split-second decisions without appropriate vehicle condition data and price evaluation

³⁶ Technavio, Global Used Car Market 2020–2024, U.S. Used Car Market 2020–2024

³⁷ National Independent Automobile Dealers Association, Used Car Industry Report, 2020

[Table of Contents](#)

tools, which can lead to costly mistakes. Many times, buyers are left to guess or to trust the seller on the condition of the vehicle they are bidding on.

- **Traditional auction services have not been built to enable a fully digital experience** . Hybrid auctions, which are simulcast over the internet, still entail the same inefficiencies and operational complexities as traditional in-person physical auctions. While buyers are able to watch live video and audio of an auction, sellers are still required to haul their vehicles to the auction lot. Additionally, buyers in different environments have access to different information, which can foster distrust during the auction process.

Difficulty Effectively Sourcing and Selling Inventory

- **Limited reach to source inventory and difficulty finding the right vehicle** . Dealers are often limited to sourcing inventory at local auctions or agreeing to direct private sales from another dealer without appropriate time to truly assess the vehicle's condition. Independent dealers source the majority of their inventory from auctions and franchise dealers use auctions to source 27% of their used vehicle inventory.³⁸ Proximity has long been a problem, with dealers largely reaching only local auctions within driving distance, whereas the "right" vehicle may be further away.
- **Turning wholesale inventory quickly and at the right price is challenging** . Dealers need to find ways to manage constantly changing inventory and adjust pricing strategies to adapt to market conditions and consumer behavior. The time spent and speed at which dealers turn wholesale inventory is a key driver of their profitability and dealers often lack the technology and tools to quickly and efficiently sell their wholesale vehicles by optimizing for time and price.

Inability to Fully Assess Vehicle Condition

- **Evaluating vehicle condition is complicated** . At a traditional auction, buyers typically have very little time to decide whether to buy a vehicle, and they often lack sufficient data to thoroughly assess the full condition of the vehicle. Even though buyers at in-person auctions have the opportunity to see the physical vehicle, buyers do not get to evaluate critical condition indicators, such as the undercarriage, engine readings, and clear sound, before purchasing the vehicle. This exposes dealers to risks of hidden vehicle issues. Not fully understanding and predicting the condition of a vehicle before purchasing may lead to longer than expected reconditioning times, increased costs, decreased profits, and increased time that inventory sits on a dealer's lot.
- **Disputes and mistakes are frequent and can often lead to costly reconditioning or unpredictable arbitration outcomes** . Sellers and buyers often have disagreements after a transaction is completed. Certain vehicle condition reports may misrepresent or miss certain issues with the vehicle, the most common being defective transmissions or frame issues, which are difficult to test during the traditional wholesale process.

Lack of Pricing Guidance

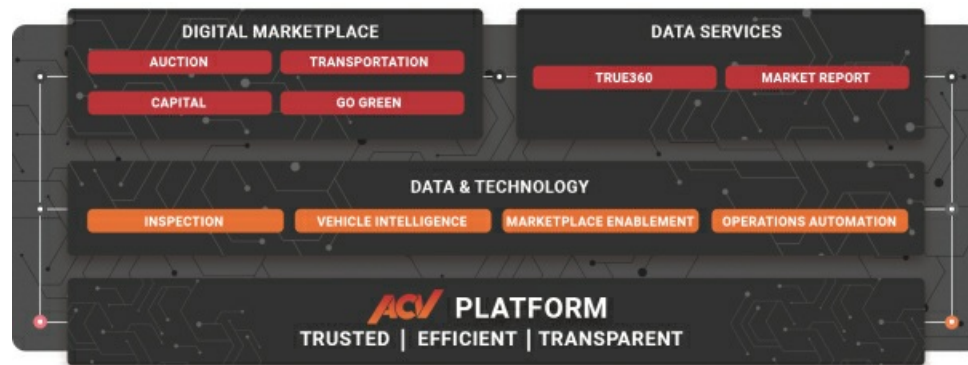
- **Every vehicle is unique** . Dealers tend to face many challenges when determining the right price for a vehicle. Buyers must make split-second decisions about value, with no time to comprehensively review the condition of the vehicle. Generally, dealers have been limited by lack of access to unbiased information on specific vehicles and pricing guides have historically only offered information around blended transactions. Buyers and sellers have different pricing strategies: buyers generally use local market data and unique history information to determine

³⁸ National Independent Automobile Dealers Association, Used Car Industry Report, 2020

[Table of Contents](#)

how much they can justify bidding on a particular vehicle, while sellers may price vehicles higher than what the vehicle is truly worth, leading to supply and demand inefficiencies. A lack of consistency in the way that dealers characterize a vehicle's attributes can also drive different pricing on similar vehicles.

Our Platform



Our platform leverages data and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. Our digital marketplace offerings include our core auction offering and value-added services, ACV Transportation, ACV Capital, and our Go Green assurance. Our data services provide insights into the condition and value of used vehicles for transactions both on and off our marketplace. Our core data and technology platform includes inspection, vehicle intelligence, marketplace enablement, and operations automation.

Digital Marketplace

Our digital marketplace is our intuitive and efficient offering for connecting buyers and sellers of wholesale vehicles nationwide, enabling them to transact intuitively and efficiently.

- **Auction.** Our core offering is our online auction, which facilitates instant transactions of wholesale vehicles. Thousands of dealers transact every day, with sellers either launching their vehicles directly to our 20-minute live auction or to Run List, which is a digital list that gives buyers the chance to view the condition report and place proxy bids 24 hours before the auction goes live.
- **ACV Transportation.** Through our nationwide network of carrier partners, our technology platform, and dedicated service teams, we move vehicles both locally and long-haul in a cost-efficient and timely manner.
- **ACV Capital.** We offer short-term inventory financing for buyers to purchase vehicles on our digital marketplace. Our financing product includes straightforward pricing, allowing our customers to know their inventory costs upfront.
- **Go Green.** We provide the seller with an assurance against claims related to defects in the vehicle which we did not identify in our condition report and otherwise may have exposed the seller to loss as a result of arbitration with the buyer.

[Table of Contents](#)

Data Services

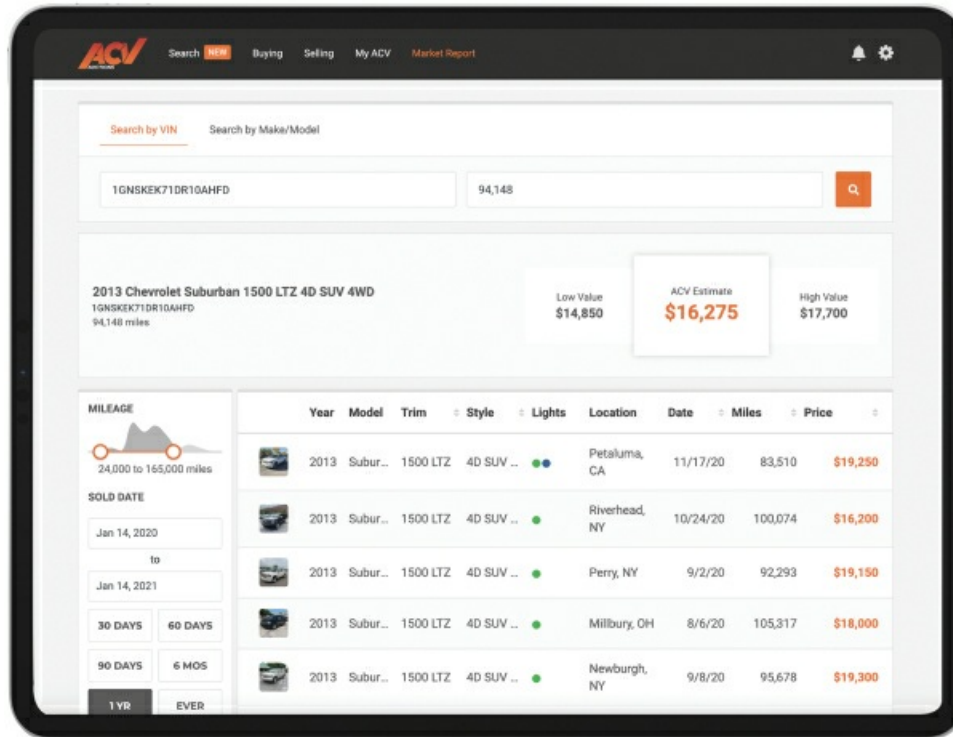
We offer data services for our dealer and commercial partners that bring transparency and offer insights into the condition and value of used vehicles, enabling them to make more informed wholesale and retail inventory management decisions both on and off our digital marketplace.

- **True360 Report.** We provide proprietary, vehicle-specific intelligence, including cosmetic and structural vehicle assessments that can be integrated into leading vehicle history report providers. This data helps our dealers and commercial partners buy and sell vehicles and accurately assess and document vehicle condition. Dealers utilize the True360 Report to make wholesale and retail transaction decisions with confidence both on and off our marketplace. Commercial partners use our detailed and marketable True360 commercial inspection reports to better price and sell their used vehicle inventory.



Table of Contents

- **ACV Market Report.** We provide transaction data and condition reports for comparable used vehicles, including pricing data from third-party sources. With a full picture of how previous vehicle sales have performed, our ACV Market Report gives dealers another tool to determine best pricing and valuation strategies for used vehicles.



Data and Technology

Data and technology are the foundations of our platform and underpin everything we do. Our core data and technology capabilities include inspection, vehicle intelligence, marketplace enablement, and operations automation.

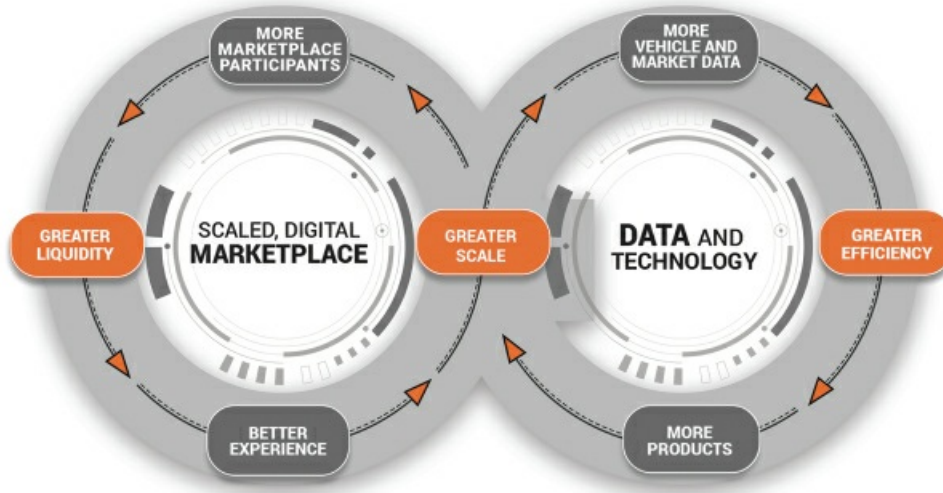
- **Inspection**
 - **Condition Report.** Our platform enables thorough, comprehensive inspections and reports that feature approximately 100 details such as cosmetic irregularities including paint quality, as well as structural assessments that identify prior repairs or existing damages.
 - **Virtual Lift.** We offer a high definition look at a vehicle's undercarriage without having to put the vehicle on a lift through Virtual Lift. This is a portable, light-weight, drive-over solution utilizing mobile device technology that can be operated by a single inspector.
 - **AMP.** We allow for the clear recording and immediate sharing of a vehicle's engine sound through our Audio Motor Profile, or AMP, solution. This custom feature gives buyers the

ability to listen to the vehicle running in a way that is more detailed than physically standing next to the vehicle.

- **Vehicle Intelligence.** Our platform is fueled by the data we collect through our proprietary technology, inspections, and activity on our marketplace, as well as third-party market data. We store, analyze, and connect this data to create comprehensive analytics tailored for our dealers and commercial partners. Our pricing engine utilizes our extensive repository of data to help predict wholesale and retail vehicle valuations at scale, and dealers can price any vehicle anywhere. Through live appraisals, we also enable dealers to quickly assess the value of potential trade-in vehicles from consumers.
- **Marketplace Enablement**
 - **MyACV.** We provide an application that serves as our customers' gateway to our platform through our mobile app, website, or directly leveraging our APIs. MyACV offers user-friendly product features for our customers including personalization, inventory discovery, bidding, purchasing, finalization of post-sale payment options, and additional services including transportation and financing.
 - **Private Auction.** Our recently launched private auction offering powers private sales for dealer groups and commercial partners, permitting the customization of participants, schedule and duration, bidding, purchasing, and pricing rules.
- **Operations Automation.** Investments in our technology platform have unlocked process workflow optimization and automation for pre- and post-auction services. Our configurable and integrated services support payment processing, risk management, processing of titles by a dedicated ACV team or automated through machine learning, arbitration, and transportation services.

Network Effects

Our platform benefits from a virtuous cycle driven by our scaled, digital marketplace and the data and technology we leverage every day. More buyers and sellers engaging on our marketplace drives greater liquidity and greater vehicle selection, which leads to an overall better marketplace experience. This leads to greater scale, driving more vehicle and market data that helps grow our data and technology moat. As we collect more vehicle and market data, we are able to provide greater efficiency to buyers and sellers through more products, which in turn drives greater marketplace supply and scale. For example, our data and technology enables economies of scale that improve our value-added transportation and financing services. As we continue to grow and offer more comprehensive and efficient services, our customers can further benefit from a more streamlined, simple, and consistent experience across the full used vehicle lifecycle. These reinforcing flywheel effects continuously improve our scaled, digital marketplace, and data and technology for our customers, resulting in growth for our platform.



Value Proposition to Our Customers

Our competitive advantages are driven by our ability to enable trust, transparency, and confidence in an industry that has historically lacked these qualities. We provide transparent and accurate vehicle information and access to a vibrant marketplace that efficiently connects buyers and sellers of used vehicles. Both on and off our marketplace, we offer data services to dealers and commercial partners that provide insight into the value and condition of used vehicles, including pre-auction inspections, True360 Reports, as well as pricing guidance for Marketplace Participants. We power our marketplace with technology-driven products and value-added services that address the entire transaction journey, ranging from pre-scheduling to post auction services including title, verification, payment processing, financing and transportation. Our aim is to provide a streamlined, simple and consistent experience for our customers so they are able to shift their focus to the upstream parts of their businesses that matter most.

We Provide Unbiased Accuracy and Transparency

- **We provide detailed condition information and comprehensive vehicle intelligence that help our customers make the best decisions** . Before a vehicle is launched on our auction, our vehicle inspectors create a comprehensive and impartial vehicle condition report right at the seller's lot. This report, which includes approximately 100 detailed data points and over 40 photos of the vehicle including of its undercarriage, provides unbiased information that is unparalleled in its transparency. Our reports alert potential buyers to issues both small and large, and include details ranging from engine fluid levels to individual tire tread depths. We also increase the vehicle's desirability and retail value through our True360 Reports. We provide off-lease inspections to captive finance companies and OEMs to assess damages and price their vehicles based on their condition. We leverage the multiple data points we collect from our inspections to increase the confidence level of our dealers and commercial partners.
- **Transparent, third-party objectivity is at our core** . We believe that our thorough vehicle condition and market reports introduce third-party objectivity that improves the likelihood of buyers and sellers reaching a sale at an attractive price. Approximately 70% of consumers seek a third-party site for independent information validation.³⁹ In the traditional wholesale process, the owner of the vehicle typically takes full responsibility for the condition of the vehicle. On our platform, we help confirm the integrity of the assets through third-party inspections.
- **We provide insights into actual vehicle value** . Our comprehensive approach to inspections and condition reports, as well as our deep data moat, help guide pricing for our dealers and commercial partners. We have a thorough and extensive process that determines the true condition of each individual vehicle we inspect and we are able to predict demand for it through our marketplace. This enables us to help determine the actual cash value of the vehicle, and allows for efficient matching of buyers and sellers in our marketplace.

We Provide a Quick and Efficient Channel for Sourcing and Selling Inventory

- **We believe we provide the fastest means to sourcing and selling inventory at scale for dealers and commercial partners in the wholesale marketplace** . We eliminate roughly a week worth of lag time associated with traditional auctions when dealers utilize our digital marketplace to sell their inventory. We provide a highly liquid online marketplace and access to markets outside of the standard local markets of which dealers are accustomed. Through our platform, dealers can source inventory every day, from anywhere. According to our 2020 ACV Survey, 66% of dealers noted they buy and sell more vehicles using our online auction than they would have otherwise been able to at traditional physical auctions. Our online auctions provide sellers with convenient and cost-efficient access to thousands of dealers nationwide, and provide buyers with immediate access to an extensive inventory of thousands of vehicles—all at the touch of a button. In 2019, the average distance between dealers for our transactions was 350 miles. We provide dealers access to inventory and give them the ability to access vehicles from outside of their local markets with total confidence.
- **We eliminate the time requirements associated with traditional auctions** . Traditionally, sellers had to wait until an auction was scheduled to wholesale their vehicle, materially increasing the carrying costs of their vehicles. Our platform eliminates the significant time requirements for dealers who have historically had to drive hundreds of miles per week, going to different auctions around their respective regions to source vehicles. With our platform, dealers can remain at their dealerships, where they are able to have better control over their retail operations.

³⁹ National Independent Automobile Dealers Association, Used Car Industry Report, 2019

We Hold Ourselves Accountable and Responsible

- **We are partners to our customers.** We eliminate the surprise element that has historically been associated with traditional auctions due to the lack of information. At traditional auctions, the buyers and sellers tend to own more of the risk, so the auctions typically do not have much exposure. We own that responsibility and alleviate risk for our partners, and view this as a critical differentiator of our platform. We believe our condition reports more accurately assess condition than any other inspection and we stand behind them.
- **Our data and technology help increase buyer confidence and decrease disputes, and bring ease to the arbitration process.** We are able to take the responsibility for representation and arbitration, and can take risk off our dealers, through our optional Go Green assurance service. For some of the most common arbitration causes including transmission issues, we have utilized our deep data moat to help predict when these issues may arise before a sale, significantly driving down the need for arbitration.

We Drive Deeper Insights through Data Aggregation to Value Vehicles Better and Optimize our Marketplace Experience

- **We grow our data repository from a multitude of interactions across the entire transaction journey, from pre-inspection scheduling to post-auction services.** We leverage a deep and comprehensive set of data we collect to predict trends around pricing and condition of vehicles. As our community of dealer and commercial partners and our market coverage grow, so does the accuracy and value of these data points, ultimately creating a more trusted, transparent, and efficient process.

We Provide a Holistic Solution for Wholesale Vehicle Acquisition and Disposition

- **We handle every step of the process.** Through our comprehensive suite of products and services, our dealers and commercial partners receive trust, transparency, convenience, speed, efficiency, cost savings, and reach. Our customers never need to leave their stores; we bring the vehicles and inspectors directly to them. In addition to our digital marketplace and in-depth condition reports, we also integrate services which handle payments (processed directly through our platform), titles (handled by a dedicated ACV team), arbitration (10-days of protection offered for free plus extended low-cost plans for 20 or 30 days), transportation (delivered directly from the seller's lot to the buyer's lot) and financing (straightforward pricing determined by the amount financed and terms selected).
- **We reduce the complexity of logistics.** With our ability to help dealers sell their vehicles without ever having to remove the vehicle from their individual lots, we eliminate the burdensome process of dealers needing to haul their vehicles to various auctions with no predictability of a sale. Additionally, we help dealers reach inventory of vehicles much further than they have historically been able to reach. By owning the responsibility of transporting our dealers' vehicles once a sale has been completed, we eliminate the additional challenge dealers face of having to transport their own vehicles hundreds of miles away.
- **We have financing options that our dealers need.** We have over 60 payment options available for buyers. This ranges from standard ACH pulls that we administer, to various vehicle financing sources that we have been able to establish relationships and integrations with, as well as creating our own ACV Capital financing offering that is primarily for independent dealers. This is a significant competitive advantage for us as vehicle financing providers such as banks are generally cautious to provide financing given the high amount needed relative to the value of the vehicle.

We Supplement Our Digital Platform with Dedicated Account Management and Customer Service

- **While we are committed to digitizing the wholesale vehicle auction process, we recognize that some steps still require the human touch to maximize the trust and transparency.** We have a dedicated team on the ground in each of our territories, including over 740 vehicle condition inspectors, or VCIs, and over 125 territory managers as of December 31, 2020, who inspect our vehicles, create our vehicle condition reports, and work to build trusting relationships directly with our customers.
- **We focus on the highest quality customer service which helps win and keep customers long-term.** We strive to cultivate long-term partnerships with our customers, which is a unique and differentiated approach in the industry.

Why We Win

Our competitive advantage results from our deep expertise in the used vehicle market, a transparent, digital approach for our dealers and commercial partners, and a comprehensive suite of products and services:

Transparent, Digital Approach Unlocks a More Efficient Market. We are digitizing and bringing transparency and efficiency to a massive, fragmented and highly complex used vehicle market. Our digital marketplace and comprehensive suite of products and services provides greater access to trusted inventory and speed to liquidity for our dealers and commercial partners. Our differentiated approach to vehicle insights also allows us to stand behind vehicles listed on our marketplace and truly partner with our customers. We pioneered what we believe to be the wholesale market's first seller assurance service, Go Green, which provides the seller with an assurance against claims of defects in the vehicle that are not disclosed in our condition report and which otherwise may have exposed the seller to loss as a result of arbitration with the vehicle buyer. We believe our approach instills more confidence for our customers to transact digitally and we enable transactions that may not have happened in the traditional auction process.

Industry Leading Digital Marketplace with Significant Scale. The power of our platform is evidenced through our scale and growth. In 2020, we had 16,215 active Marketplace Participants generating \$3.3 billion Marketplace GMV, which increased by 29.6% and 86.2%, respectively, from the prior year. Our digital marketplace provides sellers with an efficient channel to wholesale their vehicles and access to thousands of dealers nationwide, and provides buyers with a real-time view of extensive vehicle inventory, all at the touch of a button. As of December 31, 2020, our territory managers and VCIs operated across 125 territories. We believe our ability to build vibrant local and regional networks of Marketplace Participants, combined with our nationwide coverage, creates a strong competitive advantage. The number of units sold on our marketplace in 2020 increased by 62.1% to 391,466. We define Marketplace Participants as dealers or commercial partners with a unique customer ID that have transacted on our digital marketplace at least once in the last 12 months as either a buyer or seller and include independent and franchise dealers buying and selling on our marketplace, as well as commercial partners, consisting of commercial leasing companies, rental car companies, bank or other finance companies, who use our marketplace to sell their inventory. See the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Operating and Financial Metrics" for additional information on Marketplace Participants.

Comprehensive Suite of Products and Services Deepening Relationships with Our Customers. To further enhance our digital marketplace, we offer a comprehensive suite of products and services that help create a seamless experience and remove the friction and pain points

[Table of Contents](#)

associated with the traditional wholesale process. Through services such as ACV Transportation and ACV Capital, we help our customers manage the entire transaction journey on our platform, becoming an integral partner and deepening our relationships with them. The value of these services is demonstrated in the growth of customer adoption and attachment rates. Of the 391,466 units sold on our digital marketplace in 2020, 37.3% were transported using ACV Transportation or financed using ACV Capital. Our customers trust our products and services to enable them to make more informed wholesale decisions and retail more vehicles.

Growing Technology and Data Moat. Technology and data inform every aspect of our marketplace, offerings, and services. Our growing repository of data enables transparent, comprehensive, and accurate vehicle information that our customers can trust, powering more efficient and frictionless vehicle transactions both on and off our marketplace. Through the connection of hundreds of discrete data points collected along the entire used vehicle transaction journey, we improve existing products and react dynamically to our customers' needs. We have also built proprietary technology including Virtual Lift and AMP, which further enhances our industry leading condition and market reports. These reports offer intelligence that enables our customers to make informed wholesale and retail inventory management decisions. Additionally, our back-end technology, which leverages machine learning to reduce manual processes, drives a substantial moat that allows for quicker turnaround time in the post-transaction process and enables our operations to become more efficient.

Attractive Territory Cohort Economics. As our territories mature and scale, territory-level economics tend to improve driven by more cost-efficient operations and greater customer affinity for our offerings. At the launch of a new territory, we incur a certain amount of costs to establish presence, which are largely fixed costs in nature. This includes adding a territory manager and a team of our VCI's who carry out inspections on our customers' lots and help drive stronger relationships with our customers and increase their usage of our platform. This cost structure allows us to support strong transaction growth without significant incremental costs. As we reach greater scale and higher levels of density in a territory, we typically experience lower inspection cost per vehicle and better overall economics per transaction.

Mission-Driven Culture and Proven Team. We founded ACV with the core principle of investing in people and technology to bring trust and transparency across the entire used vehicle market. We are invested in the development and empowerment of our over 1,470 teammates. We believe the happiness of our teammates leads to successful business operations, and comes from learning and engaging in fulfilling work, which results in ample professional growth opportunities. Additionally, we represent the successful creation of an entrepreneurial ecosystem in our hometown, and our success enables us to attract some of the best talent in the region and across the country. Our leadership team is composed of seasoned executives with demonstrated track records of scaling businesses across auto, consumer, and marketplace companies.

Our Growth Strategies

We have grown significantly since first going live with our offering in 2015, and we are already disrupting the traditional wholesale vehicle on an immense scale. We believe we have a massive underpenetrated addressable opportunity ahead of us.

Key elements of our strategy to grow our business include:

Increase the Number of Marketplace Participants on Our Platform. We believe there are significant opportunities to continue to grow the number of dealers and commercial partners on our

[Table of Contents](#)

platform. We intend to attract new dealers and commercial partners with targeted sales and marketing efforts focused on educating potential Marketplace Participants as to the benefits of our offerings. As of December 31, 2020, we had 16,215 Marketplace Participants on our platform. There are approximately 16,500 franchise dealers in the United States and franchise dealers represent a core source of the overall supply of our marketplace, accounting for 32.7% of our Marketplace Participants as of December 31, 2020. Independent dealers represent a core source of the overall demand on our marketplace. There are over 38,000 independent dealers in the United States. Additionally, we also believe there are thousands of commercial consignors that sell to dealers in the wholesale market today.

Drive Greater Share of Wholesale Transactions with Existing Customers. While our industry leading digital marketplace has and will continue to enable us to grow the number of dealers on our platform over time, we believe that we have room to increase the number of wholesale transactions from existing customers. As of December 31, 2020, we had 16,215 Marketplace Participants on our platform compared to the over 50,000 automotive dealers in the United States, while 391,466 Marketplace Units were transacted on our digital marketplace in 2020, compared to the estimated 22 million used vehicles that are bought and sold in the wholesale market each year. We remain in the early stages of penetrating our Marketplace Participants' total number of wholesale transactions and we believe that our streamlined, simple, and consistent experience for our customers will result in an increasing share of their wholesale transactions. In providing inspection services for our commercial partners with True360 Reports we expect a growing number of commercial consignors to utilize our digital marketplace and data services in the future.

Introduce New Products. We plan to leverage our extensive data and technology capabilities to continue to introduce new and complementary products and services. Introducing new products to our platform and continuing to refine our current offerings will increase our competitive advantage. One area of focus is the development of data-powered products that enable our customers to buy and sell used vehicles more effectively in a hyper digital world, and help fuel growth across dealer wholesale, commercial wholesale, and consumer-to-dealer channels. Additionally, we are focused on discovering new products that will continue to power our pricing engine and complement our market reports.

Pursue Targeted Acquisitions. We believe that the complexity of the automotive industry provides substantial opportunity for investment to strengthen our competitive moat. In 2019 we acquired TrueFrame, a provider of comprehensive vehicle inspections for dealers and their retail consumers. This allowed us to extend the reach of our dealer platform to the retail consumer market through our True360 Reports, which can be integrated into leading vehicle history report providers. In April 2020, we acquired ASI, which allowed us to enter the commercial inspection market and strengthen our offerings for our commercial partners. We will continue to pursue select acquisitions that extend the capabilities of our platform, enhance our comprehensive suite of products and offerings, and bring talent to our team.

Expand Internationally. The U.S. used vehicle market represents approximately 36% of the global market.⁴⁰ We believe that our trusted and transparent digital marketplace and data-driven insights will be an attractive value proposition to many automotive dealers and commercial consignors around the world. By leveraging our data and technology platform and our go-to-market expertise developed in the United States, we plan to thoughtfully expand to new countries and offer services that we believe best suit the needs of those markets. We have designed our platform with scale and flexibility at its core, with features and functionality that can easily be enabled across multiple formats and countries. We plan to leverage these strengths to launch in other countries where we see attractive industry dynamics.

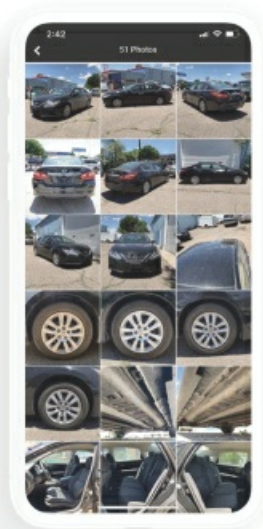
⁴⁰ Technavio, Global Used Car Market 2020–2024, U.S. Used Car Market 2020–2024

Our Offerings and Services

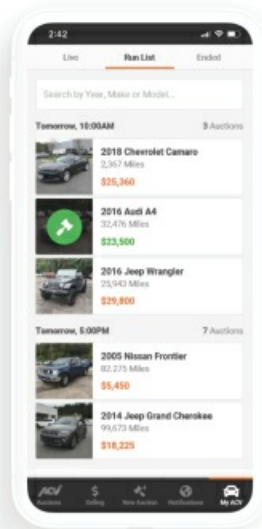
Our platform leverages data and technology to power our digital marketplace and data services, enabling our dealers and commercial partners to buy, sell, and value vehicles with confidence and efficiency. Our digital marketplace offerings include our auction and value-added services, ACV Transportation, ACV Capital, and our Go Green assurance. Our data services provide insights into the condition and value of used vehicles for transactions both on and off our marketplace. Our core data and technology include inspection, vehicle intelligence, marketplace enablement, and operations automation.

Digital Marketplace

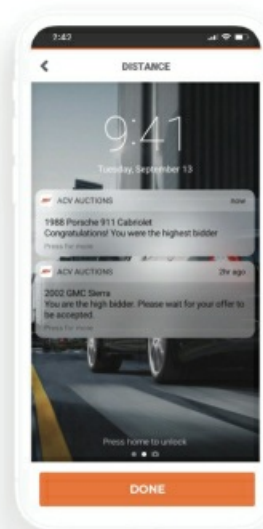
- **Auction.** Our core offering is our online auction, which facilitates instant transactions of wholesale vehicles. Thousands of dealers transact on our digital marketplace every day, with sellers either launching their vehicles directly to our 20-minute live auction or to Run List. When sellers launch their vehicles directly to our online auction buyers can search and discover relevant inventory through customized filters, such as price, location, and vehicle-specific details including mileage, location, year, make, and model.



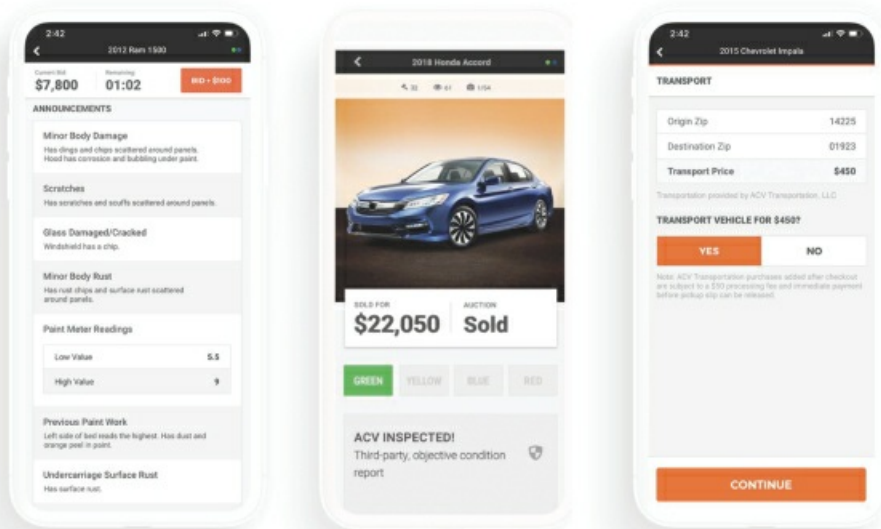
Proprietary Inspection



Customized Filters



Instant Notifications



Condition and Market Report

Live Auction

Post-Auction Services

- **Run List.** Run List supports dealers in making informed decisions. It allows for pre-filtering and pre-screening of vehicles up to 24 hours prior to an auction taking place. This allows dealers the time to thoroughly review vehicle data and insights and focus their searches.
- **ACV Transportation.** Through our nationwide network of carrier partners, our technology platform, and dedicated service teams, we move vehicles both locally and long-haul in a cost-efficient and timely manner. All buyers on our platform have the ability to see real-time transportation quotes as part of the vehicle-display page and add transportation services during checkout. Once the transaction is finalized, dealers will receive a confirmation email and have access to status reports on MyACV to follow the vehicle on its journey to its new dealer. We offer transportation services from the vehicle's location.
- **ACV Capital.** We offer short-term inventory financing for buyers to purchase vehicles on our digital marketplace. Our financing product includes straightforward pricing with no hidden costs and no additional fees, allowing our customers to know their inventory costs upfront.
- **Go Green.** We provide the seller with an assurance against defects in the vehicle which are not disclosed in our condition report and otherwise may have exposed the seller to a loss as a result of arbitration with the buyer. We believe Go Green is the wholesale market's first seller assurance service and this approach instills more confidence in dealers and commercial partners to transact digitally.

Data Services

We offer insights into the condition and value of used vehicles for transactions both on and off our marketplace and help dealers, their end consumers, and commercial partners make more informed decisions and transact with confidence and efficiency.

- **True360 Report.** We provide proprietary, vehicle-specific intelligence, including cosmetic and structural assessments. This data helps our dealers and commercial partners buy and sell

[Table of Contents](#)

vehicles and accurately assess and document vehicle condition. Dealers utilize our True360 Report to make wholesale and retail transaction decisions with confidence both on and off our marketplace. The True360 Reports can be integrated into leading vehicle history report providers, such as CarFax and AutoCheck, to increase transparency. Commercial partners use our detailed and marketable True360 commercial inspection reports to better price and sell their used vehicle inventory.

- **ACV Market Report.** We provide a transparent view of sold auctions, including the industry's best condition data, to help dealers make well informed buying and selling decisions in minutes. Updated daily, our ACV Market Report provides dealers with a full picture of how previous vehicles have performed, allowing them to determine the best pricing strategy for their auctions. In just a few clicks, dealers can view the current market value of a vehicle and instantly improve their pricing strategy. By simply entering the vehicle identification number, or VIN, and mileage of a certain vehicle, the ACV Market Report will pull all the corresponding transactions displaying the price of the vehicles sold. The report provides a range from the low value to high value of the year, make, and model sold on the platform, and will list all of the vehicle's information including location, date, mileage and sold price. Dealers can utilize filters to further narrow down results in order to get the best picture to assess the pricing strategy for that particular vehicle.

Data and Technology

Data and technology are the foundations of our platform and underpin everything we do. Our core data and technology capabilities include inspection, vehicle intelligence, marketplace enablement, operations automation.

Inspection. Our team of VCI's is crucial to generating supply for our marketplace in a given territory. Each of our territory managers has a dedicated local team of certified VCI's, all of whom are employed by us, that perform inspections as part of a dealer's listing when selling a vehicle through an online auction, or in connection with delivering a True360 report. An inspection from one of our VCI's collects hundreds of different data points and serves as independent third-party insight on the condition of a vehicle. In 2020, we performed approximately 800,000 inspections across our digital marketplace, True360 retail and off-lease inspections.

- **Condition Report.** Our platform enables thorough, comprehensive inspections, which form our detailed condition reports that are attached to every vehicle sold through our marketplace. These inspections feature approximately 100 details such as cosmetic irregularities including paint quality, as well as structural assessments that identify prior repairs or existing damages. For the cosmetic and structural analysis, our inspectors complete metering of all paint surfaces to help identify irregularities in paint quality and assess the structure of the vehicle to identify prior repairs or existing damages. Inspectors also use drivetrain and mechanical analyses to read and clear diagnostic trouble codes, and identify potential resolutions for them. For interior and exterior reviews, inspectors complete a detailed evaluation of the vehicle, ranging from the cupholder and gauge, to the tires.
- **Virtual Lift.** We offer a high definition look at a vehicle's undercarriage without having to put the vehicle on a lift through Virtual Lift. This is a portable, light-weight, drive-over solution utilizing mobile device technology that can be operated by a single inspector in a matter of minutes. Virtual Lift elevates the level of trust and transparency on our digital marketplace by providing a digital look into a vehicle's undercarriage.



- **AMP.** We allow for the clear recording and immediate sharing of a vehicle's engine sound through our Audio Motor Profile, or AMP. This custom feature gives buyers the ability to listen to the vehicle running in a way that is better than physically standing next to the vehicle. AMP captures the engine turning, idle periods, and rev cycles. Utilizing our advanced machine learning algorithms, we leverage our audio database of over 850,000 used vehicles to provide guided insights on vehicle engine conditions.



Vehicle Intelligence. Our platform is fueled by the data we collect through our proprietary technology, inspections, and activity on our marketplace, as well as third-party market data. We store, analyze, and connect this data to create comprehensive analytics tailored for our dealers and commercial partners. Our pricing engine utilizes our extensive repository of data to help predict wholesale and retail vehicle valuations at scale; and dealers can price any vehicle anywhere. Through live appraisals, we also enable dealers to quickly assess the value of potential trade-in vehicles from consumers.

Marketplace Enablement

- **MyACV.** We provide an application that serves as our customers' gateway to our platform through our mobile app, website, or directly leveraging our application programming interfaces, or APIs, and provides quick access to all of their important information all in one place. MyACV offers user-friendly product features and functionalities for our customers including personalization, inventory discovery, bidding, purchasing, and finalization of post-sale payment options, as well as additional services including transportation and financing. Our navigation feature accommodates a constantly increasing list of new capabilities, like the Data Export feature that allows dealers to download won, sold, and saved auction details.
- **Private Auction.** Our recently launched private auction product powers customized private sales for dealer groups and commercial partners, permitting the customization of participants, schedule and duration, bidding, purchasing, and pricing rules. Our customers are able to curate and customize their audience, auction schedule and duration, and bid policy, among other items, in a co-branded interface.

Operations Automation. Investments in our technology platform have unlocked process workflow optimization and automation for pre- and post-auction services. Our configurable and integrated services support payment intermediation and transportation services by directly processing the dealer request in our app. Titles processing is partially automated through machine learning and handled by a dedicated ACV team of experts. Our ACV Arbitration platform facilitates the arbitration process from end-to-end, providing an automated and objective review and settlement of claims.

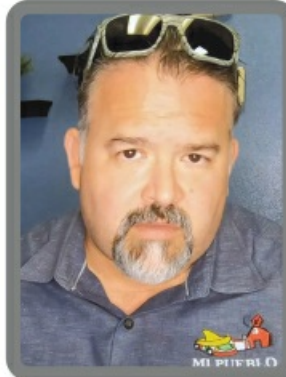
ACV IS A GREAT PLATFORM. THEY MAKE IT EASY TO BUY AND SELL FROM ANYWHERE. ACV HAS ALSO EXPANDED MY REACH INTO NEW MARKETS BY INCLUDING AFFORDABLE TRANSPORTATION SERVICES THAT ARE WORKED INTO THE SALE, SO I DON'T HAVE TO DEAL WITH THE LOGISTICS.

Brittany Hibdon
Dealer Principal
Hibdon Auto Center



I'M GETTING BUYERS FROM ALL OVER VERSUS THE TRADITIONAL AUCTIONS WHERE I ONLY GET LOCAL BUYERS. ACV MAKES IT VERY SIMPLE. IT'S JUST THE PUSH OF A BUTTON AND IT SAVES ME A LOT OF TIME AND MONEY.

Carlos Gamboa
General Manager
Mi Pueblo La Familia Autos



WE'RE MAKING MORE IN THE WHOLESALE DEPARTMENT THAN WE EVER HAVE, BUT ALSO, ACV'S GIVEN US GUIDANCE SO THAT WE CAN BE SUCCESSFUL.

John Preston
General Manager
Marin County Ford



WE MOVE 100% OF OUR WHOLESALE INVENTORY THROUGH ACV. THE INFORMATION IS VERY CONSISTENT... YOU DON'T HAVE TO SECOND GUESS IT OR WORRY ABOUT IT.

Brian Singh
General Manager
Parkway Family Mazda



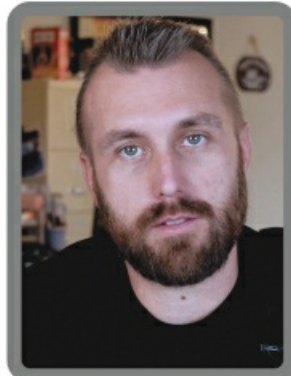
PURCHASING CARS THROUGH ACV IS SO EASY AND A LOT LESS STRESSFUL. I CAN MANAGE IT ALL RIGHT FROM MY PHONE AND THE CONDITION REPORTS ARE SO THOROUGH THAT I HONESTLY DON'T LOOK AT THEM MUCH ANYMORE. THAT'S HOW MUCH I TRUST THE INSPECTIONS. THE CARS ARRIVE EXACTLY AS DESCRIBED.

RD Proud
General Manager
Auto Union LTD



WHEN I USE ACV CAPITAL, ACV'S FLOOR PLAN, THE PROCESS ACTUALLY GETS SPED UP VERSUS USING A TRADITIONAL FLOOR PLAN... AND THE FEES ARE MORE AFFORDABLE.

Josh Adams
Owner
Prestige Motor Sales



ACV'S REAL VALUE TO US IS BEING ABLE TO SELL OUR VEHICLES FROM OUR RECEIVING LOCATION VERSUS HAVING TO PUT THE VEHICLE ON A TRANSPORTER AND SHIP IT TO THE AUCTION. WE ARE AVERAGING A \$400-\$450 SAVINGS/CAR WITH ACV.

Joe Coreno
Director of Retail and
Remarketing Operations
Fusion Auto Finance



ACV'S APP IS SIMPLE TO USE. THE STAFF IS QUICK AND RESPONSIVE WHEN WE NEED THEM AND THEY SAVE US TIME AND MONEY. ACV HAS HELPED US DOUBLE OUR PROFITS FOR THE UNITS WE SELL ON THE PLATFORM.

Jesse Nammack
Used Car Sales Manager
Apple Ford Lincoln



Technology

Software and data are the foundation of our marketplace and products. We have a dedicated, world-class delivery team that has developed an event-driven service-oriented architecture to process millions of events every day.

Our technology provides the following capabilities:

- **Usability.** Our state of the art, dealer-centric user experience continues to evolve with the needs of our Marketplace Participants. Our platform has been designed to be capable to either stand alone or to integrate with third party platforms and APIs.
- **Flexibility.** Features and functionality developed for ACV's platform can easily be enabled, and configured for individual Marketplace Participants. Technology and data products and services can stand alone as individual or integrated solutions.
- **Reliability.** We were an early adopter of Kubernetes which powers the infrastructure for our highly-reliable, event-driven, service oriented architecture. We have consistently accomplished an over 99.99% uptime while deploying to production over 20 times per day.
- **Security.** We have a dedicated industry-leading security team and are an approved partner for financial institutions.

These capabilities enable the following advantages:

- **Powerful User Experience.** We deliver an engaging, scalable, and consistent user experience for a broad set of customers by providing a common set of customizable tools for individual inspections and other use cases. These foundational experiences are designed with a deep understanding of the challenges dealers have historically faced.
- **Speed of Innovation.** Our platform approach, combined with our cloud-based infrastructure, our lean product development principles, and our agile software development methodology allows us to quickly act on evolving dealer and partner customer needs.
- **Omni-Channel Advantages.** As we scale, our growing set of inspection and condition report use cases, and data offerings for wholesale and retail markets benefits from omni-channel advantages.

Sales

Our sales team is responsible for onboarding our dealers and commercial partners and ensuring their success and satisfaction on our platform. We have built a robust internal sales team of over 60 employees that act as account managers, and partner with our customers. Account managers are often the first point of contact for customers seeking to join our platform, and develop meaningful relationships with our dealers and commercial partners. We also have a dedicated sales team that proactively sources new customers, particularly for our more nascent territories or in existing territories where we seek to improve our buyer to seller ratio. After dealers are on-boarded onto our platform, they can interact with their account managers through in-app messaging, by email, or by phone.

Our 125 territory managers also function as sales representatives, particularly in more nascent territories where they develop personal relationships with local dealers. When launching and entering new territories, our dedicated on the ground team, including territory managers, VCI's, and other operations staff, target and onboard dealers in the respective territory with an appropriate balance of

[Table of Contents](#)

buyers and sellers to encourage vibrancy in the marketplace. Territory managers continue to support our dealers, building awareness of our brand in the regions in which they operate. Our VCIs serve as a sales support team by building and cultivating relationships with our customers through multiple weekly visits to customers in their territories. Given the strength of their relationships and frequency of interaction with our dealers, VCIs often double as informal relationship managers and can be a key point of contact for dealers on our platform.

Marketing

We build and cultivate relationships with our dealer and commercial partners, with the goal of providing a streamlined, simple, and consistent experience for our customers. Marketing campaigns and promotions are used throughout the transaction journey to guide the customer through the funnel, cross-sell offerings and ultimately reach their full volume potential with ACV.

Our marketing initiatives aim to drive brand awareness, incentivize our existing partners to remain engaged and active in our marketplace, and attract new dealers and commercial partners to our platform. We are focused on building a world-class acquisition engine led by our marketing team and in partnership with our VCIs, business development representatives and account managers. Our customer acquisition efforts are strategically aligned to territories or regions that could benefit from dealer development. We are focused on increasing retention and growing wallet share with our customers.

We acquire new customers through a variety of marketing channels including digital (paid search, search engine optimization, display, social, video and influencer marketing), direct marketing (promotional and brand building) and outbound business development. The marketing and business development teams own the customer relationship from initial inquiry to sign-up. After onboarding they are assigned a dedicated account manager or territory manager for on-going support. Engagement with our customers is driven by ongoing and regular communications from their account managers or territory managers. Additionally, account managers and territory managers determine appropriate promotions to re-engage buyers and sellers, as well as an incentive for new customers to sign-up and engage.

Competition

We mainly compete with large, national offline vehicle auction companies, such as Manheim, a subsidiary of Cox Enterprises, Inc., and KAR Auction Services. The offline vehicle auction market in North America is largely consolidated, with Manheim and KAR Auction Services serving as large players in the market, accounting for an estimated 70% of the wholesale auction market. Both of these traditional offline vehicle auction companies are expanding into the online channel and have launched online auctions in connection with their physical auctions, including Manheim Express and TradeRev and BacklotCars (KAR Auction Services' mobile application). We also compete with a number of smaller digital auction companies. In addition, we compete with smaller chains of auctions and independent auctions. Our dealers also compete for vehicles that may go to peer-to-peer online marketplaces such as Facebook, Craigslist, eBay Motors and Nextdoor.com.

Human Capital and Culture

We believe the development and empowerment of our people is critical to our ability to deliver differentiated solutions to our customers. We strive to be a great place to work—a place where we welcome innovation, diversity, inclusion, and foster a spirit of community from our corporate

[Table of Contents](#)

headquarters to our teammates in the field. We give our teammates the freedom, tools, resources, and opportunity to build the future—for our company, our customers, and our communities. We hire happy and enthusiastic people who want to grow with us. We believe the happiness of our teammates comes from engaging and fulfilling work and from ample personal and professional growth opportunities. We strive to ensure that all of our teammates have what they need to get to where they want to be, and we try our best to make it fun along the way. We invest heavily in the development of our teammates through training, internal development, and mobility options to drive growth. Together with respect, empowerment, and the spirit of innovation, we create the dynamic energy that drives our business forward.

We represent the successful creation of an entrepreneurial ecosystem in our hometown and our growth and scale highlight that the spirit of innovation is alive and well in Buffalo, New York.

We are continuously building an exceptional culture that strives to drive engagement, exceed expectations, and directly impact company success. Along the way, we have won many awards that speak to our focus on our people. From 2018 to 2020, we were recognized by Auto Remarketing's *Best Auctions to Work For* three years in a row. In 2019, we were named to Buffalo Business First's Best Places to Work 2019 list, second place in the large business category. In 2018, we won gold in the Stevie® Awards for Great Employers in the automotive employer of the year category, and we were ranked on Entrepreneur Magazine's Top Company Cultures list in the top 20 in the medium-size company category.

We have a proven leadership team composed of seasoned executives with demonstrated track records of scaling businesses, as well as business leaders from across auto, consumer, and marketplace businesses. As of December 31, 2020, we had over 1,470 teammates, including our more than over 740 highly sophisticated VCs that help support our relationships with our customers nationwide. Additionally, we have 125 teammates in product and engineering, 83 in sales and marketing and 314 in corporate.

Intellectual Property

We rely on a combination of federal, state, common law and international legal rights, as well as contractual restrictions, to protect our intellectual property, including trademarks, domain names, copyrights, trade secrets, patents and confidentiality agreements with employees and third parties. We pursue the registration of our trademarks, service marks and domain names in the United States and in certain locations outside the United States.

We control access to and use of our proprietary technology and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors and third parties. We further control the use of our proprietary technology and intellectual property through provisions in our terms of service. We intend to pursue additional intellectual property protection to the extent we believe it would be beneficial and cost effective. Despite our efforts to protect our proprietary technology and our intellectual property rights, unauthorized parties may attempt to copy or obtain and use our technology to develop platforms with the same functionality as our platform. For more information regarding the risks relating to intellectual property, see "Risk Factors—Risks Related to Information Technology and Intellectual Property."

Our Facilities

We do not own any real property. Our principal executive offices are located in Buffalo, New York where we lease a total of approximately 23,000 square feet of space in two buildings under two leases that expire in 2022 and 2023, respectively, subject to renewal. The operations in these office spaces principally consist of VCs, territory managers and regional directors.

Our Government Regulations

The industry in which we operate is and will continue to be subject to extensive U.S. federal, state and local laws and regulations. The wholesale, financing and transportation of used vehicles are regulated by the states in which we operate and by the U.S. federal government. These laws can vary significantly from state to state. In addition, we are subject to regulations and laws specifically governing the internet and ecommerce and the collection, storage, processing, transfer and other use of personal information and other customer data. We are also subject to federal and state laws, such as the Equal Credit Opportunities Act and prohibitions against unfair or deceptive acts or practices. The federal governmental agencies that regulate our business and have the authority to enforce such regulations and laws against us include the U.S. Federal Trade Commission, the U.S. Department of Transportation, the U.S. Occupational Health and Safety Administration, the U.S. Department of Justice and the U.S. Federal Communications Commission. We are subject to regulation by state financial regulatory agencies. We also are subject to audit by such state regulatory authorities. Additionally, we may be subject to regulation by individual state dealer licensing authorities and state consumer protection agencies.

The wholesale sale of used vehicles through our platform and financing offerings may be subject to state and local licensing requirements. Despite our belief that we are not subject to the licensing requirements of such jurisdictions, regulators of jurisdictions in which our customers reside for which we do not have a dealer or financing license could require that we obtain a license or otherwise comply with various state regulations. Regulators may seek to impose punitive fines for operating without a license or demand we seek a license in those jurisdictions, any of which may inhibit our ability to do business in those jurisdictions, increase our operating expenses and adversely affect our financial condition and results of operations.

In addition to these laws and regulations, our facilities and business operations are subject to a wide array of federal, state and local laws and regulations relating to occupational health and safety, and other broadly applicable business regulations. We also are subject to laws and regulations involving taxes, privacy and data security, anti-spam, content protection, electronic contracts and communications, mobile communications, unencumbered internet access to our platform, the design and operation of websites and internet neutrality.

Legal Proceedings

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently subject to any pending or threatened litigation that we believe, if determined adversely to us, would individually, or taken together, would reasonably be expected to have a material adverse effect on our business or financial results.

[Table of Contents](#)

MANAGEMENT

The following table sets forth information for our executive officers and directors as of March 15, 2021:

Name	Age	Position
<i>Executive Officers:</i>		
George Chamoun	46	Chief Executive Officer and Director
Craig Anderson	44	Chief Corporate Development and Strategy Officer and Chief Legal Officer
Vikas Mehta	45	Chief Operating Officer
Michael Waterman	52	Chief Sales Officer
William Zerella	64	Chief Financial Officer
<i>Non-Employee Directors:</i>		
Kirsten Castillo	48	Director
Robert Goodman	60	Director
Brian Hirsch	47	Director
René F. Jones	51	Director
Eileen Kamerick	62	Director
Brian Radecki	50	Director

Executive Officers

George Chamoun has served as our Chief Executive Officer and a member of our board of directors since September 2016. Prior to joining us, Mr. Chamoun held various positions at Synacor, Inc., or Synacor. Mr. Chamoun co-founded Synacor's predecessor company, Chek, Inc., and served as its Chief Executive Officer from January 1998 until he led the acquisition of MyPersonal.com, Inc. in December 2000 to form Synacor. Prior to departing Synacor in September 2016, Mr. Chamoun most recently served as President of Service Provider Sales and Marketing. In addition to his work as our Chief Executive Officer, Mr. Chamoun currently serves as chairman of Launch NY, a nonprofit organization supporting the start-up ecosystem in Upstate New York. Mr. Chamoun holds a B.A. in political science from the State University of New York at Buffalo. We believe that Mr. Chamoun is qualified to serve on our board of directors due to his experience building and leading our business and his insight into corporate matters as our Chief Executive Officer.

Craig Anderson has served as our Chief Corporate Development and Strategy Officer and Chief Legal Officer since June 2018. He previously served as Chief Financial Officer at Compass, a real estate platform, from July 2017 until March 2018. Before that, Mr. Anderson served as Chief Financial Officer and Chief Operating Officer of Flywheel Sports, a technology-enabled fitness provider, from September 2015 to June 2017, as well as President and Chief Operating Officer at Opt-Intelligence, an advertising exchange, from April 2013 to September 2015. Mr. Anderson began his career as an attorney at O'Melveny & Myers LLP before moving to the investment banking division of The Blackstone Group. Mr. Anderson holds a B.A. in economics from the University of California, Berkeley, a J.D. from Harvard Law School and an M.B.A. from The Wharton School at the University of Pennsylvania.

Vikas Mehta has served as our Chief Operating Officer since January 2019. Prior to joining us, Mr. Mehta served for over a decade in several leadership roles in North America and Europe at eBay, Inc., or eBay, including as Payments Lead, Americas from June 2018 to January 2019 and General Manager, Consumer Business Germany from June 2015 to May 2018. He has also served as Chief

Table of Contents

Operating Officer at Kijiji, an eBay subsidiary and Canada's largest classifieds site, in addition to earlier roles at the company. Prior to joining eBay, Mr. Mehta served as Manager of Sourcing Strategy at The Allstate Corporation. Mr. Mehta holds a B.S. in chemical engineering from the University of Florida and master's degrees in chemical engineering and technology policy from the Massachusetts Institute of Technology.

Michael Waterman has served as our Chief Sales Officer since April 2019, and previously served as our Senior Vice President, Business Development beginning in October 2016. Prior to his arrival at our company, Mr. Waterman served in various product and sales management roles, including as Division Vice President at Dealertrack, Inc. from November 2012 until July 2016, Director, Strategic Dealer Sales at ADESA, Inc. from March 2011 until October 2013 and National Sales Director, Inventory Solutions at Dealertrack, Inc. from March 2006 until March 2011. He also began his career managing dealerships. Mr. Waterman holds a B.S. in finance from Kent College.

William Zerella has served as our Chief Financial Officer since September 2020. Prior to joining us, Mr. Zerella served as Chief Financial Officer of Luminar Technologies, Inc. from June 2018 to May 2020. Mr. Zerella also served as Chief Financial Officer of Fitbit, Inc. from June 2014 to June 2018. In addition to these roles, he has previously served as Chief Financial Officer for Vocera Communications, Inc., Force10 Networks Inc., Infinera Corporation and Calient Technologies, Inc., along with holding various other senior level financial and management positions at additional companies, including GTECH Corporation and Deloitte & Touche LLP. Mr. Zerella is currently a member of the board of directors of GroundTruth Inc., where he also serves as chair of the audit committee. Mr. Zerella holds a B.S. in accounting from the New York Institute of Technology and an M.B.A. from the New York University Leonard N. Stern School of Business.

Non-Employee Directors

Kirsten Castillo has served as a member of our board of directors since October 2020. Ms. Castillo most recently served as Chief Operating Officer of GlobalTranz Enterprises, Inc., or GlobalTranz, from May 2017 to November 2018. She previously served as Chief Executive Officer of Logistics Planning Services, or LPS, from September 2012 until its acquisition by GlobalTranz in May 2017. Ms. Castillo also served as Chief Operating Officer of LPS from September 2010 to September 2012. Ms. Castillo is committed to the advancement of women and has served as Vice President of Engagement for AWESOME (Advancing Women's Excellence in Supply Chain, Operations, Management and Education) since August 2019. Since April 2020, Ms. Castillo has served on the board of directors of Ocugen, Inc. She holds a B.S. from the University of Minnesota and a Global Executive M.B.A. from Duke Fuqua School of Business. We believe that Ms. Castillo is qualified to serve on our board of directors due to her significant business, management and leadership experience.

Robert P. Goodman has served as a member of our board of directors since February 2017. Mr. Goodman is a Partner at Bessemer Venture Partners, a venture capital firm which he joined in 1998, and is a Managing Member of Deer Management Co. LLC, the management company for Bessemer Venture Partners' investment funds, including Bessemer Venture Partners IX L.P. and Bessemer Venture Partners IX Institutional L.P. Prior to joining Bessemer Venture Partners, Mr. Goodman founded and served as the Chief Executive Officer of three privately held telecommunications companies. Mr. Goodman served on the board of directors of Blue Apron Holdings from November 2015 to December 2019, and he is or has been a member of the boards of directors of a number of other portfolio companies of Bessemer Venture Partners in the areas of software, mobile and business-to-business marketplace. Mr. Goodman holds a B.A. in Latin American studies from Brown University and an M.B.A. from Columbia University. We believe that Mr. Goodman is qualified to

Table of Contents

serve on our board of directors due to his experience in working with entrepreneurial companies, particularly technology companies, and his experience as a director of both public and private companies.

Brian Hirsch has served as a member of our board of directors since August 2016. He is a Co-Founder and Managing Partner of Tribeca Venture Partners, or TVP, which he formed in 2011, where his investment interests include entrepreneurial startups and high growth companies in numerous sectors, including marketplaces, fintech, SaaS, edtech and consumer related businesses. Prior to founding TVP, Mr. Hirsch was a founder and Managing Director of Greenhill SAVP, the venture capital arm of Greenhill & Co., Inc., from 2006 to 2011. In total, Mr. Hirsch has been a venture capitalist and early stage tech investor for over twenty-three years. He currently serves on the board of directors of numerous private technology companies. Mr. Hirsch holds a B.A. in economics and American studies from Brandeis University. We believe that Mr. Hirsch is qualified to serve on our board of directors due to his experience providing guidance and counsel to, including serving on the boards of directors of, a wide variety of companies across different sectors, as well as his experience as a venture capitalist.

René F. Jones has served as a member of our board of directors since October 2020. Mr. Jones currently serves as Chairman of the board of directors and Chief Executive Officer of M&T Bank Corporation, or M&T, and its principal banking subsidiary, M&T and Manufacturers and Traders Trust Company, or M&T Bank, positions he has held since December 2017. Mr. Jones is also a member of the Executive Committee of M&T and M&T Bank. Mr. Jones joined M&T Bank in 1992 and held a number of roles there prior to his elevation to Chairman of the board of directors and Chief Executive Officer, including Executive Vice President of M&T from 2006 to 2017, Chief Financial Officer of M&T and M&T Bank from 2005 to 2016 and Vice Chairman of M&T Bank from 2014 to 2017. Mr. Jones serves as a member of the boards of directors of the Westminster Foundation in Buffalo, New York and the Jacobs Institute, a non-profit medical device innovation center in Buffalo, New York. He is also on the board of trustees of the Massachusetts Historical Society and is a trustee of the Burchfield Penney Art Center in Buffalo, New York. Mr. Jones holds a B.S. in management science from Boston College and an M.B.A. with concentrations in finance, organization and markets from the University of Rochester Simon School of Business. We believe that Mr. Jones is qualified to serve on our board of directors due to his significant financial and leadership experience with M&T.

Eileen A. Kamerick has served as a member of our board of directors since March 2020. Ms. Kamerick is an adjunct professor at leading law schools and consults on corporate governance and financial strategy matters. Previously, from March 2014 until January 2015, she was Senior Advisor to the Chief Executive Officer and Executive Vice President and Chief Financial Officer of ConnectWise, Inc. Ms. Kamerick has also previously served as chief financial officer at several companies, including Houlihan Lokey, Inc., Heidrick & Struggles International, Inc., Leo Burnett Company, Inc. and BP Amoco Americas. Ms. Kamerick currently serves on the boards of directors of Associated Banc-Corp. and Hochschild Mining, plc, where she also serves as chair of the audit committee, as well as on the boards of directors of certain closed end funds advised by Legg Mason Partners Fund Advisors, LLC and 24 AIG and Anchor Trust Funds. Ms. Kamerick previously served on the board of directors of Westell Technologies, Inc. from December 2003 to December 2016. Ms. Kamerick additionally currently serves as a national board member of the Alzheimer's Association. Ms. Kamerick is a National Association of Corporate Directors Board Leadership Fellow, and she has also earned the National Association of Corporate Directors Directorship Certification. Ms. Kamerick holds a B.A. in English literature from Boston College, and an M.B.A. and a J.D. from The University of Chicago. We believe that Ms. Kamerick is qualified to serve on our board of directors due to her financial expertise and her extensive experience as a director of other companies.

Brian Radecki has served as a member of our board of directors since February 2021. Mr. Radecki currently serves as the Founder, Chief Executive Officer and member of the board of

Table of Contents

directors of Rapa Therapeutics, a clinical stage start-up biotechnology company spun out of the National Cancer Institute in September 2017. Mr. Radecki is also an active angel investor, with investments across several industries in companies at various stages of the corporate lifecycle. Since January 2017, Mr. Radecki has been an investor and member of the board of directors of Wheels Up Partners Holdings LLC. Mr. Radecki also currently serves on the board of directors of Rosecliff Acquisition Corp I after joining its board in February 2021. From 1997 to 2016, Mr. Radecki held various senior operational and financial roles at CoStar Group Inc., or CoStar, including serving as its Chief Financial Officer from 2007. While at CoStar, Mr. Radecki helped lead the company's initial public offering in 1998, along with subsequent equity offerings and several acquisitions. Prior to joining CoStar, Mr. Radecki served as Accounting Manager at Axent Technologies, Inc. Earlier in his career, Mr. Radecki worked at Azerty, Inc. and the public accounting firm, Lumsden & McCormick, LLP, both based in Buffalo, New York. Mr. Radecki received a B.S. in business administration and a dual degree in both accounting and finance from the State University of New York at Buffalo. We believe Mr. Radecki is qualified to serve on our board of directors due to his extensive experience working at public companies in senior level roles, along with his substantial investment and advisory experience as a private angel investor.

Family Relationships

There are no family relationships among any of the directors or executive officers.

Composition of Our Board of Directors

Our business and affairs are managed under the direction of our board of directors. We currently have seven directors. All of our directors currently serve on the board of directors pursuant to the provisions of a voting agreement between us and several of our stockholders. The voting agreement will terminate upon the completion of this offering, after which there will be no further contractual obligations regarding the election or designation of our directors. Our current directors will continue to serve as directors until their resignation, removal or successor is duly elected.

Our board of directors may establish the authorized number of directors from time to time by resolution. In accordance with our amended and restated certificate of incorporation that will be in effect upon the completion of this offering, immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- the Class I directors will be George Chamoun and Robert P. Goodman, whose terms will expire at the first annual meeting of stockholders to be held following the completion of this offering;
- the Class II directors will be Brian Hirsch and Eileen A. Kamerick, whose terms will expire at the second annual meeting of stockholders to be held following the completion of this offering; and
- the Class III directors will be Kirsten Castillo, René Jones and Brian Radecki, whose terms will expire at the third annual meeting of stockholders to be held following the completion of this offering.

We expect that any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control.

Director Independence

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning her or his background, employment and affiliations, our board of directors has determined that none of our directors, other than George Chamoun, has any relationships that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under The Nasdaq Stock Market, or Nasdaq, listing standards. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our shares by each non-employee director and the transactions described in the section titled “Certain Relationships and Related Party Transactions.”

Committees of Our Board of Directors

Our board of directors has established an audit committee and a compensation committee, and will establish a nominating and corporate governance committee prior to the completion of this offering. The composition and responsibilities of each of the committees of our board of directors are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors. Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Audit Committee

Our audit committee consists of Eileen A. Kamerick, René Jones and Brian Radecki, each of whom our board of directors has determined satisfies the independence requirements under Nasdaq listing standards and Rule 10A-3(b)(1) of the Exchange Act of 1934, or the Exchange Act. The chair of our audit committee is Ms. Kamerick, who our board of directors has determined is an “audit committee financial expert” within the meaning of SEC regulations. Each member of our audit committee can read and understand fundamental financial statements in accordance with applicable requirements. In arriving at these determinations, our board of directors has examined each audit committee member’s scope of experience and the nature of their employment in the corporate finance sector.

The principal duties and responsibilities of our audit committee include, among other things:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- helping to maintain and foster an open avenue of communication between management and the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent accountants, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our policies on risk assessment and risk management;
- reviewing related party transactions;

Table of Contents

- obtaining and reviewing a report by the independent registered public accounting firm at least annually, that describes its internal quality-control procedures, any material issues with such procedures, and any steps taken to deal with such issues when required by applicable law; and
- approving (or, as permitted, pre-approving) all audit and all permissible non-audit services to be performed by the independent registered public accounting firm.

Our audit committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable listing standards of Nasdaq.

Compensation Committee

Our compensation committee consists of Robert P. Goodman, Brian Hirsch and Brian Radecki. The chair of our compensation committee is Mr. Goodman. Our board of directors has determined that each member of the compensation committee is independent under Nasdaq listing standards and a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

The principal duties and responsibilities of our compensation committee include, among other things:

- approving the retention of compensation consultants and outside service providers and advisors;
- reviewing and approving, or recommending that our board of directors approve, the compensation, individual and corporate performance goals and objectives and other terms of employment of our executive officers, including evaluating the performance of our chief executive officer and, with his assistance, that of our other executive officers;
- reviewing and recommending to our board of directors the compensation of our directors;
- administering our equity and non-equity incentive plans;
- reviewing our practices and policies of employee compensation as they relate to risk management and risk-taking incentives;
- reviewing and evaluating succession plans for the executive officers;
- reviewing and approving, or recommending that our board of directors approve, incentive compensation and equity plans; and
- reviewing and establishing general policies relating to compensation and benefits of our employees and reviewing our overall compensation philosophy.

Our compensation committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable listing standards of Nasdaq.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee consists of Kirsten Castillo and Eileen A. Kamerick. The chair of our nominating and corporate governance committee is Ms. Castillo. Our board of directors has determined that each member of the nominating and corporate governance committee is independent under the Nasdaq listing standards.

The nominating and corporate governance committee's responsibilities include, among other things:

- identifying, evaluating, and selecting, or recommending that our board of directors approve, nominees for election to our board of directors and its committees;
- approving the retention of director search firms;

Table of Contents

- evaluating the performance of our board of directors and of individual directors;
- considering and making recommendations to our board of directors regarding the composition of our board of directors and its committees;
- evaluating the adequacy of our corporate governance practices and reporting; and
- overseeing an annual evaluation of the board's performance.

Our nominating and corporate governance committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable listing standards of Nasdaq.

Code of Conduct

In connection with this offering, we have adopted a Code of Conduct that applies to all our employees, officers and directors. This includes our principal executive officer, principal financial officer and principal accounting officer or controller, or persons performing similar functions. The full text of our Code of Conduct will be posted on our website at www.acvactions.com. We intend to disclose on our website any future amendments of our Code of Conduct or waivers that exempt any principal executive officer, principal financial officer, principal accounting officer or controller, persons performing similar functions or our directors from provisions in the Code of Conduct. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

Compensation Committee Interlocks and Insider Participation

None of the members of the compensation committee are currently, or have been at any time, one of our officers or employees. None of our executive officers currently serve, or have served during the last year, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Non-Employee Director Compensation

During the year ended December 31, 2020, we did not pay compensation to any of our non-employee directors for service on our board of directors, other than as described below. While we have not had a formal director compensation policy, in connection with the appointments of Ms. Castillo, Mr. Jones and Ms. Kamerick to our board of directors in 2020, we granted stock options to each of them, as further described below. We have reimbursed and will continue to reimburse all of our non-employee directors for their reasonable out-of-pocket expenses incurred in attending board of directors and committee meetings.

Non-Employee Director Compensation Table

The following table sets forth information regarding compensation earned by or paid to our non-employee directors for the year ended December 31, 2020:

Name	Option Awards⁽¹⁾⁽²⁾	Total
Kirsten Castillo ⁽³⁾	\$ 598,740	\$ 598,740
Brian Goldsmith ⁽⁴⁾	—	—
Robert P. Goodman	—	—
Brian Hirsch	—	—
René F. Jones ⁽⁵⁾	598,740	598,740
Eileen Kamerick ⁽⁶⁾	386,770	386,770
Jordan Levy ⁽⁷⁾	—	—

Table of Contents

- (1) Amounts reported represent the aggregate grant date fair value of the stock options granted to our non-employee directors during 2020 under our 2015 Long-Term Incentive Plan, or our 2015 Plan, computed in accordance with ASC Topic 718. The assumptions used in calculating the grant date fair value of the stock options reported in this column are set forth in the notes to our audited consolidated financial statements included elsewhere in this prospectus. This amount does not reflect the actual economic value that may be realized by the non-employee directors.
- (2) The following table provides information regarding the number of shares of our Class B common stock underlying options granted to our non-employee directors that were outstanding as of December 31, 2020:

<u>Name</u>	<u>Option Awards Outstanding at Year-</u> <u>End</u>
Kirsten Castillo	100,000
Brian Goldsmith	—
Robert P. Goodman	—
Brian Hirsch	—
René F. Jones	100,000
Eileen Kamerick	143,482
Jordan Levy	—

- (3) Ms. Castillo joined our board of directors in October 2020.
- (4) Mr. Goldsmith resigned from our board of directors in February 2021.
- (5) Mr. Jones joined our board of directors in October 2020.
- (6) Ms. Kamerick joined our board of directors in March 2020.
- (7) Mr. Levy resigned from our board of directors in February 2021.

In March 2020, in connection with her commencement of services, we granted Ms. Kamerick a stock option to purchase 143,482 shares of our Class B common stock, with an exercise price of \$4.50 per share. The option vests in twelve equal quarterly installments, commencing on March 5, 2020, subject to Ms. Kamerick's continuous service with us. In October 2020, in connection with their commencement of services, we granted each of Ms. Castillo and Mr. Jones a stock option to purchase 100,000 of our Class B common stock, with an exercise price of \$5.42 per share. Each option vests in twelve equal quarterly installments, commencing on October 7, 2020 subject to the director's continuous service with us.

In February 2021, Mr. Radecki was appointed to our board of directors. In connection with his commencement of services, in February 2021, we granted Mr. Radecki restricted stock units, or RSUs, representing a contingent right to receive 40,000 shares of our Class B common stock. The RSUs include both a performance-based vesting requirement and a service-based vesting requirement. The performance-based requirement must occur before the seventh anniversary of the grant date in order for the RSUs to vest, and will be satisfied on the first to occur of: (i) a change in control of our company or (ii) the effective date of a registration statement we file under the Securities Act for the first sale or resale of our common stock, which will be satisfied upon completion of this offering. The service-based requirement will be satisfied with respect to one-third of the RSUs on each of the first, second and third anniversaries of the grant date, subject to Mr. Radecki's continuous service with us as of each such date. In the event of a change in control of our company, the RSUs will vest in full, subject to Mr. Radecki's continuous service through such date.

Mr. Chamoun, our Chief Executive Officer, who is also a member of our board of directors, does not receive any additional compensation for service as a director. Mr. Chamoun's compensation as a named executive officer is set forth below under "Executive Compensation—2020 Summary Compensation Table."

Non-Employee Director Compensation Policy

Our board of directors adopted a non-employee director compensation policy in March 2021 that will become effective upon the execution and delivery of the underwriting agreement related to this offering, or the effective date, and will be applicable to all of our non-employee directors. This

[Table of Contents](#)

compensation policy provides that each such non-employee director will receive the following compensation for service on our board of directors:

- an annual cash retainer of \$33,500;
- an additional annual cash retainer of \$25,000 for service as independent chair of the board of directors;
- an additional annual cash retainer of \$17,000 for service as lead independent director;
- an additional annual cash retainer of \$8,500, \$5,000 and \$3,900 for service as a member of the audit committee, compensation committee and the nominating and corporate governance committee, respectively;
- an additional annual cash retainer of \$20,000, \$12,000 and \$7,500 for service as chair of the audit committee, chair of the compensation committee and chair of the nominating and corporate governance committee, respectively (in lieu of the committee member retainer above);
- an initial RSU award, or initial RSU award, granted upon a director's initial election or appointment to the board, with an aggregate grant date fair value, as calculated in accordance with ASC Topic 718, equal to \$330,000, vesting in three equal annual installments; and
- a refresher RSU award, or refresher RSU award, granted at each annual meeting of our stockholders, or annual meeting, held after the effective date to each non-employee director who (i) has served as a non-employee member of the board for at least six months prior to the annual meeting and (ii) continues to serve following such annual meeting; provided, however, that no non-employee director who was serving on our board of directors as of the effective date will be eligible for a refresher RSU award until the date of the annual meeting held in 2024. Such refresher RSU awards will have an aggregate grant date fair value, as calculated in accordance with ASC Topic 718, equal to \$165,000, and will vest on the first anniversary of their grant date (or the day immediately preceding the next annual meeting, if sooner).

Pursuant to the compensation policy, each non-employee director may elect to receive all of his or her cash compensation payable thereunder as an RSU award, which we refer to as the retainer RSU award. If a non-employee director timely makes this election, the retainer grant will be automatically granted to the non-employee director on January 1 of each year and will have an aggregate grant date fair value, as calculated in accordance with ASC Topic 718, equal to the aggregate of the cash compensation that would have otherwise been paid for the upcoming calendar year. Each retainer RSU award will vest in four equal installments on the last day of each of the company's fiscal quarters, subject to the non-employee director's continued service through each applicable vesting date.

Each of the RSU awards described above will be granted under our 2021 Plan, the terms of which are described in more detail below under "Executive Compensation—Employee Benefit Plans—2021 Equity Incentive Plan." Each such RSU award will vest subject to the director's continuous service with us, provided that each RSU award will vest in full upon a change in control of the company.

EXECUTIVE COMPENSATION

Our named executive officers for the year ended December 31, 2020, consisting of our principal executive officer and the next two most highly compensated executive officers, were:

- George Chamoun, our Chief Executive Officer;
- William Zerella, our Chief Financial Officer; and
- Vikas Mehta, our Chief Operating Officer.

2020 Summary Compensation Table

The following table presents all of the compensation awarded to or earned by or paid to our named executive officers for the year ended December 31, 2020.

Name and Principal Position	Salary (\$)(1)	Bonus(\$)(2)	Stock Awards (\$)	Option Awards (\$)(3)	All Other Compensation (\$)	Total (\$)
George Chamoun <i>Chief Executive Officer</i>	258,988	275,000	—	—	1,620(4)	535,608
William Zerella(5) <i>Chief Financial Officer</i>	99,167	45,000	0(6)	7,415,755	5,450(4)	7,565,372
Vikas Mehta <i>Chief Operating Officer</i>	237,262	120,000	—	—	1,700(4)	358,962

(1) Salary amounts represent actual amounts paid during 2020. See “—Narrative to the Summary Compensation Table—Annual Base Salary” below.

(2) Amounts shown represent the named executive officers’ total discretionary bonuses earned for 2020 and paid in 2021 as determined by our board of directors.

(3) Amounts reported represent the aggregate grant date fair value of the stock options granted to our named executive officers during 2020 under our 2015 Plan, computed in accordance with ASC Topic 718. The assumptions used in calculating the grant date fair value of the stock options reported in this column are set forth in the notes to our audited consolidated financial statements included elsewhere in this prospectus. This amount does not reflect the actual economic value that may be realized by the named executive officer.

(4) Amounts reported represent a monthly cell phone allowance paid by us on behalf of the named executive officer and a one-time work-from-home stipend in the amount of \$500 to the named executive officer, and with respect to Mr. Zerella only, reimbursement in the amount of \$4,600 for certain moving expenses.

(5) Mr. Zerella commenced employment as our Chief Financial Officer in September 2020.

(6) This amount represents the grant date fair value of restricted stock units, or RSUs, granted to Mr. Zerella in 2020 that are subject to both a performance-based vesting requirement and a service-based vesting requirement, and is based on the probable outcome of such vesting conditions computed in accordance with ASC Topic 718. The maximum potential grant date fair value of the RSUs granted to Mr. Zerella is \$2,630,000, which assumes the achievement of the highest level of performance achievement. The assumptions used in calculating the grant date fair value of the stock award are set forth in the notes to our audited consolidated financial statements included elsewhere in this prospectus. This amount does not reflect the actual economic value that may be realized by the named executive officer. See “—Outstanding Equity Awards as of December 31, 2020” for a description of the material terms of the RSUs.

Narrative to the Summary Compensation Table

Annual Base Salary

Our named executive officers receive a base salary to compensate them for services rendered to us. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive’s skill set, experience, role and responsibilities. None of our named executive officers is currently party to an employment agreement or other agreement or arrangement that provides for automatic or scheduled increases in base salary. The 2020 base salary

Table of Contents

for Mr. Chamoun was \$250,000 until March 2020, when our board of directors determined to increase Mr. Chamoun's salary to \$300,000. From April 2020 to May 2020, Mr. Chamoun voluntarily reduced his salary to \$52,208, after which his salary returned to \$300,000. The 2020 base salary for Mr. Zerella was \$350,000. The amount stated in the table above reflects the prorated portion of Mr. Zerella's annual base salary from the commencement of his employment as our Chief Financial Officer in September 2020. The 2020 base salary for Mr. Mehta was \$240,000.

In March 2021, our board of directors approved the following base salaries for each of our named executive officers, effective April 1, 2021: Mr. Chamoun, \$325,000; Mr. Zerella, \$370,000; and Mr. Mehta, \$325,000.

Annual Performance Bonus Opportunity

In 2020, our named executive officers were eligible to receive discretionary annual bonuses based on individual performance, company performance or as otherwise determined appropriate, as determined by our board of directors. In February 2021, our board of directors approved and paid annual cash bonuses for Mr. Chamoun, Mr. Zerella and Mr. Mehta in the amounts of \$275,000, \$45,000 and \$120,000, respectively, as reflected in the "Bonus" column of the Summary Compensation Table above.

In March 2021, our board of directors adopted a formal executive bonus plan, or the Performance Bonus Plan, effective in connection with this offering. The Performance Bonus Plan is designed to provide incentives to participating executive officers, including our named executive officers, to make important contributions to the company's success and to reward such executive officers for outstanding performance. The Performance Bonus Plan will provide for bonus payments to each executive officer conditioned upon the achievement of certain performance goals established by the compensation committee, which may be corporate performance goals and/or individual performance goals and which may differ for each executive officer. Our compensation committee will establish such performance goals based on one or more established performance criteria, such as financial, operational, workforce, or partner performance criteria. In March 2021, our board of directors approved the following target annual bonus amounts for each of our named executive officers, effective April 1, 2021: Mr. Chamoun, \$300,000; Mr. Zerella, \$150,000; and Mr. Mehta, \$150,000.

Equity-Based Incentive Awards

Our equity award program is the primary vehicle for offering long-term incentives to our executives. We believe that equity awards provide our executives with a strong link to our long-term performance, create an ownership culture and help to align the interests of our executives and our stockholders. To date, we have used stock option grants and RSU awards for this purpose because we believe they are an effective means by which to align the long-term interests of our executive officers with those of our stockholders. We believe that our equity awards are an important retention tool for our executive officers, as well as for our other employees.

We have historically granted stock options broadly to our employees. More recently, we have also granted RSU awards to our employees, including our named executive officers. Grants to our executives and other employees are made at the discretion of our board of directors and are not made at any specific time period during a year.

Prior to this offering, all of the equity awards we have granted were made pursuant to our 2015 Plan. Following this offering, we will grant equity incentive awards under the terms of our 2021 Plan. The terms of our equity plans are described under "—Employee Benefit Plans" below.

[Table of Contents](#)

In October 2020, in connection with his commencement of employment with us, we granted Mr. Zerella a stock option to purchase 1,231,239 shares of Class B common stock and RSUs, representing a contingent right to receive 250,000 shares of our Class B common stock. The terms of the awards are described under “—Outstanding Equity Awards as of December 31, 2020” below. We did not grant any equity awards to Mr. Chamoun or Mr. Mehta in 2020.

In February 2021, we granted each of Mr. Chamoun and Mr. Mehta RSUs, representing a contingent right to receive 742,494 shares and 371,247 shares, respectively, of our Class B common stock. The RSUs include both a performance-based vesting requirement and a service-based vesting requirement. The performance-based requirement must occur before the seventh anniversary of the grant date in order for the RSUs to vest, and will be satisfied on the first to occur of: (i) a change in control of our company or (ii) the effective date of a registration statement we file under the Securities Act for the first sale or resale of our common stock, which will be satisfied upon completion of this offering. The service-based requirement will be satisfied with respect to one-sixteenth of the RSUs each quarter over a four-year period beginning on July 1, 2021, subject to the named executive officer’s continuous service with us as of each such date.

Outstanding Equity Awards as of December 31, 2020

The following table presents estimated information regarding outstanding equity awards held by our named executive officers as of December 31, 2020. All awards were granted pursuant to the 2015 Plan. See “—Employee Benefit Plans—2015 Long-Term Incentive Plan” below for additional information.

Name	Option Awards(1)				Stock Awards(1)	
	Number of Securities Underlying Unexercised Options(2) Exercisable	Number of Securities Underlying Unexercised Options(2) Unexercisable	Option Exercise Price (\$)	Option Expiration Date	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights that have not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights that have not Vested (\$)(2)
George Chamoun	1,718,809	133,921(3)	\$ 0.14	3/21/2027	—	—
William Zerella	—	1,231,239(4)	\$ 5.42	10/26/2030	—	—
Vikas Mehta	66,145	533,855(6)	\$ 2.00	3/5/2029	250,000(5)	4,750,000

- (1) All of the equity awards listed in the table above were granted under the 2015 Plan.
- (2) The market price for our common stock is based on an assumed initial public offering price of our Class A common stock of \$19.00 per share, the midpoint of the price range set forth on the cover of this prospectus.
- (3) One-fourth of the shares subject to the option award vested on March 22, 2018, and thereafter one-forty-eighth of the shares subject to the option award vest monthly, subject to continuous service with us.
- (4) One-fourth of the shares subject to the option award will vest on September 14, 2021, and thereafter one-forty-eighth of the shares subject to the option award vest monthly, subject to continuous service with us.
- (5) This amount reflects the number of shares underlying a grant of RSUs, representing a contingent right to receive 250,000 shares of our Class B common stock. The RSUs include both a performance-based vesting requirement and service-based vesting requirement. The performance-based requirement must occur before the seventh anniversary of the grant date in order for the RSUs to vest, and will be satisfied on the first to occur of: (i) a change in control of our company or (ii) the effective date of a registration statement we file under the Securities Act for the first sale or resale of our common stock. The service-based requirement will be satisfied with respect to one-fourth of the RSUs on September 14, 2021, with the remainder vesting in 36 equal monthly installments, subject to Mr. Zerella’s continuous service with us as of each such date. As of December 31, 2020, none of the RSUs have vested as neither the performance-based requirement nor the service-based requirement has been satisfied. The performance-based requirement will be satisfied upon completion of this offering. The service-based vesting requirement will be satisfied if, within three months prior to or twelve months following a change in control of the company, Mr. Zerella is terminated by the company without cause or resigns for good reason.
- (6) One-fourth of the shares subject to the option award vested on January 22, 2020, and thereafter one-forty-eighth of the shares subject to the option award vest monthly, subject to continuous service with us.

We did not materially modify any outstanding equity award held by our named executive officers in 2020.

Agreements with Our Named Executive Officers

We intend to enter into confirmatory offer letters with each of our named executive officers, which provide for an annual base salary, bonus opportunity, severance benefits pursuant to our Severance Plan (described under “—Potential Payments upon Termination or Change in Control” below) and standard employee benefits generally available to our employees. Each of our named executive officers is employed at-will. We intend to enter into updated forms of employee confidential information and inventions assignment agreement with each of our named executive officers.

Potential Payments upon Termination or Change in Control

Regardless of the manner in which service terminates, each of our named executive officers is entitled to receive amounts earned during his term of service, including unpaid salary and unused vacation, as applicable.

Effective in connection with this offering, each of our named executive officers will become eligible to receive benefits under the terms of our Severance and Change in Control Plan, or the Severance Plan, adopted by the board of directors in March 2021. The Severance Plan provides for severance and/or change in control benefits to the named executive officers upon (i) a “change in control termination” or (ii) a “regular termination” (each as described below). Upon a change in control termination, each of our named executive officers is entitled to a lump sum payment equal to a portion of his base salary (18 months for Mr. Chamoun and 12 months for each of Mr. Zerella and Mr. Mehta), a lump sum payment equal to 150% (for Mr. Chamoun) or 100% (for each of Mr. Zerella and Mr. Mehta) of his annual target cash bonus, payment of COBRA premiums for a period of time (up to 18 months for Mr. Chamoun and 12 months for each of Mr. Zerella and Mr. Mehta) and accelerated vesting of outstanding time-vesting equity awards. To the extent an equity award is not assumed, continued or substituted for in the event of certain change in control transactions and the executive’s employment is not terminated as of immediately prior to such change in control, the vesting of such equity award will also accelerate in full (and for equity awards subject to performance vesting, performance will be deemed to be achieved at target, unless otherwise provided in individual award documents). Upon a regular termination, each of our named executive officers is entitled to a lump sum payment equal to a portion of his base salary (12 months for Mr. Chamoun and nine months for each of Mr. Zerella and Mr. Mehta) and payment of COBRA premiums for a period of time (up to 12 months for Mr. Chamoun and nine months for each of Mr. Zerella and Mr. Mehta). All severance benefits under the Severance Plan are subject to the executive’s execution of an effective release of claims against the company.

For purposes of the Severance Plan, a “regular termination” is an involuntary termination without “cause” (and not as a result of death or disability) (or, with respect to Mr. Chamoun only, is a resignation for “good reason”), as defined in the Severance Plan, in any case that does not occur during the period of time beginning three months prior to, and ending 12 months following, a “change in control”, as defined in the 2021 Plan, or the “change in control period.” For purposes of the Severance Plan, a “change in control termination” is an involuntary termination without cause (and not as a result of death or disability) or a resignation for good reason, in any case that occurs during the change in control period.

In addition, each of our named executive officers’ equity awards is subject to the terms of the 2015 Plan and award agreement thereunder. A description of the termination and change in control provisions in the 2015 Plan and awards granted thereunder is provided in the section titled “—Employee Benefit Plans” and a description of the vesting provisions of each equity award held by our named executive officers which is outstanding and unvested as of December 31, 2020 is provided above under “—Outstanding Equity Awards at December 31, 2020.”

Health and Welfare and Retirement Benefits; Perquisites

All of our current named executive officers are eligible to participate in our employee benefit plans, including our medical, dental, vision, disability and life insurance plans, in each case on the same basis as all of our other employees. We generally do not provide perquisites or personal benefits to our named executive officers, except in limited circumstances. In addition, we provide the opportunity to participate in a 401(k) plan to our employees, including each of our named executive officers, as discussed in the section below entitled “—401(k) Plan.”

[Table of Contents](#)

401(k) Plan

We maintain a 401(k) plan intended to qualify as a tax-qualified plan under Section 401 of the Code, with the 401(k) plan's related trust intended to be tax exempt under Section 501(a) of the Code. The 401(k) plan provides that each participant may contribute up to the lesser of 100% of his or her compensation or the statutory limit, which is \$19,500 for calendar years 2020 and 2021. Participants that are 50 years or older can also make "catch-up" contributions, which in calendar years 2020 and 2021 may be up to an additional \$6,500 above the statutory limit. We have the ability to make discretionary contributions to the 401(k) plan but did not do so in 2020. Employees' pre-tax contributions are allocated to each participant's individual account and are then invested in selected investment alternatives according to the participant's directions. Employees are immediately and fully vested in their contributions. As a tax-qualified retirement plan, contributions to the 401(k) plan and earnings on those contributions are not taxable to the employees until distributed from the 401(k) plan.

Employee Benefit Plans

The principal features of our equity plans are summarized below. These summaries are qualified in their entirety by reference to the actual text of the plans, which are filed as exhibits to the registration statement of which this prospectus is a part.

2021 Equity Incentive Plan

In March 2021, our board of directors adopted, and our stockholders approved, our 2021 Plan. The 2021 Plan will become effective on the date of the underwriting agreement related to this offering. No grants will be made under the 2021 Plan prior to its effectiveness. Once the 2021 Plan becomes effective, no further grants will be made under the 2015 Plan.

Awards. Our 2021 Plan will provide for the grant of incentive stock options, or ISOs, within the meaning of Section 422 of the Code to employees, including employees of any parent or subsidiary, and for the grant of nonstatutory stock options, or NSOs, stock appreciation rights, restricted stock awards, restricted stock unit, or RSU, awards, performance awards and other forms of awards to employees, directors and consultants, including employees and consultants of our affiliates.

Authorized Shares. Initially, the maximum number of shares of our Class A common stock that may be issued under our 2021 Plan after it becomes effective will not exceed 26,168,771 shares of our Class A common stock, which is the sum of (1) 13,600,000 new shares, plus (2) shares that remain available for the issuance of awards under our 2015 Plan as of immediately prior to the time our 2021 Plan becomes effective plus (3) shares subject to outstanding stock options or other stock awards granted under our 2015 Plan that, on or after the 2021 Plan becomes effective, terminate or expire prior to exercise or settlement; are not issued because the award is settled in cash; are forfeited because of the failure to vest; or are reacquired or withheld (or not issued) to satisfy a tax withholding obligation or the purchase or exercise price, if any, as such shares become available from time to time. In addition, the number of shares of our Class A common stock reserved for issuance under our 2021 Plan will automatically increase on January 1 of each calendar year, starting on January 1, 2022 through January 1, 2031, in an amount equal to (1) 5.0% of the total number of shares of our capital stock outstanding on December 31 of the year before the date of each automatic increase, or (2) a lesser number of shares determined by our board of directors prior to the applicable January 1. The maximum number of shares of our Class A common stock that may be issued on the exercise of ISOs under our 2021 Plan will be 79,000,000 shares.

Table of Contents

Shares subject to stock awards granted under our 2021 Plan that expire or terminate without being exercised in full or that are paid out in cash rather than in shares will not reduce the number of shares available for issuance under our 2021 Plan. Shares withheld under a stock award to satisfy the exercise, strike or purchase price of a stock award or to satisfy a tax withholding obligation will not reduce the number of shares available for issuance under our 2021 Plan. If any shares of our Class A common stock issued pursuant to a stock award are forfeited back to or repurchased or reacquired by us (1) because of a failure to meet a contingency or condition required for the vesting of such shares, (2) to satisfy the exercise, strike or purchase price of an award or (3) to satisfy a tax withholding obligation in connection with an award, the shares that are forfeited or repurchased or reacquired will revert to and again become available for issuance under the 2021 Plan. Any shares previously issued which are reacquired in satisfaction of tax withholding obligations or as consideration for the exercise or purchase price of a stock award will again become available for issuance under the 2021 Plan.

Plan Administration. Our board of directors, or a duly authorized committee of our board of directors, will administer our 2021 Plan and is referred to as the “plan administrator” herein. Our board of directors may also delegate to one or more of our officers the authority to (1) designate employees (other than officers) to receive specified stock awards and (2) determine the number of shares subject to such stock awards. Under our 2021 Plan, our board of directors will have the authority to determine award recipients, grant dates, the numbers and types of stock awards to be granted, the applicable fair market value, and the provisions of each stock award, including the period of exercisability and the vesting schedule applicable to a stock award.

The plan administrator will have the power to modify outstanding awards under our 2021 Plan. Subject to the terms of our 2021 Plan, the plan administrator will have the authority to reprice any outstanding stock award, cancel and re-grant any outstanding stock award in exchange for new stock awards, cash or other consideration, or take any other action that is treated as a repricing under generally accepted accounting principles, or GAAP, with the consent of any adversely affected participant.

Stock Options. ISOs and NSOs are granted under stock option agreements adopted by the plan administrator. The plan administrator will determine the exercise price for stock options, within the terms and conditions of the 2021 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our Class A common stock on the date of grant. Options granted under the 2021 Plan will vest at the rate specified in the stock option agreement as determined by the plan administrator.

The plan administrator will determine the term of stock options granted under the 2021 Plan, up to a maximum of 10 years. Unless the terms of an optionholder’s stock option agreement, or other written agreement between us and the recipient approved by the plan administrator, provide otherwise, if an optionholder’s service relationship with us or any of our affiliates ceases for any reason other than disability, death, or cause, the optionholder may generally exercise any vested options for a period of three months following the cessation of service. This period may be extended in the event that either an exercise of the option or an immediate sale of shares acquired upon exercise of the option following such a termination of service is prohibited by applicable securities laws or our insider trading policy. If an optionholder’s service relationship with us or any of our affiliates ceases due to death, or an optionholder dies within a certain period following cessation of service, the optionholder or a beneficiary may generally exercise any vested options for a period of 18 months following the date of death. If an optionholder’s service relationship with us or any of our affiliates ceases due to disability, the optionholder may generally exercise any vested options for a period of 12 months following the cessation of service. In the event of a termination for cause, options generally terminate upon the termination date. In no event may an option be exercised beyond the expiration of its term.

Table of Contents

Acceptable consideration for the purchase of Class A common stock issued upon the exercise of a stock option will be determined by the plan administrator and may include (1) cash, check, bank draft or money order, (2) a broker-assisted cashless exercise, (3) the tender of shares of our Class A common stock previously owned by the optionholder, (4) a net exercise of the option if it is an NSO, or (5) other legal consideration approved by the plan administrator.

Unless the plan administrator provides otherwise, options or stock appreciation rights generally are not transferable except by will or the laws of descent and distribution. Subject to approval of the plan administrator or a duly authorized officer, an option may be transferred pursuant to a domestic relations order, official marital settlement agreement, or other divorce or separation instrument.

Tax Limitations on ISOs. The aggregate fair market value, determined at the time of grant, of our Class A common stock with respect to ISOs that are exercisable for the first time by an award holder during any calendar year under all of our stock plans may not exceed \$100,000. Options or portions thereof that exceed such limit will generally be treated as NSOs. No ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our parent or subsidiary corporations unless (1) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant, and (2) the term of the ISO does not exceed five years from the date of grant.

Restricted Stock Unit Awards. RSU awards are granted under restricted stock unit award agreements adopted by the plan administrator. RSU awards may be granted in consideration for any form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. An RSU award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator, or in any other form of consideration set forth in the RSU award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by an RSU award. Except as otherwise provided in the applicable award agreement, or other written agreement between us and the recipient approved by the plan administrator, RSU awards that have not vested will be forfeited once the participant's continuous service ends for any reason.

Restricted Stock Awards. Restricted stock awards are granted under restricted stock award agreements adopted by the plan administrator. A restricted stock award may be awarded in consideration for cash, check, bank draft or money order, past or future services to us, or any other form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. The plan administrator will determine the terms and conditions of restricted stock awards, including vesting and forfeiture terms. If a participant's service relationship with us ends for any reason, we may receive any or all of the shares of Class A common stock held by the participant that have not vested as of the date the participant terminates service with us through a forfeiture condition or a repurchase right.

Stock Appreciation Rights. Stock appreciation rights are granted under stock appreciation right agreements adopted by the plan administrator. The plan administrator will determine the purchase price or strike price for a stock appreciation right, which generally will not be less than 100% of the fair market value of our Class A common stock on the date of grant. A stock appreciation right granted under the 2021 Plan will vest at the rate specified in the stock appreciation right agreement as determined by the plan administrator. Stock appreciation rights may be settled in cash and/or shares of Class A common stock or in any other form of payment as determined by our board of directors and specified in the stock appreciation right agreement.

The plan administrator will determine the term of stock appreciation rights granted under the 2021 Plan, up to a maximum of 10 years. If a participant's service relationship with us or any of our affiliates ceases for any reason other than cause, disability, or death, the participant may generally exercise any

Table of Contents

vested stock appreciation right for a period of three months following the cessation of service. This period may be further extended in the event that exercise of the stock appreciation right following such a termination of service is prohibited by applicable securities laws. If a participant's service relationship with us, or any of our affiliates, ceases due to disability or death, or a participant dies within a certain period following cessation of service, the participant or a beneficiary may generally exercise any vested stock appreciation right for a period of 12 months in the event of disability and 18 months in the event of death. In the event of a termination for cause, stock appreciation rights generally terminate immediately upon the occurrence of the event giving rise to the termination of the individual for cause. In no event may a stock appreciation right be exercised beyond the expiration of its term.

Performance Awards. The 2021 Plan will permit the grant of performance awards that may be settled in stock, cash or other property. Performance awards may be structured so that the stock or cash will be issued or paid only following the achievement of certain pre-established performance goals during a designated performance period. Performance awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the Class A common stock.

The performance goals may be based on any measure of performance selected by the board of directors. The performance goals may be based on company-wide performance or performance of one or more business units, divisions, affiliates, or business segments, and may be either absolute or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the board of directors at the time the performance award is granted, the board will appropriately make adjustments in the method of calculating the attainment of performance goals as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to GAAP; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under GAAP; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any portion of our business which is divested achieved performance objectives at targeted levels during the balance of a performance period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of our common stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under our bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under GAAP; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under GAAP.

Other Stock Awards. The plan administrator will be permitted to grant other awards based in whole or in part by reference to our Class A common stock. The plan administrator will set the number of shares under the stock award (or cash equivalent) and all other terms and conditions of such awards.

Non-Employee Director Compensation Limit. The aggregate value of all compensation granted or paid to any non-employee director with respect to any period commencing on the date of our annual meeting of stockholders for a particular year and ending on the day immediately prior to the date of the meeting for the next subsequent year, including stock awards granted and cash fees paid by us to such non-employee director, will not exceed \$650,000 in total value, or with respect to such period in which a non-employee director is first appointed or elected to our board, \$1,000,000 in total value (in each case, calculating the value of any such stock awards based on their grant date fair value for financial reporting purposes).

[Table of Contents](#)

Changes to Capital Structure. In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split, or recapitalization, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under the 2021 Plan, (2) the class and maximum number of shares by which the share reserve may increase automatically each year, (3) the class and maximum number of shares that may be issued on the exercise of ISOs, and (4) the class and number of shares and exercise price, strike price, or purchase price, if applicable, of all outstanding stock awards.

Corporate Transactions. In the event of a corporate transaction, unless otherwise provided in a participant's stock award agreement or other written agreement with us or one of our affiliates or unless otherwise expressly provided by the plan administrator at the time of grant, any stock awards outstanding under the 2021 Plan may be assumed, continued or substituted for by any surviving or acquiring corporation (or its parent company), and any reacquisition or repurchase rights held by us with respect to the stock award may be assigned to the successor (or its parent company). If the surviving or acquiring corporation (or its parent company) does not assume, continue or substitute for such stock awards, then (1) with respect to any such stock awards that are held by participants whose continuous service has not terminated prior to the effective time of the corporate transaction, or current participants, the vesting (and exercisability, if applicable) of such stock awards will be accelerated in full to a date prior to the effective time of the corporate transaction (contingent upon the effectiveness of the corporate transaction), and such stock awards will terminate if not exercised (if applicable) at or prior to the effective time of the corporate transaction, and any reacquisition or repurchase rights held by us with respect to such stock awards will lapse (contingent upon the effectiveness of the corporate transaction), and (2) any such stock awards that are held by persons other than current participants will terminate if not exercised (if applicable) prior to the effective time of the corporate transaction, except that any reacquisition or repurchase rights held by us with respect to such stock awards will not terminate and may continue to be exercised notwithstanding the corporate transaction.

In the event a stock award will terminate if not exercised prior to the effective time of a corporate transaction, the plan administrator may provide, in its sole discretion, that the holder of such stock award may not exercise such stock award but instead will receive a payment equal in value to the excess (if any) of (1) the per share amount payable to holders of common stock in connection with the corporate transaction, over (2) any per share exercise price payable by such holder, if applicable. In addition, any escrow, holdback, earn out or similar provisions in the definitive agreement for the corporate transaction may apply to such payment to the same extent and in the same manner as such provisions apply to the holders of Class A common stock.

Under the 2021 Plan, a corporate transaction is generally defined as the consummation of: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of at least 50% of our outstanding securities, (3) a merger or consolidation where we do not survive the transaction, or (4) a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding immediately before such transaction are converted or exchanged into other property by virtue of the transaction.

Change in Control. Awards granted under the 2021 Plan may be subject to acceleration of vesting and exercisability upon or after a change in control as may be provided in the applicable stock award agreement or in any other written agreement between us or any affiliate and the participant, but in the absence of such provision, no such acceleration will automatically occur.

Under the 2021 Plan, a change in control is generally defined as: (1) the acquisition by any person or company of more than 50% of the combined voting power of our then outstanding stock; (2) a consummated merger, consolidation or similar transaction in which our stockholders immediately before the transaction do not own, directly or indirectly, more than 50% of the combined voting power

[Table of Contents](#)

of the surviving entity (or the parent of the surviving entity) in substantially the same proportions as their ownership immediately prior to such transaction; (3) a consummated sale, lease, exclusive license or other disposition of all or substantially all of our assets other than to an entity more than 50% of the combined voting power of which is owned by our stockholders in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction; or (4) when a majority of our board of directors becomes comprised of individuals who were not serving on our board of directors on the date the 2021 Plan was adopted by the board of directors, or the incumbent board, or whose nomination, appointment, or election was not approved by a majority of the incumbent board still in office.

Plan Amendment or Termination. Our board of directors has the authority to amend, suspend, or terminate our 2021 Plan, provided that such action does not materially impair the existing rights of any participant without such participant's written consent. Certain material amendments also require the approval of our stockholders. No ISOs may be granted after the tenth anniversary of the date our board of directors adopts our 2021 Plan. No stock awards may be granted under our 2021 Plan while it is suspended or after it is terminated.

2021 Employee Stock Purchase Plan

In March 2021, our board of directors adopted, and our stockholders approved, our ESPP. Our ESPP will become effective immediately prior to and contingent upon the date of the underwriting agreement related to this offering. The purpose of our ESPP will be to secure the services of new employees, to retain the services of existing employees, and to provide incentives for such individuals to exert maximum efforts toward our success and that of our affiliates. Our ESPP will include two components. One component will be designed to allow eligible U.S. employees to purchase our Class A common stock in a manner that may qualify for favorable tax treatment under Section 423 of the Code. The other component will permit the grant of purchase rights that do not qualify for such favorable tax treatment in order to allow deviations necessary to permit participation by eligible employees who are foreign nationals or employed outside of the United States while complying with applicable foreign laws.

Share Reserve. Following this offering, the ESPP will authorize the issuance of 2,800,000 shares of our Class A common stock under purchase rights granted to our employees or to employees of any of our designated affiliates. The number of shares of our Class A common stock reserved for issuance will automatically increase on January 1 of each calendar year, beginning on January 1, 2022 through January 1, 2031, by the lesser of (1) 1.0% of the total number of shares of our capital stock outstanding on the last day of the year before the date of the automatic increase, and (2) 4,200,000 shares; provided that before the date of any such increase, our board of directors may determine that such increase will be less than the amount set forth in clauses (1) and (2).

Administration. Our board of directors will administer the ESPP and may delegate its authority to administer the ESPP to our compensation committee. The ESPP will be implemented through a series of offerings under which eligible employees are granted purchase rights to purchase shares of our Class A common stock on specified dates during such offerings. Under the ESPP, our board of directors will be permitted to specify offerings with durations of not more than 27 months, and may specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering. An offering under the ESPP may be terminated under certain circumstances.

Payroll Deductions. Generally, all regular employees, including executive officers, employed by us or by any of our designated affiliates, will be eligible to participate in the ESPP and may contribute, normally through payroll deductions, up to 15.0% of their earnings (as defined in the

[Table of Contents](#)

applicable ESPP offering document) for the purchase of our Class A common stock under the ESPP. Unless otherwise determined by our board of directors, common stock will be purchased for the accounts of employees participating in the ESPP at a price per share that is at least the lesser of (1) 85% of the fair market value of a share of our Class A common stock on the first date of an offering, or (2) 85% of the fair market value of a share of our Class A common stock on the date of purchase.

Limitations. Employees may have to satisfy one or more of the following service requirements before participating in the ESPP, as determined by our board of directors, including: (1) being customarily employed for more than 20 hours per week, (2) being customarily employed for more than five months per calendar year, or (3) continuous employment with us or one of our affiliates for a period of time (not to exceed two years). No employee will be permitted to purchase shares under the ESPP at a rate in excess of \$25,000 worth of our common stock based on the fair market value per share of our common stock at the beginning of an offering for each calendar year such a purchase right is outstanding. Finally, no employee will be eligible for the grant of any purchase rights under the ESPP if immediately after such rights are granted, such employee has voting power over 5% or more of our outstanding capital stock measured by vote or value under Section 424(d) of the Code.

Changes to Capital Structure. In the event that there occurs a change in our capital structure through such actions as a stock split, merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, liquidating dividend, combination of shares, exchange of shares, change in corporate structure, or similar transaction, the board of directors will make appropriate adjustments to: (1) the class(es) and maximum number of shares reserved under the ESPP, (2) the class(es) and maximum number of shares by which the share reserve may increase automatically each year, (3) the class(es) and number of shares subject to and purchase price applicable to outstanding offerings and purchase rights, and (4) the class(es) and number of shares that are subject to purchase limits under ongoing offerings.

Corporate Transactions. In the event of certain significant corporate transactions, any then-outstanding rights to purchase our stock under the ESPP may be assumed, continued, or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue, or substitute for such purchase rights, then the participants' accumulated payroll contributions will be used to purchase shares of our Class A common stock within 10 business days before such corporate transaction, and such purchase rights will terminate immediately after such purchase.

Under the ESPP, a corporate transaction is generally the consummation of: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of more than 50% of our outstanding securities, (3) a merger or consolidation where we do not survive the transaction, and (4) a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding immediately before such transaction are converted or exchanged into other property by virtue of the transaction.

ESPP Amendment or Termination. Our board of directors will have the authority to amend or terminate our ESPP, provided that except in certain circumstances such amendment or termination may not materially impair any outstanding purchase rights without the holder's consent. We will obtain stockholder approval of any amendment to our ESPP as required by applicable law or listing requirements.

2015 Long-Term Incentive Plan

General. In 2015 our board of directors adopted and our stockholders approved our 2015 Plan, which was subsequently amended and restated, most recently in November 2020, and amended most recently in March 2021. Our 2015 Plan will be suspended prior to the completion of this offering in connection with our adoption of our 2021 Plan; however, awards outstanding under our 2015 Plan will continue in full effect in accordance with their existing terms.

[Table of Contents](#)

Awards. Our 2015 Plan provides for the grant of incentive stock options, or ISOs, within the meaning of Section 422 of the Code to employees, and for the grant of nonstatutory stock options, or NSOs, restricted stock awards, unrestricted stock awards and restricted stock units, or RSUs, to employees, directors and consultants, including employees, directors and consultants of our affiliates. We have granted stock options and RSUs under the 2015 Plan.

Shares Available for Awards. Subject to certain capitalization adjustments, the aggregate number of shares of Class B common stock that may be issued pursuant to awards under the 2015 Plan will not exceed 15,792,176 shares. The maximum number of shares of our Class B common stock that may be issued pursuant to the exercise of ISOs under our 2015 Plan is 13,792,176 shares. As of December 31, 2020, options to purchase 9,933,348 shares of our Class B common stock and RSUs covering 250,000 shares of our Class B common stock were outstanding.

Shares subject to awards granted under our 2015 Plan that are forfeited, expire or terminate without issuance of shares, that are settled in cash rather than in shares, or used to pay the exercise price of an award or to satisfy the tax withholding obligations related to an award will revert to and again become available for issuance under the 2015 Plan.

Administration. Our board of directors or a duly authorized committee of our board of directors administers our 2015 Plan and is referred to as the “Administrator” herein. Subject to the terms of our 2015 Plan, the Administrator has full power and authority to interpret and administer the 2015 Plan and any award agreement thereunder, to establish rules and regulations for the administration of the 2015 Plan and to make such determinations and take any other action that it deems necessary or advisable. The Administrator has the full authority to determine which eligible persons are to receive awards, the numbers and types of awards to be granted and the terms and conditions of the awards, including the applicable fair market value, the period of their exercisability and the vesting schedule applicable to an award.

Stock Options. The Administrator determines the exercise price for stock options, within the terms and conditions of the 2015 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our Class B common stock on the date of grant. Options granted under the 2015 Plan vest at the rate specified in the stock option agreement as determined by the Administrator.

The Administrator determines the term of stock options granted under the 2015 Plan, up to a maximum of 10 years. If an optionholder’s employment or service relationship with us or any of our affiliates ceases for any reason other than disability, death or cause, the optionholder may generally exercise any vested options for a period of three months following the cessation of employment or service. If an optionholder’s employment or service relationship with us or any of our affiliates ceases due to death, the optionholder’s legal representative or a beneficiary may generally exercise any vested options for a period of one year following the date of death. If an optionholder’s employment or service relationship with us or any of our affiliates ceases due to disability, the optionholder may generally exercise any vested options for a period of one year following the cessation of employment or service. In the event of a termination for cause, options generally terminate upon the termination date. In no event may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of Class B common stock issued upon the exercise of a stock option will be determined by the Administrator and may include (1) cash or cash equivalent, (2) the tender of shares of our Class B common stock previously acquired by the optionholder, with the consent of the Administrator, (3) the withholding shares of Class B common stock otherwise issuable in connection with the exercise of the option, with the consent of the Administrator, (4) any other method specified in an award agreement, or (5) any combination of the foregoing.

Table of Contents

Tax Limitations on ISOs. The aggregate fair market value, determined at the time of grant, of our Class B common stock with respect to ISOs that are exercisable for the first time by an optionholder during any calendar year under all of our stock plans may not exceed \$100,000. Options or portions thereof that exceed such limit will generally be treated as NSOs. No ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our affiliates unless (1) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant and (2) the term of the ISO does not exceed five years from the date of grant.

Restricted Stock Units. RSUs are granted pursuant to RSU award agreements adopted by the Administrator. Each RSU entitles the participant to a distribution from the company in an amount equal to the fair market value of a share of stock. An RSU award may be settled in cash, shares of stock, a combination of cash and stock or other form of property, as determined by the Administrator and set forth in the RSU award agreement. To the extent provided in the applicable RSU award agreement, dividend equivalents may be credited in respect of shares covered by an RSU award. Except as otherwise provided in the applicable RSU award agreement, if a participant's employment or service relationship with us or any of our affiliates ceases for any reason, all of the participant's unvested RSUs shall terminate.

Transferability. A participant may not transfer awards granted under our 2015 Plan other than by will or the laws of descent and distribution.

Adjustments. In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split, or recapitalization, such adjustments will be made to the 2015 Plan and to outstanding awards thereunder as the Administrator deems equitable or appropriate, including adjustments to (1) the aggregate number, class and kind of securities that may be delivered under the 2015 Plan, (2) the maximum number of shares of stock that may be issued as ISOs, and (3) the number, class, kind and exercise price of securities subject to outstanding awards under the 2015 Plan.

Change in Control. Subject to the requirements and limitations of Section 409A of the Code, if applicable, and without the consent of any participant, the Administrator may provide for any one or more of the following:

- accelerate the exercisability, vesting or settlement of awards, in whole or in part, on the conditions determined by the Administrator (including upon a participant's termination of employment or separation from service prior to, upon or following the change in control);
- arrange for the assumption, continuation, or substitution of outstanding awards by the acquiror in the change in control; or
- cancel each outstanding award, or portion thereof, in exchange for a payment with respect to each vested share of stock or vested RSU in cash, stock of the company or of a corporation or other business entity a party to the change in control, or other property having a fair market value equal to the consideration paid for shares in the change in control (reduced by the exercise or purchase price of an award, if applicable).

Under the 2015 Plan, a change in control is generally (1) the acquisition by any person or company of more than 50% of the combined voting power of our then outstanding stock, (2) a consummated merger, consolidation or similar transaction in which our stockholders immediately before the transaction do not own, directly or indirectly, more than 50% of the combined voting power of the surviving entity (or the parent of the surviving entity) in substantially the same proportions as their ownership immediately prior to such transaction, (3) a complete dissolution or liquidation of the company, (4) a consummated sale, lease, exclusive license or other disposition of all or substantially

[Table of Contents](#)

all of our assets other than to an entity more than 50% of the combined voting power of which is owned by our stockholders in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction, or (5) when, within any 24-month period, a majority of our board of directors becomes comprised of individuals who were not serving on our board of directors immediately following the effective date of the 2015 Plan, or the incumbent board, or whose nomination, appointment, or election was not approved by a majority of the incumbent board still in office.

Plan Amendment or Termination. Our board of directors has the authority to amend, suspend, or terminate our 2015 Plan, provided that no amendments to or termination of the 2015 Plan will impair the existing rights of any participant under any previously granted award without such participant's consent. Certain material amendments also require the approval of our stockholders. Unless terminated sooner, the 2015 Plan will automatically terminate on the tenth anniversary of its effective date. No awards may be granted under our 2015 Plan while it is suspended or after it is terminated. Once the 2021 Plan becomes effective, no further grants will be made under the 2015 Plan.

Indemnification Matters

Upon the completion of this offering, our amended and restated certificate of incorporation will contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will authorize us to indemnify our directors, officers, employees and other agents to the fullest extent permitted by Delaware law. Our amended and restated bylaws that will be in effect upon the completion of this offering will provide that we are required to indemnify our directors and officers to the fullest extent permitted by Delaware law and may indemnify our other employees and agents. Our amended and restated bylaws that will be in effect upon the completion of this offering will also provide that, on satisfaction of certain conditions, we will advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by our board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe these provisions in our amended and restated certificate of incorporation and amended and restated bylaws and these indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

[Table of Contents](#)

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, or the Securities Act, may be permitted for directors, executive officers or persons controlling us, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Rule 10b5-1 Sales Plans

Our directors and officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our Class A common stock or Class B common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades under parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers may also buy or sell additional shares outside of a Rule 10b5-1 plan when they do not possess of material nonpublic information, subject to compliance with the terms of our insider trading policy.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than compensation arrangements for our directors and executive officers, which are described elsewhere in this prospectus, below we describe transactions since January 1, 2018 to which we were a party or will be a party, in which:

- the amounts involved exceeded or will exceed \$120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or any member of the immediate family of, or person sharing the household with, the foregoing persons, which we refer to as our related parties, had or will have a direct or indirect material interest.

Preferred Stock Financings

Series C Convertible Preferred Stock

In January 2018 and February 2018, we issued and sold an aggregate of 18,267,813 shares of our Series C convertible preferred stock in multiple closings at a purchase price of \$1.8994 per share, for an aggregate purchase price of \$34.7 million. Each share of our Series C convertible preferred stock will convert automatically into one share of our Class B common stock immediately prior to the completion of this offering.

The table below sets forth the number of shares of our Series C convertible preferred stock purchased by our related parties.

Stockholder	Shares of Series C Convertible Preferred Stock	Total Purchase Price (\$)
Entities affiliated with Bessemer Venture Partners ⁽¹⁾	9,213,435	17,500,000
Entities affiliated with Tribeca Venture Partners ⁽²⁾	3,948,614	7,500,000
Entities affiliated with Armory Square Ventures ⁽³⁾	1,558,471	2,960,161
Entities affiliated with SoftBank ⁽⁴⁾	1,052,963	2,000,000

(1) Entities affiliated with Bessemer Venture Partners holding our Series C convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Bessemer Venture Partners IX L.P. and Bessemer Venture Partners IX Institutional L.P. These entities, together with another entity affiliated with Bessemer Venture Partners, beneficially own more than 5% of our outstanding capital stock and Robert P. Goodman, a member of our board of directors, is a Partner of Bessemer Venture Partners.

(2) Entities affiliated with Tribeca Venture Partners holding our Series C convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Tribeca Access Fund, L.P., Tribeca Venture Fund II, L.P. and Tribeca Venture Fund II New York, L.P. These entities together with another entity affiliated with Tribeca Venture Partners beneficially own more than 5% of our outstanding capital stock and Brian Hirsch, a member of our board of directors, is a Co-Founder and Managing Partner of Tribeca Venture Partners.

(3) The entity affiliated with Armory Square Ventures holding our Series C convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information is Armory Square Ventures ACV Co-Invest, LLC. This entity together with other entities affiliated with Armory Square Ventures beneficially own more than 5% of our outstanding capital stock.

(4) Entities affiliated with SoftBank holding our Series C convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are SoftBank Capital Technology New York Fund II L.P. and SoftBank Capital Technology New York Parallel Fund II L.P. These entities beneficially own more than 5% of our outstanding capital stock and Jordan Levy, a former member of our board of directors, is a Managing Partner of SoftBank.

Series D Convertible Preferred Stock

In December 2018, we issued and sold an aggregate of 20,245,834 shares of our Series D convertible preferred stock in multiple closings at a purchase price of \$4.7022 per share, for an

Table of Contents

aggregate purchase price of \$95.2 million. Each share of our Series D convertible preferred stock will convert automatically convert into one share of our Class B common stock immediately prior to the completion of this offering.

The table below sets forth the number of shares of our Series D convertible preferred stock purchased by our related parties.

Stockholder	Shares of Series D Convertible Preferred Stock	Total Purchase Price (\$)
Entities affiliated with Bessemer Venture Partners ⁽¹⁾	5,954,659	28,000,000
Entities affiliated with Tribeca Venture Partners ⁽²⁾	1,131,385	5,320,001
Entities affiliated with Armory Square Ventures ⁽³⁾	726,118	3,414,354
Vikas Mehta	106,333	499,999

- (1) The entities affiliated with Bessemer Venture Partners holding our Series D convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Bessemer Venture Partners IX L.P. and Bessemer Venture Partners IX Institutional L.P. These entities beneficially own more than 5% of our outstanding capital stock and Robert P. Goodman, a member of our board of directors, is a Partner of Bessemer Venture Partners.
- (2) The entities affiliated with Tribeca Venture Partners holding our Series D convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Tribeca Access Fund, L.P. and Tribeca ACV Holdings, LLC. These entities together with other entities affiliated with Tribeca Venture Partners beneficially own more than 5% of our outstanding capital stock and Brian Hirsch, a member of our board of directors, is a Co-Founder and Managing Partner of Tribeca Venture Partners.
- (3) The entities affiliated with Armory Square Ventures holding our Series D convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Armory Square Ventures, L.P. and Armory Square Ventures ACV Co-Invest II LLC. This entity together with other entities affiliated with Armory Square Ventures beneficially own more than 5% of our outstanding capital stock.

Series E Convertible Preferred Stock

In October 2019, November 2019 and December 2019, we issued and sold an aggregate of 14,466,016 shares of our Series E convertible preferred stock in multiple closings at a purchase price of \$11.0604 per share, for an aggregate purchase price of \$160.0 million. Each share of our Series E convertible preferred stock will convert automatically convert into one share of our Class B common stock immediately prior to the completion of this offering.

The table below sets forth the number of shares of our Series E convertible preferred stock purchased by our related parties.

Stockholder	Shares of Series E Convertible Preferred Stock	Total Purchase Price (\$)
Entities affiliated with Bessemer Venture Partners ⁽¹⁾	904,126	9,999,995
Entities affiliated with Tribeca Venture Partners ⁽²⁾	226,031	2,499,999

- (1) The entities affiliated with Bessemer Venture Partners holding our Series E convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Bessemer Venture Partners IX L.P. and Bessemer Venture Partners IX Institutional L.P. These entities beneficially own more than 5% of our outstanding capital stock and Robert P. Goodman, a member of our board of directors, is a Partner of Bessemer Venture Partners.
- (2) The entity affiliated with Tribeca Venture Partners holding our Series E convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information is Tribeca Access Fund, L.P. This entity together with other entities affiliated with Tribeca Venture Partners beneficially own more than 5% of our outstanding capital stock and Brian Hirsch, a member of our board of directors, is a Co-Founder and Managing Partner of Tribeca Venture Partners.

[Table of Contents](#)

Series E-1 Convertible Preferred Stock

In September 2020, we issued and sold an aggregate of 4,642,048 shares of our Series E-1 convertible preferred stock in multiple closings at a purchase price of \$11.8482 per share, for an aggregate purchase price of \$55.0 million. Each share of our Series E-1 convertible preferred stock will convert automatically into one share of our Class B common stock immediately prior to the completion of this offering.

The table below sets forth the number of shares of our Series E-1 convertible preferred stock purchased by our related parties.

Stockholder	Shares of Series E-1 Convertible Preferred Stock	Total Purchase Price (\$)
Entities affiliated with Armory Square Ventures (1)	168,802	2,000,000
Entities affiliated with Bessemer Venture Partners (2)	84,400	1,000,000
Entities affiliated with Tribeca Venture Partners (3)	42,200	500,000

- (1) The entity affiliated with Armory Square Ventures holding our Series E-1 convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information is Armory Square Ventures II, L.P. This entity together with other entities affiliated with Armory Square Ventures beneficially own more than 5% of our outstanding capital stock.
- (2) The entities affiliated with Bessemer Venture Partners holding our Series E-1 convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information are Bessemer Venture Partners IX L.P. and Bessemer Venture Partners IX Institutional L.P. These entities beneficially own more than 5% of our outstanding capital stock and Robert Goodman, a member of our board of directors, is a Partner of Bessemer Venture Partners.
- (3) The entity affiliated with Tribeca Venture Partners holding our Series E-1 convertible preferred stock whose shares are aggregated for purposes of reporting share ownership information is Tribeca ACV Holdings, LLC. This entity together with other entities affiliated with Tribeca Venture Partners beneficially own more than 5% of our outstanding capital stock and Brian Hirsch, a member of our board of directors, is a Co-Founder and Managing Partner of Tribeca Venture Partners.

Other Related Person Transactions

We have, from time to time, engaged Kramer Levin Naftalis & Frankel LLP, or Kramer Levin, a law firm, for legal services related to various employment matters. The wife of Craig Anderson, our Chief Corporate Development and Strategy Officer and Chief Legal Officer, is a partner of Kramer Levin. Since January 1, 2018, we have paid approximately \$714,000 to Kramer Levin for legal expenses and have accrued approximately \$48,000 in unpaid legal expenses in connection with Kramer Levin's services.

Paul Chamoun, our National Director, Field Initiatives and Training, is the brother of George Chamoun, our Chief Executive Officer and a member of our board of directors. Paul Chamoun's annual base salary is \$150,000 and since January 1, 2018 we have paid him total compensation, including salary and equity compensation, of \$424,817.

Investors' Rights Agreement

In connection with our preferred stock financings, we entered into an investors' rights agreement, as subsequently amended and restated, which contains, among other things, registration rights and information rights, with certain holders of our capital stock. The parties to the investors' rights agreement include, among others: George Chamoun, our Chief Executive Officer and a member of our board of directors; Vikas Mehta, our Chief Operating Officer; entities affiliated with Bessemer Venture Partners; entities affiliated with Tribeca Venture Partners; entities affiliated with SoftBank; and entities affiliated with Armory Square Ventures.

This investors' rights agreement will terminate upon the completion of this offering, except with respect to registration rights, as more fully described in the section titled "Description of Capital

[Table of Contents](#)

Stock—Registration Rights.” See also the section titled “Principal and Selling Stockholders” for additional information regarding beneficial ownership of our capital stock.

Equity Grants to Directors and Executive Officers

We have granted stock options and restricted stock units to certain of our directors and executive officers. For more information regarding the equity awards granted to our directors and named executive officers, see the sections titled “Management—Director Compensation” and “Executive Compensation.”

Reserved Share Program

At our request, the underwriters have reserved for sale, at the initial public offering price per share, up to 5% of the shares of Class A common stock offered by this prospectus for sale to certain individuals, including our directors, employees and certain friends and family of ACV identified by our directors and management. The reserved share program will not limit the ability of our directors, officers and their family members, or holders of more than 5% of our capital stock, to purchase more than \$120,000 in value of our Class A common stock. We do not currently know the extent to which these related persons will participate in our reserved share program, if at all, or to the extent they will purchase more than \$120,000 in value of our Class A common stock.

Indemnification Agreements

Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will contain provisions limiting the liability of directors, and our amended and restated bylaws that will be in effect upon the completion of this offering will provide that we will indemnify each of our directors and officers to the fullest extent permitted under Delaware law. Our amended and restated certificate of incorporation and amended and restated bylaws that will be in effect upon the completion of this offering will also provide our board of directors with discretion to indemnify our employees and other agents when determined appropriate by the board. In addition, we have entered into an indemnification agreement with each of our directors and executive officers, which requires us to indemnify them. For more information regarding these agreements, see the section titled “Executive Compensation—Indemnification Matters.”

Policies and Procedures for Transactions with Related Persons

In connection with this offering, we have adopted a policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common stock and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related person transaction with us without the approval or ratification of our board of directors or our audit committee. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of any class of our common stock or any member of the immediate family of any of the foregoing persons, in which the amount involved exceeds \$120,000 and such person would have a direct or indirect interest, must be presented to our board of directors or our audit committee for review, consideration and approval. In approving or rejecting any such proposal, our board of directors or our audit committee is to consider the material facts of the transaction, including whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related person’s interest in the transaction.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our shares as of December 31, 2020 by:

- each named executive officer;
- each of our directors;
- our directors and executive officers as a group;
- each of the selling stockholders; and
- each other person or entity known by us to own beneficially more than 5% of our Class A common stock and Class B common stock (by number or by voting power).

We have determined beneficial ownership in accordance with the rules and regulations of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole voting and sole investment power with respect to all shares that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership before this offering is based on no shares of Class A common stock and 137,601,063 shares of Class B common stock outstanding as of December 31, 2020, assuming the automatic conversion of all outstanding shares of convertible preferred stock into 115,269,221 shares of Class B common stock, which will occur immediately prior to the completion of this offering. Applicable percentage ownership after this offering, both assuming no exercise and assuming full exercise of the underwriters' option to purchase 2,482,500 additional shares of Class A common stock from the selling stockholders, is based on (1) 16,550,000 shares of Class A common stock and (2) 137,601,063 shares of Class B common stock outstanding immediately after the completion of this offering, excluding any potential purchases in this offering through our reserved share program or otherwise by the persons and entities named in the table below. In computing the number of shares beneficially owned by a person and the percentage ownership of such person, we deemed to be outstanding all shares subject to options held by the person that are currently exercisable, or exercisable or would vest based on service-based vesting conditions within 60 days of December 31, 2020. However, except as described above, we did not deem such shares outstanding for the purpose of computing the percentage ownership of any other person.

Table of Contents

- (4) Consists of (a) 1,558,471 shares of Class B Common Stock held by Armory Square Ventures ACV Co-Invest LLC, (b) 681,060 shares of Class B Common Stock held by Armory Square Ventures ACV Co-Invest II LLC, (c) 5,430,534 shares of Class B Common Stock held by Armory Square Ventures, L.P. and (d) 168,802 shares of Class B Common Stock held by Armory Square Ventures II, L.P. (collectively, the "Armory Square Entities"). Each of Armory Square Ventures GP, LLC, the general partner of the Armory Square Entities, and Armory Square Ventures Manager, LLC, the managing company of the Armory Square Entities, have voting and dispositive power over the shares held by the Armory Square Entities. Somak Chattopadhyay is the managing member of Armory Square Ventures Manager, LLC and may be deemed to share voting and dispositive power over the shares being registered for resale. The address for these entities and individuals is 211 West Jefferson Street, Second Floor, Syracuse, NY 13202.
- (5) Consists of (a) 4,350,496 shares of Class B Common Stock held by Mr. Chamoun and (b) 1,808,090 shares of Class B Common Stock issuable upon the exercise of options held by Mr. Chamoun exercisable within 60 days of December 31, 2020. This amount does not include RSUs, representing a contingent right to receive 742,494 shares of our Class B common stock, awarded to Mr. Chamoun in February 2021. See "Executive Compensation—Equity-Based Incentive Awards" for more information.
- (6) This amount does not include RSUs, representing a contingent right to receive 250,000 shares of our Class B common stock, awarded to Mr. Zerella in October 2020. See "Executive Compensation—Equity-Based Incentive Awards" for more information.
- (7) Consists of (a) 531,333 shares of Class B Common Stock held by Mr. Mehta and (b) 108,854 shares of Class B Common Stock issuable upon the exercise of options held by Mr. Mehta exercisable within 60 days of December 31, 2020. This amount does not include RSUs, representing a contingent right to receive 371,247 shares of our Class B common stock, awarded to Mr. Mehta in February 2021. See "Executive Compensation—Equity-Based Incentive Awards" for more information.
- (8) Consists of 8,333 shares of Class B Common Stock issuable upon the exercise of options held by Ms. Castillo exercisable within 60 days of December 31, 2020.
- (9) Consists of 8,333 shares of Class B Common Stock issuable upon the exercise of options held by Mr. Jones exercisable within 60 days of December 31, 2020.
- (10) Consists of 35,870 shares of Class B Common Stock issuable upon the exercise of options held by Ms. Kamerick exercisable within 60 days of December 31, 2020.
- (11) Consists of 21,101 shares of Class B Common Stock held by Mr. Radecki. This amount does not include RSUs, representing a contingent right to receive 40,000 shares of our Class B common stock, awarded to Mr. Radecki in February 2021. See "Management—Non-Employee Director Compensation" for more information.
- (12) Consists of (a) 61,032,392 shares of Class B Common Stock and (b) 3,282,352 shares of Class B Common Stock issuable upon the exercise of options held by our directors and executive officers exercisable within 60 days of December 31, 2020.
- (13) Consists of 3,014,820 shares of Class B Common Stock held by 43 North Foundation Inc.
- (14) Consists of (a) 2,188,639 shares of Class B Common Stock held by Mr. Neiman, (b) 2,125,000 shares of Class B Common Stock held by the Neiman Family 2020 Trust, for which Mr. Neiman serves as trustee and holds voting and investment power (c) 1,000,000 shares of Class B Common Stock held by the Maddix Neiman 2020 Trust, for which Mr. Neiman serves as trustee and holds voting and investment power, and (d) 1,000,000 shares of Class B Common Stock held by the Alyvia Neiman 2020 Trust, for which Mr. Neiman serves as trustee and holds voting and investment power.
- (15) Consists of (a) 557,250 shares of Class A Common Stock to be sold by Mr. Neiman, (b) 407,250 shares of Class A Common Stock to be sold by the Neiman Family 2020 Trust, (c) 271,500 shares of Class A Common Stock to be sold by the Maddix Neiman 2020 Trust, and (d) 271,500 shares of Class A Common Stock to be sold by the Alyvia Neiman 2020 Trust, in each case upon the conversion of such shares from Class B Common Stock into Class A Common Stock in connection with this offering.
- (16) Consists of (a) 2,072,812 shares of Class B Common Stock held by Mr. Magnuszewski and (b) 59,375 shares of Class B Common Stock issuable upon the exercise of options held by Mr. Magnuszewski within 60 days of December 31, 2020.

DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock and certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the amended and restated bylaws that will be in effect upon the completion of this offering. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will be in effect upon the completion of this offering.

On the completion of this offering, our amended and restated certificate of incorporation will provide for two classes of common stock: Class A common stock and Class B common stock. In addition, our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will authorize shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our board of directors.

Upon the completion of this offering, our authorized capital stock will consist of 2,180,000,000 shares, all with a par value of \$0.001 per share, of which:

- 2,000,000,000 shares will be designated Class A common stock;
- 160,000,000 shares will be designated Class B common stock; and
- 20,000,000 shares will be designated preferred stock.

As of December 31, 2020, we had outstanding:

- no shares of Class A common stock; and
- 137,601,063 shares of Class B common stock, assuming the automatic conversion of all outstanding shares of convertible preferred stock into 115,269,221 shares of Class B common stock.

Our outstanding capital stock was held by 454 stockholders of record as of December 31, 2020. Our board of directors is authorized, without stockholder approval except as required by the listing standards of Nasdaq, to issue additional shares of our capital stock.

Class A Common Stock and Class B Common Stock

Voting Rights

The Class A common stock is entitled to one vote per share on any matter that is submitted to a vote of our stockholders. Holders of our Class B common stock are entitled to ten votes per share on any matter submitted to our stockholders. Holders of shares of Class B common stock and Class A common stock will vote together as a single class on all matters (including the election of directors) submitted to a vote of stockholders, unless otherwise required by Delaware law.

Under Delaware law, holders of our Class A common stock or Class B common stock would be entitled to vote as a separate class if a proposed amendment to our amended and restated certificate of incorporation would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences or special rights of the shares of such class so as to affect them adversely. As a result, in

Table of Contents

these limited instances, the holders of a majority of the Class A common stock could defeat any amendment to our amended and restated certificate of incorporation. For example, if a proposed amendment to our amended and restated certificate of incorporation provided for the Class A common stock to rank junior to the Class B common stock with respect to (1) any dividend or distribution, (2) the distribution of proceeds were we to be acquired or (3) any other right, Delaware law would require the vote of the Class A common stock as a separate class. In this instance, the holders of a majority of Class A common stock could defeat that amendment to our amended and restated certificate of incorporation.

Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering will not provide for cumulative voting for the election of directors.

Economic Rights

Except as otherwise will be expressly provided in our amended and restated certificate of incorporation that will be in effect upon the completion of this offering or required by applicable law, all shares of Class A common stock and Class B common stock will have the same rights and privileges and rank equally, share ratably and be identical in all respects for all matters, including those described below.

Dividends and Distributions. Subject to preferences that may apply to any shares of convertible preferred stock outstanding at the time, the holders of Class A common stock and Class B common stock will be entitled to share equally, identically and ratably, on a per share basis, with respect to any dividend or distribution of cash or property paid or distributed by the company, unless different treatment of the shares of the affected class is approved by the affirmative vote of the holders of a majority of the outstanding shares of such affected class, voting separately as a class. See the section titled "Dividend Policy" for additional information.

Liquidation Rights. On our liquidation, dissolution or winding-up, the holders of Class A common stock and Class B common stock will be entitled to share equally, identically and ratably in all assets remaining after the payment of any liabilities, liquidation preferences and accrued or declared but unpaid dividends, if any, with respect to any outstanding convertible preferred stock, unless a different treatment is approved by the affirmative vote of the holders of a majority of the outstanding shares of such affected class, voting separately as a class.

Change of Control Transactions. The holders of Class A common stock and Class B common stock will be treated equally and identically with respect to shares of Class A common stock or Class B common stock owned by them, unless different treatment of the shares of each class is approved by the affirmative vote of the holders of a majority of the outstanding shares of the class treated differently, voting separately as a class, on (1) the completion of the sale, transfer or other disposition of all or substantially all of our assets, (2) the consummation of a merger, reorganization, consolidation or share transfer which results in our voting securities outstanding immediately before the transaction (or the voting securities issued with respect to our voting securities outstanding immediately before the transaction) representing less than a majority of the combined voting power of the voting securities of the company or the surviving or acquiring entity or (3) the completion of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons of securities of the company if, after closing, the transferee person or group would hold 50% or more of the outstanding voting power of the company (or the surviving or acquiring entity). However, consideration to be paid or received by a holder of common stock in connection with any such assets sale, merger, reorganization, consolidation or share transfer under any employment, consulting, severance or other arrangement will be disregarded for the purposes of determining whether holders of common stock are treated equally and identically.

[Table of Contents](#)

Subdivisions and Combinations. If we subdivide or combine in any manner outstanding shares of Class A common stock or Class B common stock, the outstanding shares of the other classes will be subdivided or combined in the same manner.

No Preemptive or Similar Rights

Our Class A common stock and Class B common stock are not entitled to preemptive rights, and are not subject to conversion, redemption or sinking fund provisions, except for the conversion provisions with respect to the Class B common stock described below.

Conversion

Each share of Class B common stock is convertible at any time at the option of the holder into one share of Class A common stock. After the completion of this offering, on any transfer of shares of Class B common stock, whether or not for value, each such transferred share will automatically convert into one share of Class A common stock, except for certain transfers described in our amended and restated certificate of incorporation that will be in effect upon the completion of this offering, including transfers for tax and estate planning purposes, so long as the transferring holder continues to hold sole voting and dispositive power with respect to the shares transferred.

Any holder's shares of Class B common stock will convert automatically into shares of Class A common stock, on a one-to-one basis, upon the following: (1) the sale or transfer of such share of Class B common stock, subject to certain exceptions; (2) the death of the Class B common stockholder; and (3) the final conversion date, defined as the earlier of (a) the first trading day on or after the date on which the outstanding shares of Class B common stock represent less than 5.0% of the then outstanding Class A and Class B common stock; (b) the tenth anniversary of this offering; or (c) the date specified by vote of the holders of a majority of the outstanding shares of Class B common stock, voting as a single class.

Once transferred and converted into Class A common stock, the Class B common stock may not be reissued.

Fully Paid and Non-Assessable

In connection with this offering, our legal counsel will opine that the shares of our Class A common stock to be issued under this offering will be fully paid and non-assessable.

Preferred Stock

As of December 31, 2020, there were 115,269,221 shares of our convertible preferred stock outstanding. Immediately prior to the completion of this offering, each outstanding share of our convertible preferred stock will automatically convert into one share of our Class B common stock.

Under our amended and restated certificate of incorporation that will be in effect upon the completion of this offering, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges and restrictions of up to an aggregate of 20,000,000 shares of preferred stock in one or more series and authorize their issuance. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of our Class A common stock or Class B common stock. Any issuance of our preferred stock could adversely affect the voting power of holders

[Table of Contents](#)

of our Class A common stock or Class B common stock, and the likelihood that such holders would receive dividend payments and payments on liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change of control or other corporate action. Upon the completion of this offering, no shares of preferred stock will be outstanding. We have no present plan to issue any shares of preferred stock.

Options

As of December 31, 2020, 9,933,348 shares of our Class B common stock were issuable on the exercise of outstanding options to purchase shares of our Class B common stock under our 2015 Plan, with a weighted-average exercise price of \$2.16 per share.

Restricted Stock Units

As of December 31, 2020, 250,000 shares of Class B common stock were issuable upon the vesting and settlement of RSUs outstanding as of December 31, 2020 under our 2015 Plan.

Registration Rights

We are party to an investors' rights agreement that provides that certain holders of our capital stock, including certain holders of at least 5% of our capital stock and entities affiliated with certain of our directors, have certain registration rights, as set forth below. This investors' rights agreement was originally entered into as of August 12, 2016, and most recently amended and restated as of September 2, 2020. The registration of shares of our common stock by the exercise of registration rights described below would enable the holders to sell these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts and commissions, of the shares registered by the demand, piggyback and Form S-3 registrations described below.

Generally, in an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions, to limit the number of shares such holders may include. The demand, piggyback and Form S-3 registration rights described below will expire upon the earliest to occur of: (1) the closing of a Deemed Liquidation Event, as defined in our amended and restated certificate of incorporation; or (2) with respect to any particular stockholder, such time as such stockholder can sell all of its shares under Rule 144 of the Securities Act or another similar exemption during any three-month period.

Demand Registration Rights

The holders of an aggregate of 115,453,074 shares of our Class B common stock will be entitled to certain demand registration rights. At any time beginning 180 days after the effective date of the registration statement, of which this prospectus is a part, such holders are entitled to registration rights under the investors' rights agreement, on not more than one occasion, provided that the holders of at least a majority of such shares as are then outstanding request that we register at least 25% of such shares then outstanding (or a lesser percent if the anticipated aggregate offering price, net of underwriting discounts and commissions, applicable stock transfer taxes and certain legal fees, would exceed \$5 million).

Piggyback Registration Rights

In connection with this offering, the holders of an aggregate of 115,453,074 shares of our Class B common stock were entitled to, and the necessary percentage of holders waived, their rights to notice

[Table of Contents](#)

of this offering and to include their shares of registrable securities in this offering. After this offering, in the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders, the holders of these shares will be entitled to certain piggyback registration rights allowing such holders to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, subject to certain exceptions, the holders of these shares are entitled to notice of the registration and have the right to include their shares in the registration, subject to limitations that the underwriters may impose on the number of shares included in the offering.

Form S-3 Registration Rights

The holders of an aggregate of 115,453,074 shares of Class B common stock will be entitled to certain Form S-3 registration rights. If we are eligible to file a registration statement on Form S-3, these holders have the right, upon written request from such holders, to have such shares registered by us if the anticipated aggregate offering price of such shares, net of underwriting discounts and commissions, is at least \$1 million, subject to exceptions set forth in the investors' rights agreement.

Anti-Takeover Provisions

Certificate of Incorporation and Bylaws to be in Effect upon the Completion of this Offering

Because our stockholders do not have cumulative voting rights, stockholders holding a majority of the voting power of our shares of common stock will be able to elect all of our directors. Our amended and restated certificate of incorporation and amended and restated bylaws to be effective upon the completion of this offering will provide for stockholder actions at a duly called meeting of stockholders or, before the date on which all shares of common stock convert into a single class, by written consent. A special meeting of stockholders may be called by a majority of our board of directors, the chair of our board of directors, our chief executive officer or our lead independent director. Our amended and restated bylaws to be effective upon the completion of this offering will establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our board of directors.

Our amended and restated certificate of incorporation to be effective upon the completion of this offering will further provide for a dual-class common stock structure, which provides our current investors, officers and employees with control over all matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets.

In accordance with our amended and restated certificate of incorporation to be effective upon the completion of this offering, immediately after this offering, our board of directors will be divided into three classes with staggered three-year terms.

The foregoing provisions will make it more difficult for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions, including the dual-class structure of our common stock, are intended to preserve our existing control structure after completion of this offering, facilitate our continued product

Table of Contents

innovation and the risk-taking that it requires, permit us to continue to prioritize our long-term goals rather than short-term results, enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. These provisions are also designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

Section 203 of the Delaware General Corporation Law

When we have a class of voting stock that is either listed on a national securities exchange or held of record by more than 2,000 stockholders, we will be subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, subject to certain exceptions.

Choice of Forum

Our amended and restated certificate of incorporation to be effective on the completion of this offering will provide that the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) is the sole and exclusive forum for the following claims or causes of action under Delaware statutory or common law: (1) any derivative claim or cause of action brought on our behalf; (2) any claim or cause of action asserting a claim of breach of a fiduciary duty owed by any of our current or former directors, officers, or other employees to us or our stockholders; (3) any claim or cause of action against us or any of our current or former directors, officers or other employees arising out of or pursuant to any provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws; (4) any claim or cause of action arising under or seeking to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or our amended and restated bylaws (including any right, obligation, or remedy thereunder); and (5) any claim or cause of action against us or any of our current or former directors, officers, or other employees that is governed by the internal-affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court having personal jurisdiction over the indispensable parties named as defendants. This choice of forum provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction, or the Securities Act.

Our amended and restated certificate of incorporation to be effective on the completion of this offering will further provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause or causes of action arising under the Securities Act, including all causes of action asserted against any defendant to such complaint. For the avoidance of doubt, this provision is intended to benefit and may be enforced by us, our officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

While the Delaware courts have determined that such choice of forum provisions are facially valid, there is no assurance that a court in another jurisdiction would enforce the choice of forum

[Table of Contents](#)

provision contained in the amended and restated certificate of incorporation to be effective on the completion of this offering. If a court were to find such provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm their business, operating results and financial condition. Additionally, our amended and restated certificate of incorporation to be effective on the completion of this offering will provide that any person or entity holding, owning or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to these provisions. Investors also cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Limitations of Liability and Indemnification

See the section titled "Executive Compensation—Indemnification Matters."

Exchange Listing

Our Class A common stock is currently not listed on any securities exchange. We have applied to have our Class A common stock approved for listing on The Nasdaq Stock Market under the symbol "ACVA."

Transfer Agent and Registrar

Upon the completion of this offering, the transfer agent and registrar for our Class A common stock and Class B common stock will be Computershare Trust Company, N.A. The transfer agent's address is 250 Royall Street, Canton, Massachusetts 02021.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A common stock. Future sales of substantial amounts of our Class A or Class B common stock, including shares issued on the exercise of outstanding options, in the public market after this offering, or the possibility of these sales or issuances occurring, could adversely affect the prevailing market price for our Class A common stock or impair our ability to raise equity capital.

Based on our shares outstanding as of December 31, 2020, upon the completion of this offering, a total of 16,550,000 shares of Class A common stock and 137,601,063 shares of Class B common stock will be outstanding, assuming the automatic conversion of all of our outstanding shares of convertible preferred stock into an aggregate of 115,269,221 shares of Class B common stock. Of these shares, all of the Class A common stock sold in this offering by us, plus any shares sold by the selling stockholders on the exercise of the underwriters' option to purchase additional Class A common stock from the selling stockholders, will be freely tradable in the public market without restriction or further registration under the Securities Act, unless these shares are held by "affiliates," as that term is defined in Rule 144 under the Securities Act, or unless these shares are sold to our directors or executive officers pursuant to our reserved share program.

The remaining shares of Class A common stock and Class B common stock will be, and shares of Class A common stock or Class B common stock subject to stock options will be on issuance, "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act, which are summarized below. Restricted securities may also be sold outside of the United States to non-U.S. persons in accordance with Rule 904 of Regulation S.

Subject to the lock-up agreements described below and the provisions of Rule 144 or Regulation S under the Securities Act, as well as our insider trading policy, these restricted securities will be available for sale in the public market after the date of this prospectus.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act for at least 90 days, an eligible stockholder is entitled to sell such shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. To be an eligible stockholder under Rule 144, such stockholder must not be deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and must have beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144, subject to the expiration of the lock-up agreements described below.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell shares on expiration of the lock-up agreements described below, subject, in the case of restricted securities, to such shares having been beneficially owned for at least six months. Beginning 90 days after the date of this prospectus, within any three-month period, such stockholders may sell a number of shares that does not exceed the greater of:

- 1% of the number of Class A common stock then outstanding, which will equal approximately 165,500 shares immediately after this offering, assuming no exercise of the underwriters' option to purchase additional shares of Class A common stock from the selling stockholders; or

Table of Contents

- the average weekly trading volume of our Class A common stock on The Nasdaq Stock Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

Rule 701 generally allows a stockholder who was issued shares under a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days, to sell these shares in reliance on Rule 144, but without being required to comply with the public information, holding period, volume limitation or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required by that rule to wait until 90 days after the date of this prospectus before selling those shares under Rule 701, subject to the expiration of the lock-up agreements described below.

Form S-8 Registration Statements

We intend to file one or more registration statements on Form S-8 under the Securities Act with the SEC to register the offer and sale of shares of our Class A common stock and Class B common stock that are issuable under the 2015 Plan, 2021 Plan and ESPP. These registration statements will become effective immediately on filing. Shares covered by these registration statements will then be eligible for sale in the public markets, subject to vesting restrictions, any applicable lock-up agreements described below, and Rule 144 limitations applicable to affiliates.

Lock-Up Arrangements

We, the selling shareholders, all of our directors, executive officers and the holders of substantially all of our common stock and securities exercisable for or convertible into our Class A common stock and Class B common stock outstanding immediately on the completion of this offering, have agreed with the underwriters that, until 180 days after the date of this prospectus, or the restricted period, subject to certain exceptions, we and they will not, without the prior written consent of Goldman Sachs & Co. LLC, offer, sell, contract to sell, pledge, grant any option to purchase, lend or otherwise dispose of any shares of our common stock, or any options or warrants to purchase any shares of our common stock, or any securities convertible into, exchangeable for or that represent the right to receive shares of our common stock; provided that such restricted period will end with respect to 25% of the shares subject to each lock up agreement if at any time after we have filed our first quarterly report on Form 10-Q, the last reported closing price of our Class A common stock is at least 33% greater than the initial public offering price of our Class A common stock for 10 out of any 15 consecutive trading days ending on or after the date of the filing of our first quarterly report on Form 10-Q; and provided further that if such release were to occur within nine trading days of a regularly scheduled trading black-out period, the above referenced early expiration period will instead be the second trading day immediately following the expiration of such trading black-out period. In addition, with respect to shares not released as a result of such early release, if 180 days after the date of this prospectus occurs within nine trading days of a regularly scheduled trading black-out period, the restricted period will expire on the tenth trading day immediately preceding the commencement of such

[Table of Contents](#)

trading black-out period. These agreements are described in the section titled "Underwriting." Goldman Sachs & Co. LLC may release any of the securities subject to these lock-up agreements at any time, subject to applicable notice requirements.

In addition to the restrictions contained in the lock-up agreements described above, we have entered into agreements with substantially all of our security holders that contain market stand-off provisions imposing restrictions on the ability of such security holders to offer, sell or transfer our equity securities for a period of 180 days following the date of this prospectus.

Registration Rights

Upon the completion of this offering, the holders of 115,453,074 shares of our Class B common stock or their transferees will be entitled to certain rights with respect to the registration of the offer and sale of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately on the effectiveness of the registration. See the section titled "Description of Capital Stock—Registration Rights" for additional information.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS OF OUR CLASS A COMMON STOCK

The following summary describes the material U.S. federal income tax consequences of the acquisition, ownership, and disposition of our Class A common stock acquired in this offering by Non-U.S. Holders (as defined below). This discussion is not a complete analysis of all potential U.S. federal income tax consequences relating thereto, and does not address foreign, state, and local consequences that may be relevant to Non-U.S. Holders in light of their particular circumstances, nor does it address U.S. federal tax consequences (such as gift and estate taxes) other than income taxes. This discussion is limited to Non-U.S. Holders that hold our Class A common stock as a “capital asset” within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended, or the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder’s particular circumstances, including the impact of the alternative minimum tax, the special tax accounting rules under Section 451(b) of the Code, and the Medicare contribution tax on net investment income. Special rules different from those described below may apply to certain Non-U.S. Holders that are subject to special treatment under the Code, such as financial institutions, insurance companies, tax-exempt organizations, broker-dealers and traders in securities, U.S. expatriates, “controlled foreign corporations,” “passive foreign investment companies,” corporations that accumulate earnings to avoid U.S. federal income tax, corporations organized outside of the United States, any state thereof or the District of Columbia that are nonetheless treated as U.S. taxpayers for U.S. federal income tax purposes, persons that hold our Class A common stock as part of a “straddle,” “hedge,” “conversion transaction,” “synthetic security” or integrated investment or other risk reduction strategy, persons who acquire our Class A common stock through the exercise of an option or otherwise as compensation, “qualified foreign pension funds” as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds, partnerships and other pass-through entities or arrangements, and investors in such pass-through entities or arrangements. Such Non-U.S. Holders are urged to consult their own tax advisors to determine the U.S. federal, state, local, and other tax consequences that may be relevant to them. Furthermore, the discussion below is based upon the provisions of the Code, and Treasury Regulations, rulings, and judicial decisions thereunder as of the date hereof, and such authorities may be repealed, revoked, or modified, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. We have not requested a ruling from the U.S. Internal Revenue Service, or the IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions.

This discussion is for informational purposes only and is not tax advice. Persons considering the purchase of our Class A common stock pursuant to this offering should consult their own tax advisors concerning the U.S. federal income, estate, and other tax consequences of acquiring, owning, and disposing of our Class A common stock in light of their particular situations as well as any consequences arising under the laws of any other taxing jurisdiction, including any state, local, or foreign tax consequences.

For the purposes of this discussion, a “Non-U.S. Holder” is, for U.S. federal income tax purposes, a beneficial owner of Class A common stock that is neither a U.S. Holder, nor a partnership (or other entity treated as a partnership for U.S. federal income tax purposes regardless of its place of organization or formation). A “U.S. Holder” means a beneficial owner of our Class A common stock that is for U.S. federal income tax purposes any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity treated as a corporation for U.S. federal income tax purposes created or organized in or under the laws of the United States, any state thereof, or the District of Columbia;

Table of Contents

- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

Distributions

Distributions, if any, made on our Class A common stock to a Non-U.S. Holder to the extent made out of our current or accumulated earnings and profits (as determined under U.S. federal income tax principles) generally will constitute dividends for U.S. tax purposes and will be subject to withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty, subject to the discussions below regarding effectively connected income, backup withholding, and foreign accounts. To obtain a reduced rate of withholding under a treaty, a Non-U.S. Holder generally will be required to provide us with a properly executed IRS Form W-8BEN (in the case of individuals) or IRS Form W-8BEN-E (in the case of entities), or other appropriate form, certifying the Non-U.S. Holder's entitlement to benefits under that treaty. This certification must be provided to us and/or our paying agent prior to the payment of dividends and must be updated periodically. In the case of a Non-U.S. Holder that is an entity, Treasury Regulations and the relevant tax treaty provide rules to determine whether, for purposes of determining the applicability of a tax treaty, dividends will be treated as paid to the entity or to those holding an interest in that entity. If a Non-U.S. Holder holds stock through a financial institution or other agent acting on the holder's behalf, the holder will be required to provide appropriate documentation to such agent. The holder's agent will then be required to provide certification to us and/or our paying agent, either directly or through other intermediaries. If a Non-U.S. Holder is eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty and such Non-U.S. Holder does not timely file the required certification, such Non-U.S. Holder may be able to obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim for a refund with the IRS.

We generally are not required to withhold tax on dividends paid to a Non-U.S. Holder that are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment or fixed base that such holder maintains in the United States) if a properly executed IRS Form W-8ECI, stating that the dividends are so connected, is furnished to us (or, if stock is held through a financial institution or other agent, to such agent). In general, such effectively connected dividends will be subject to U.S. federal income tax, on a net income basis at the regular rates applicable to U.S. residents. A corporate Non-U.S. Holder receiving effectively connected dividends may also be subject to an additional "branch profits tax," which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable treaty) on the corporate Non-U.S. Holder's effectively connected earnings and profits, subject to certain adjustments. Non-U.S. Holders should consult their tax advisors regarding any applicable income tax treaties that may provide for different rules.

To the extent distributions on our Class A common stock, if any, exceed our current and accumulated earnings and profits, they will first reduce the Non-U.S. Holder's adjusted basis in our Class A common stock, but not below zero, and then will be treated as gain to the extent of any excess amount distributed, and taxed in the same manner as gain realized from a sale or other disposition of Class A common stock as described in the next section.

Gain on Disposition of Our Class A Common Stock

Subject to the discussions below regarding backup withholding and foreign accounts, a Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to gain realized on a sale or other taxable disposition of our Class A common stock unless (1) the gain is effectively connected with a trade or business of such holder in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base that such holder maintains in the United States), (2) the Non-U.S. Holder is a nonresident alien individual and is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met, or (3) we are or have been a "United States real property holding corporation" within the meaning of Code Section 897(c)(2) at any time within the shorter of the five-year period preceding such disposition or such holder's holding period in our Class A common stock. In general, we would be a United States real property holding corporation if our interests in U.S. real property comprise (by fair market value) at least half of our worldwide real property interests and our other assets used or held for use in a trade or business. We believe that we are not, and do not anticipate becoming, a United States real property holding corporation. Even if we are treated as a United States real property holding corporation, gain realized by a Non-U.S. Holder on a disposition of our Class A common stock will not be subject to U.S. federal income tax so long as (a) the Non-U.S. Holder owned, directly, indirectly and constructively, no more than 5% of our Class A common stock at all times within the shorter of (i) the five-year period preceding the disposition or (ii) the holder's holding period and (b) our Class A common stock is regularly traded on an established securities market, as defined in applicable Treasury Regulations. There can be no assurance that our Class A common stock will qualify as regularly traded on an established securities market. If a Non-U.S. Holder's gain on disposition of our Class A common stock is taxable because we are a United States real property holding corporation and such Non-U.S. Holder's ownership of our Class A common stock exceeds 5%, such Non-U.S. Holder will be taxed on such disposition generally in the manner as gain that is effectively connected with the conduct of a U.S. trade or business (subject to the provisions under an applicable income tax treaty), except that the branch profits tax generally will not apply to a corporate Non-U.S. Holder.

Non-U.S. Holders described in (1) above will be required to pay tax on the net gain derived from the sale at regular U.S. federal income tax rates, and corporate Non-U.S. Holders described in (1) above may be subject to the additional branch profits tax on such gain at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. Gain described in (2) above will be subject to U.S. federal income tax at a flat 30% rate or such lower rate as may be specified by an applicable income tax treaty, which gain may be offset by certain U.S.-source capital losses (even though a Non-U.S. Holder is not considered a resident of the United States), provided that the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

Information Reporting Requirements and Backup Withholding

Generally, we must report information to the IRS with respect to any distributions we pay on our Class A common stock (even if the payments are exempt from withholding), including the amount of any such distributions, the name and address of the recipient, and the amount, if any, of tax withheld. A similar report is sent to the holder to whom any such distributions are paid. Pursuant to tax treaties or certain other agreements, the IRS may make its reports available to tax authorities in the recipient's country of residence.

Distributions paid by us (or our paying agents) to a Non-U.S. Holder may also be subject to U.S. backup withholding. U.S. backup withholding generally will not apply to a Non-U.S. Holder who provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E, or IRS Form W-ECI, or otherwise establishes an exemption. Notwithstanding the foregoing, backup withholding may apply if

[Table of Contents](#)

the payor has actual knowledge, or reason to know, that the holder is a U.S. person who is not an exempt recipient.

U.S. information reporting and backup withholding requirements generally will apply to the proceeds of a disposition of our Class A common stock effected by or through a U.S. office of any broker, U.S. or foreign, except that information reporting and such requirements may be avoided if the holder provides a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E or otherwise meets documentary evidence requirements for establishing non-U.S. person status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding requirements will not apply to a payment of disposition proceeds to a Non-U.S. Holder where the transaction is effected outside the United States through a non-U.S. office of a non-U.S. broker. Information reporting and backup withholding requirements may, however, apply to a payment of disposition proceeds if the broker has actual knowledge, or reason to know, that the holder is, in fact, a U.S. person. For information reporting purposes, certain brokers with substantial U.S. ownership or operations will generally be treated in a manner similar to U.S. brokers.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be credited against the tax liability of persons subject to backup withholding, provided that the required information is timely furnished to the IRS.

Foreign Accounts

Sections 1471 through 1474 of the Code (commonly referred to as FATCA) impose a U.S. federal withholding tax of 30% on certain payments to a foreign financial institution (as specifically defined by applicable rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). FATCA also generally imposes a federal withholding tax of 30% on certain payments to a non-financial foreign entity unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding substantial direct and indirect U.S. owners of the entity. An intergovernmental agreement between the United States and an applicable foreign country may modify those requirements. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules.

FATCA withholding currently applies to payments of dividends, if any, on our Class A common stock and, subject to the proposed Treasury Regulations described in this paragraph, generally also would apply to payments of gross proceeds from the sale or other disposition of our Class A common stock. The U.S. Treasury Department released proposed regulations which, if finalized in their present form, would eliminate the federal withholding tax of 30% applicable to the gross proceeds of a disposition of our Class A common stock. In its preamble to such proposed regulations, the U.S. Treasury Department stated that taxpayers may generally rely on the proposed regulations until final regulations are issued. Non-U.S. holders are encouraged to consult with their own tax advisors regarding the possible implications of FATCA on their investment in our Class A common stock.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR CLASS A COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY RECENT OR PROPOSED CHANGE IN APPLICABLE LAW.

[Table of Contents](#)

UNDERWRITING

We, the selling stockholders and the underwriters named below will enter into an underwriting agreement with respect to the shares of Class A common stock being offered. Subject to certain conditions, each underwriter will severally agree to purchase the number of shares indicated in the following table. Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC and Citigroup Global Markets Inc. are the representatives of the underwriters.

Underwriters	Number of Shares
Goldman Sachs & Co. LLC	
J.P. Morgan Securities LLC	
Citigroup Global Markets Inc.	
BofA Securities, Inc.	
Jefferies LLC	
Canaccord Genuity LLC	
Guggenheim Securities, LLC	
JMP Securities LLC	
Piper Sandler & Co.	
Raymond James & Associates, Inc.	
Total	16,550,000

The underwriters will be committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters will have an option to buy up to an additional 2,482,500 shares of Class A common stock from the selling stockholders to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by us and the selling stockholders. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase 2,482,500 additional shares from the selling stockholders.

Paid by the Company

	No Exercise	Full Exercise
Per Share	\$ 1.235	\$ 1.235
Total	\$ 20,439,250	\$ 20,439,250

Paid by the Selling Stockholders

	No Exercise	Full Exercise
Per Share	\$ —	\$ 1.235
Total	\$ —	\$ 3,065,888

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers

Table of Contents

may be sold at a discount of up to \$ _____ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We, the selling shareholders, all of our directors, executive officers and the holders of substantially all of our outstanding common stock and securities exercisable for or convertible into our Class A common stock and Class B common stock outstanding immediately on the completion of this offering have agreed that, without the prior written consent of Goldman Sachs & Co. LLC, on behalf of the underwriters, subject to certain exceptions, we and they will not, during the period ending 180 days after the date of this prospectus, or the restricted period:

- offer, sell, contract to sell, pledge, grant any option to purchase, lend or otherwise dispose of any shares of common stock, or any options or warrant to purchase, or any securities convertible into, exchangeable for or that represent the right to receive shares of common stock; and
- engage in any hedging or other transaction or arrangement (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) which is designed to or which reasonably could be expected to lead to or result in a sale, loan, pledge or other disposition (whether by the undersigned or someone other than the undersigned), or transfer of any of the economic consequences of ownership, in whole or in part, directly or indirectly, of any shares of common stock;

whether any such transaction described above is to be settled by delivery of common stock or such other securities in cash or otherwise. In addition, we and each such person have agreed that, without the prior written consent of Goldman Sachs & Co. LLC, on behalf of the underwriters, we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

Notwithstanding the foregoing, such restricted period will end with respect to 25% of the shares subject to each lock-up agreement if at any time after we have filed our first quarterly report on Form 10-Q, the last reported closing price of our Class A common stock is at least 33% greater than the initial public offering price of our Class A common stock for 10 out of any 15 consecutive trading days ending on or after the date of the filing of our first quarterly report on Form 10-Q; and provided further that if such release were to occur within nine trading days of a regularly scheduled trading black-out period, the above referenced early expiration period will instead be the second trading day immediately following the expiration of such trading black-out period. In addition, with respect to shares not released as a result of such early release, if 180 days after the date of this prospectus occurs within nine trading days of a regularly scheduled trading black-out period, the restricted period will expire on the tenth trading day immediately preceding the commencement of such trading black-out period. Under our insider trading policy to be effective upon the closing of this offering, our regularly scheduled trading black-out periods begin on the 15th day of the third month of each fiscal quarter and end after two full trading days have elapsed since the public dissemination of our financial results for such quarter.

The restrictions described above are subject to specified exceptions, including the following:

(A) transfers of shares of common stock acquired in open market transactions after the completion of this offering provided that no filing under the Exchange Act reporting a reduction in beneficial ownership of shares would be required or voluntarily made;

Table of Contents

(B) transfers of shares of common stock or any security convertible into or exercisable or exchangeable for common stock (1) as a bona fide gift, (2) to an immediate family member or to any trust for the direct or indirect benefit of the lock-up party or an immediate family member of the lock-up party, (3) to any corporation, partnership, limited liability company, investment fund or other entity controlled or managed, or under common control or management of the lock-up party, or (4) by will, other testamentary document or intestate succession to the legal representative, heir, beneficiary or an immediate family member of the lock-up party,

(C) transfers or distributions of shares of common stock or any security convertible into or exercisable or exchangeable for common stock by a lock-up party that is a corporation, partnership, limited liability company, trust or other business entity (1) to current or former general or limited partners, managers, members, stockholders or holders of similar equity interests in the lock-up party or (2) to the estates of any of the foregoing;

(D) the transfer of shares of common stock or any securities convertible into or exercisable or exchangeable for common stock in connection with the vesting of equity awards and "net" or "cashless" exercise or settlement of stock options, restricted stock units or other equity awards or securities convertible or exercisable or exchangeable for common stock (including any transfer for the payment of taxes due or payment of the exercise price due as a result of such vesting or exercise whether by means of a "net settlement" or otherwise), provided that, (1) any such transfer shall only be permitted to us pursuant to an employee benefit plan or other security convertible into or exercisable or exchangeable for common stock disclosed in this prospectus used to sell shares of Class A common stock; (2) no public disclosure or filing shall be made voluntarily during the restricted period nor shall be required within 30 days after the date of this prospectus and (3) the lock-up party may exercise any option held by the lock-up party if such option would otherwise terminate or expire in accordance with its terms during the restricted period, even if in each case exercise would require a filing under Section 16(a) of the Exchange Act;

(E) sales of shares of Class A common stock pursuant to the terms of the Underwriting Agreement;

(F) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, provided that such plan does not provide for the transfer of common stock during the restricted period (other than any shares that are no longer subject to the restrictions under the lock-up agreement due to the early lock-up expiration as provided above);

(G) the transfer of shares of common stock or any security convertible into or exercisable or exchangeable for common stock that occurs by operation of law pursuant to a qualified domestic order or in connection with a divorce settlement or other court order;

(H) the reclassification and conversion of shares of our common stock and preferred stock into shares of Class B common stock and the conversion of Class B common stock into shares of Class A common stock, provided that, in each case, such shares remain subject to the terms of the lock-up agreement; or

(I) the transfer of shares of common stock or any security convertible into or exercisable or exchangeable for common stock pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by our board of directors, made to all holders of common stock involving a change of control, provided that, in the event that the tender offer, merger, consolidation or other such transaction is not completed, the common stock owned by the lock-up party will remain subject to terms of the lock-up agreement,

Table of Contents

provided that:

- in the case of any transfer or distribution pursuant to clauses (B), (C) and (G) above, each donee, trustee, distributee or transferee shall sign and deliver a lock-up agreement,
- in the case of any transfer or distribution pursuant to clauses (B) and (C) above, (1) no filing under the Exchange Act reporting a reduction in beneficial ownership of shares of common stock would be required or be voluntarily made and (2) such transfer or distribution would not involve a disposition for value, and
- in the case of any transfer or distribution pursuant to clauses (D) and (F) through (H) above, any filing required by Section 16 of the Exchange Act shall clearly indicate in the footnotes thereto that the such transfer or distribution is being made pursuant to the circumstances described in the applicable clause. Goldman Sachs & Co. LLC, in its sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time, subject to applicable notice requirements.

Prior to the offering, there has been no public market for the shares of our Class A common stock. The initial public offering price has been negotiated between us and the representatives. Among the factors considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be our historical performance, estimates of our business potential and earnings prospects, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses.

We have applied to list our Class A common stock on the The Nasdaq Stock Market under the symbol "ACVA."

In connection with the offering, the underwriters may purchase and sell shares of Class A common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A "covered short position" is a short position that is not greater than the amount of additional shares for which the underwriters' option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. "Naked" short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Class A common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of Class A common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the

Table of Contents

market price of our Class A common stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of the Class A common stock. As a result, the price of the Class A common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on The Nasdaq Stock Market, in the over-the-counter market or otherwise.

The underwriters do not expect sales to discretionary accounts to exceed five percent of the total number of shares offered.

We estimate that our and their share of the total expenses of the offering, excluding estimated underwriting discounts and commissions, will be approximately \$4.0 million. We have also agreed to reimburse the underwriters for certain FINRA-related expenses incurred by them in connection with the offering in an amount up to \$35,000 and expenses incurred in connection with the reserved share program.

We and the selling stockholders have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

At our request, the underwriters have reserved for sale, at the initial public offering price per share, up to 5% of the shares of Class A common stock offered by this prospectus to certain individuals, including our directors, employees and certain friends and family of ACV identified by our directors and management, through a reserved share program. Any shares purchased in the reserved share program will not be subject to a lock-up restriction, except in the case of shares purchased by any director or executive officer. The number of shares of Class A common stock available for sale to the general public will be reduced by the number of reserved shares sold to these individuals. Any reserved shares not purchased by these individuals will be offered by the underwriters to the general public on the same basis as the other shares of common stock offered under this prospectus. We have agreed to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with sales of the reserved shares. The reserved share program will be arranged through Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Selling Restrictions

Notice to Prospective Investors in the European Economic Area

The shares of our Class A common stock are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“EEA”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “MiFID II”); or (ii) a customer within the meaning of Directive (EU) 2016/97 (as amended, the “Insurance Distribution Directive”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Regulation (EU) 2017/1129 (the “Prospectus Regulation”). Consequently no key information document required by Regulation (EU) No 1286/2014 (as amended, the “PRIIPs Regulation”) for offering or selling the shares of Class A common stock or otherwise making them available to retail investors in the EEA has been prepared and therefore offering or selling the shares of our Class A common stock or otherwise making them available to any retail investor in the EEA may be unlawful under the PRIIPs Regulation.

Notice to Prospective Investors in the United Kingdom

The shares of our Class A common stock are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the United Kingdom (“UK”). For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client, as defined in point (8) of Article 2 of Regulation (EU) No 2017/565 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018 (“EUWA”); (ii) a customer within the meaning of the provisions of the Financial Services and Markets Act 2000 (“FSMA”) and any rules or regulations made under the FSMA to implement Directive (EU) 2016/97, where that customer would not qualify as a professional client, as defined in point (8) of Article 2(1) of Regulation (EU) No 600/2014 as it forms part of domestic law by virtue of the EUWA; or (iii) not a qualified investor as defined in Article 2 of Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the EUWA. Consequently no key information document required by Regulation (EU) No 1286/2014 as it forms part of domestic law by virtue of the EUWA (the “UK PRIIPs Regulation”) for offering or selling the shares of our Class A common stock or otherwise making them available to retail investors in the UK has been prepared and therefore offering or selling the shares of our Class A common stock or otherwise making them available to any retail investor in the UK may be unlawful under the UK PRIIPs Regulation.

Canada

The shares of Class A common stock may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions, and Ongoing Registrant Obligations. Any resale of the Class A common stock must be made in accordance with an exemption form, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province or territory of these rights or consult with a legal advisor.

[Table of Contents](#)

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Hong Kong

The shares of Class A common stock may not be offered or sold in Hong Kong by means of any document other than (1) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) (“Companies (Winding Up and Miscellaneous Provisions) Ordinance”) or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (“Securities and Futures Ordinance”), or (2) to “professional investors” as defined in the Securities and Futures Ordinance and any rules made thereunder, or (3) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares of Class A common stock may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (1) to an institutional investor (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”)) under Section 274 of the SFA, (2) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (3) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor, the securities (as defined in Section 239(1) of the SFA) of that corporation shall not be transferable for 6 months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation’s securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore (“Regulation 32”)

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an accredited investor (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited

[Table of Contents](#)

investor, the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for 6 months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (vi) as specified in Regulation 32.

Japan

The shares of Class A common stock have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended), or the FIEA. The shares of Class A common stock may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

LEGAL MATTERS

The validity of the shares of Class A common stock being offered by this prospectus will be passed upon for us by Cooley LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriters by Davis Polk & Wardwell LLP, New York, New York.

EXPERTS

The consolidated financial statements of ACV Auctions Inc. at December 31, 2020 and 2019, and for the years then ended, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our Class A common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC maintains an internet website that contains reports and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

Upon the completion of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available at www.sec.gov.

We also maintain a website at www.acvauctions.com. Information contained in, or accessible through, our website is not a part of this prospectus, and the inclusion of our website address in this prospectus is only as an inactive textual reference.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	<u>Page</u>
Report of Independent Registered Public Accounting Firm	F-2
Consolidated Financial Statements	
Consolidated Statements of Operations	F-3
Consolidated Statements of Comprehensive Loss	F-4
Consolidated Balance Sheets	F-5
Consolidated Statements of Changes in Convertible Preferred Stock and Stockholders' Deficit	F-7
Consolidated Statements of Cash Flows	F-8
Notes to Consolidated Financial Statements	F-9

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of ACV Auctions Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of ACV Auctions Inc. (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive loss, changes in convertible preferred stock and stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2020, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2018.

New York, NY

February 26, 2021, except for the effects of the reverse stock split as discussed in Note 18 to the consolidated financial statements, as to which the date is March 15, 2021.

[Table of Contents](#)

ACV AUCTIONS INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year Ended December 31, 2020	Year Ended December 31, 2019
Revenue:		
Marketplace and service revenue	\$ 173,120	\$ 87,750
Customer assurance revenue	35,237	19,097
Total revenue	208,357	106,847
Operating expenses:		
Marketplace and service cost of revenue (excluding depreciation & amortization)	83,553	65,962
Customer assurance cost of revenue (excluding depreciation & amortization)	29,496	16,816
Operations and technology	64,998	39,626
Selling, general, and administrative	64,882	62,439
Depreciation and amortization	6,075	1,286
Total operating expenses	249,004	186,129
Loss from operations	(40,647)	(79,282)
Other income (expense):		
Interest income	748	2,093
Interest expense	(633)	—
Total other income (expense)	115	2,093
Loss before income taxes	(40,532)	(77,189)
Provision for income taxes	489	27
Net loss	\$ (41,021)	\$ (77,216)
Weighted-average shares - basic and diluted	21,596,379	18,370,224
Net loss per share - basic and diluted	\$ (1.90)	\$ (4.20)

The accompanying notes are an integral part of these consolidated financial statements.

ACV AUCTIONS INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands)

	Year Ended December 31, 2020	Year Ended December 31, 2019
Net loss	<u>\$ (41,021)</u>	<u>\$ (77,216)</u>
Other comprehensive loss:		
Foreign currency translation loss	(56)	(1)
Comprehensive loss	<u>\$ (41,077)</u>	<u>\$ (77,217)</u>

The accompanying notes are an integral part of these consolidated financial statements.

[Table of Contents](#)

ACV AUCTIONS INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2020	December 31, 2019
Assets		
Current Assets :		
Cash and cash equivalents	\$ 233,725	\$ 182,275
Trade receivables (net of allowance of \$2,093 and \$1,352)	104,138	80,089
Finance receivables (net of allowance of \$40 and \$65)	8,501	3,188
Other current assets	8,041	2,646
Total current assets	354,405	268,198
Property and equipment, net	4,912	3,520
Goodwill	21,820	16,070
Acquired intangible assets, net	11,491	9,003
Internal-use software costs, net	7,775	3,763
Operating lease right-of-use assets	2,000	1,888
Other assets	2,147	2,076
Total assets	404,550	304,518
Liabilities, Convertible Preferred Stock and Stockholders' Deficit		
Current Liabilities :		
Accounts payable	151,967	85,827
Accrued payroll	8,109	4,322
Accrued other liabilities	4,375	4,737
Deferred revenue	1,504	2,330
Operating lease liabilities	746	466
Total current liabilities	166,701	97,682
Long-term operating lease liabilities	1,323	1,485
Long-term debt	4,832	—
Other long-term liabilities	5,054	25
Total liabilities	\$ 177,910	\$ 99,192
Commitments and Contingencies (Note 6)		

The accompanying notes are an integral part of these consolidated financial statements.

ACV AUCTIONS INC.
CONSOLIDATED BALANCE SHEETS (Continued)
(in thousands, except share data)

	<u>December 31,</u> <u>2020</u>	<u>December 31,</u> <u>2019</u>
Convertible Preferred Stock :		
Convertible preferred stock; \$0.001 par value; 115,269,221 and 110,627,173 shares issued and outstanding at December 31, 2020 and 2019, respectively	366,332	311,468
Stockholders' Deficit :		
Common stock; \$0.001 par value; 311,100,000 and 296,200,000 shares authorized; 22,331,842 and 21,078,342 shares issued and outstanding at December 31, 2020 and 2019, respectively	22	21
Additional paid-in capital	27,322	19,796
Accumulated deficit	(166,979)	(125,958)
Accumulated other comprehensive loss	(57)	(1)
Total stockholders' deficit	<u>(139,692)</u>	<u>(106,142)</u>
Total liabilities, convertible preferred stock and stockholders' deficit	<u>\$ 404,550</u>	<u>\$ 304,518</u>

The accompanying notes are an integral part of these consolidated financial statements.

ACV AUCTIONS INC.
CONSOLIDATED STATEMENTS OF CHANGES IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(in thousands, except share data)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total
	Shares	Amount	Shares	Par Value				
Balance, January 1, 2019	<u>95,693,296</u>	<u>\$149,594</u>	<u>17,929,302</u>	<u>\$ 18</u>	<u>\$ 7,559</u>	<u>\$ (48,742)</u>	<u>\$ —</u>	<u>\$ (41,165)</u>
Issuance of Series D Preferred Stock net of issuance costs of \$142	467,861	2,058						
Issuance of Series E Preferred Stock net of issuance costs of \$184	14,466,016	159,816						
Net loss						(77,216)		(77,216)
Other comprehensive loss							(1)	(1)
Stock-based compensation					998			998
Exercise of common stock options			711,541	1	272			273
True Frame acquisition			2,437,499	2	10,967			10,969
Balance, December 31, 2019	<u>110,627,173</u>	<u>\$311,468</u>	<u>21,078,342</u>	<u>\$ 21</u>	<u>\$ 19,796</u>	<u>\$ (125,958)</u>	<u>\$ (1)</u>	<u>\$ (106,142)</u>
Issuance of Series E-1 Preferred Stock net of issuance costs of \$136	4,642,048	54,864						
Net loss						(41,021)		(41,021)
Other comprehensive loss							(56)	(56)
Stock-based compensation					5,705			5,705
Exercise of common stock options			1,253,500	1	1,821			1,822
Balance, December 31, 2020	<u>115,269,221</u>	<u>\$366,332</u>	<u>22,331,842</u>	<u>\$ 22</u>	<u>\$ 27,322</u>	<u>\$ (166,979)</u>	<u>\$ (57)</u>	<u>\$ (139,692)</u>

The accompanying notes are an integral part of these consolidated financial statements.

ACV AUCTIONS INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years Ended December 31, 2020	Years Ended December 31, 2019
Cash Flows from Operating Activities		
Net loss	\$ (41,021)	\$ (77,216)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	7,244	1,839
Stock-based compensation expense	5,705	998
Provision for bad debt	5,181	2,800
Non-cash operating lease costs	5	62
(Gain) on contingent liabilities	(3,063)	—
Other non-cash, net	896	362
Changes in operating assets and liabilities, net of effects from purchases of businesses:		
Accounts receivable	(29,226)	(51,952)
Prepaid expenses & other current assets	(5,702)	(1,701)
Accounts payable	66,217	46,409
Accrued payroll	4,095	2,520
Accrued other liabilities	(891)	2,772
Deferred revenue	(825)	1,473
Other long-term liabilities	2,418	—
Other assets	(665)	(826)
Net cash provided by (used in) operating activities	10,368	(72,460)
Cash Flows from Investing Activities		
Net increase in finance receivables	(5,288)	(3,253)
Purchases of property and equipment	(3,503)	(3,373)
Capitalization of software costs	(5,382)	(3,220)
Acquisition of businesses (net of cash acquired)	(5,500)	(14,835)
Net cash used in investing activities	(19,673)	(24,681)
Cash Flows from Financing Activities		
Proceeds from long term debt	6,787	—
Payments towards long term debt	(1,980)	—
Proceeds from issuance of Series D preferred stock	—	2,200
Proceeds from issuance of Series E preferred stock	—	160,000
Proceeds from issuance of Series E1 preferred stock	55,000	—
Payment for debt issuance and other financing costs	(738)	(776)
Proceeds from exercise of common stock options	1,822	273
Other financing activities, net	(136)	(171)
Net cash provided by financing activities	60,755	161,526
Net increase in cash and cash equivalents	51,450	64,385
Cash and cash equivalents, beginning of year	182,275	117,890
Cash and cash equivalents, end of year	\$ 233,725	\$ 182,275
Supplemental disclosure of cash flow information		
Cash paid during the period for:		
Interest	\$ 171	\$ —
Income taxes	\$ 59	\$ 30
Cash paid included in the measurement of operating lease liabilities	\$ 770	\$ 295
Non-cash investing and financing activities:		
Purchase of property and equipment in accounts payable	\$ 133	\$ 348
Right-of-use assets obtained, including initial adoption	\$ 718	\$ 2,146
Contingent consideration	\$ 5,700	\$ —

The accompanying notes are an integral part of these consolidated financial statements.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

1. Nature of Business and Summary of Significant Accounting Policies

Nature of Business—ACV Auctions Inc. (“the Company”) was formed on December 31, 2014. The Company operates in one industry segment, providing a digital wholesale auction marketplace (the “Marketplace”) to facilitate business-to-business used vehicle sales between a selling dealership (“Seller”) and a buying dealership (“Buyer”). Customers using the Marketplace are licensed automotive dealerships or other commercial automotive enterprises. At the election of the customer purchasing a vehicle, the Company can arrange third-party transportation services for the delivery of the purchased vehicle through its wholly owned subsidiary, ACV Transportation LLC. The Company can also provide the customer financing for the purchased vehicle through its wholly owned subsidiary, ACV Capital LLC. ACV also provides data services that offer insights into the condition and value of used vehicles for transactions both on and off our Marketplace, which help dealerships, their end customers, and commercial partners make more informed decisions to transact with confidence and efficiency. Customers using data services are licensed automotive dealerships or other commercial automotive enterprises. All services are provided in the United States and are supported by the Company’s operations which are in both the United States and Canada.

Basis of Preparation—The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”). The consolidated financial statements include the accounts of ACV Auctions Inc. and all of its subsidiaries. All significant intercompany balances and transactions of consolidated subsidiaries have been eliminated in consolidation. Any reference in these notes to applicable guidance is meant to refer to the authoritative U.S. GAAP as found in the Accounting Standards Codification (“ASC”) and Accounting Standards Update (“ASU”) of the Financial Accounting Standards Board (“FASB”).

Management Estimates—The preparation of consolidated financial statements and related disclosures in conformity with U.S. GAAP requires management to make judgments, assumptions and estimates that affect the amounts reported in its consolidated financial statements and accompanying notes. Management bases its estimates on historical experience and on other assumptions it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates and these differences may be material. Significant estimates and assumptions reflected in the consolidated financial statements include, but are not limited to, allowance for doubtful receivables, contingent consideration, fair value of guarantees, loss estimates related to guarantee claims, fair value of stock-based awards, estimated useful lives and recoverability of long-lived assets, fair value and useful lives of acquired intangible assets, fair value of stock consideration, and accounting for income taxes, including the valuation allowance on deferred tax assets.

Emerging Growth Company—The Company is an “emerging growth company,” as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the “JOBS Act”), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934, as amended ("Exchange Act")) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of the Company's financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Segment Reporting—Operating segments are identified as components of an enterprise for which separate discrete financial information is available for evaluation by the Company's Chief Operating Decision Maker ("CODM") in making decisions regarding resource allocation and assessing performance. The CODM is the Chief Executive Officer ("CEO"). The CEO reviews the financial information presented on a consolidated basis for purposes of allocating resources and evaluating the Company's financial performance. Accordingly, the Company has determined that it operates in a single reporting segment.

Cash and Cash Equivalents—The Company considers all highly liquid instruments purchased with a maturity of three months or less to be cash equivalents.

Receivables – Trade receivables include the price of the auctioned vehicle and fees due for services. Trade receivables are recorded net of the allowance for doubtful receivables at net realizable value. Trade receivables are due either upon the close of an auction, or upon the delivery of title from the Seller to the Company, depending on the terms agreed with the customer.

Finance receivables represent amounts borrowed by Buyers selecting to finance the purchase of an auctioned vehicle and related fees and are collateralized by the auctioned vehicle. Finance receivables are recorded net of the allowance for doubtful receivables at net realizable value. Finance receivables are due upon maturity or upon the subsequent sale of the purchased vehicle, whichever comes first. Finance receivables are placed on nonaccrual status when principal or interest becomes delinquent, which is generally 31 days past due unless management determines that the finance receivable status clearly warrants other treatment. Nonaccrual finance receivables are returned to accrual status when all past due principal and interest payments have been paid by the borrower. While on nonaccrual status, interest is not recognized into income.

For trade receivables and finance receivables, management considers factors such as age of the receivable, customer history, existing economic conditions, and overall portfolio credit quality to estimate an allowance for doubtful receivables. Upon management's determination of uncollectibility, such accounts are written off against the allowance for doubtful receivables.

Other Current Assets – Other current assets include prepaid expenses and other receivables.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Property and Equipment, net – Property and equipment is stated at cost, net of accumulated depreciation. Improvements are generally capitalized. The costs of maintenance and repairs are charged to expense as incurred. Depreciation is computed using the straight-line method over the approximate economic useful lives of the assets. Depreciation of the cost of improvements to leased properties is made using the straight-line method based on the shorter of the estimated useful life or applicable lease period. The estimated useful lives of our property and equipment are generally as follows:

Computer equipment and devices	2-3 years
Inspection and trade show equipment	2-5 years
Furniture and fixtures	7 years
Leasehold improvements	Lesser of economic life or lease term

Internal-Use Software Costs, net—The Company capitalizes its internal-use software costs during the application development stage. Costs related to preliminary project activities and post implementation activities are expensed as incurred. This software is amortized on a straight-line basis over its estimated useful life, generally three years. The Company evaluates the useful lives of these assets on an annual basis, or more frequently when warranted.

Leases—The Company determines if an arrangement is a lease at inception. Operating leases with a term greater than twelve months are included in Operating lease right-of-use (“ROU”) assets, Current operating lease liabilities, and Long-term operating lease liabilities in our Consolidated Balance Sheets. The Company has elected to account for operating leases with a term less than twelve months to be expensed as incurred. Short-term operating lease expenses were not material for the years ended December 31, 2020 and 2019.

ROU assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. The Company’s operating leases have lease and non-lease components for which the Company has elected to apply the practical expedient and account for each lease component and related non-lease component as one single component. Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. The Company is unable to determine the lessor’s implicit rate and uses their incremental borrowing rate based on the estimated rate of interest for collateralized borrowing over a similar term of the lease payments at commencement date. An individual lease’s term may include an option to extend or terminate the lease when it is reasonably certain that the option will be exercised. Operating lease expense is recognized on a straight-line basis over the lease term.

Goodwill & Acquired Intangible Assets, net—Goodwill represents the excess of the aggregate purchase price paid over the fair value of the net tangible and intangible assets acquired. Intangible assets that are not considered to have an indefinite useful life are amortized over their useful lives. The Company evaluates the estimated remaining useful lives of acquired intangible assets and whether events or changes in circumstances warrant a revision to the remaining period of amortization. Goodwill is not amortized, but rather is subject to an impairment test.

The Company evaluates goodwill for impairment annually as one singular reporting unit, on October 1 or more frequently when an event occurs or circumstances change that indicates the carrying value may not be recoverable. The Company’s policy is to first perform a qualitative

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

assessment to determine whether it was more likely than not that the reporting unit's carrying value is less than its fair value, indicating the potential for goodwill impairment. If the reporting unit fails the qualitative test, then the Company proceeds with a quantitative test. The Company then determines whether the reporting unit fair value is less than its carrying amount, and if it is, the Company recognizes a goodwill impairment equal to the difference between the carrying amount of the reporting unit and its fair value, not to exceed the carrying amount of goodwill. The Company did not identify any impairment of its goodwill for the years ended December 31, 2020 and 2019.

Impairment of Long-Lived Assets—The Company periodically reviews long-lived assets, which consist of its property and equipment, internal-use software and other finite-lived intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset is impaired or the estimated useful lives are no longer appropriate. If indicators of impairment exist and the undiscounted projected cash flows associated with such assets are less than the carrying amount of the asset, an impairment loss is recorded to write the assets down to their estimated fair values. The Company did not identify any impairment losses related to the Company's long-lived assets during the years ended December 31, 2020 and 2019.

Other Assets—Other assets include costs incurred to obtain a revolving debt facility, implementation costs for hosted software arrangements, deferred offering costs, and other long-term assets. Implementation costs of hosted software arrangements are in connection with information technology systems used to support operational processing of transactions, human resource management, and financial processes. Deferred offering costs consist of direct incremental legal, accounting, consulting and other offerings costs relating to the Initial Public Offering ("IPO") and are capitalized. The deferred offering costs will be offset against IPO proceeds upon the consummation of the IPO. In the event the planned IPO is terminated, the deferred offering costs will be expensed. There were no deferred offering costs capitalized as of December 31, 2019. As of December 31, 2020, there was \$0.8 million of deferred offering costs recorded.

Commitments and Contingencies—The Company may be involved in disputes or regulatory inquiries that arise in the ordinary course of business. When the Company determines that a loss is both probable and reasonably estimable, a liability is recorded and disclosed if the amount is material to the consolidated financial statements taken as a whole. When a material loss contingency is only reasonably possible, the Company does not record a liability, but instead discloses the nature and the amount of the claim, and an estimate of the loss or range of loss, if such an estimate can reasonably be made. Accruals for contingencies including litigation are included in Accrued other liabilities at undiscounted amounts. These accruals are adjusted periodically as additional information becomes available. If the amount of an actual loss is greater than the amount accrued, this could have an adverse impact on our operating results in that period.

Revenue Recognition—The Company generates revenue from contracts with customers. Revenue is recognized when control of the promised services is transferred to customers in an amount that reflects the consideration that the Company expects to receive in exchange for those services. Determining whether performance obligations should be accounted for separately or combined may require significant judgment. For each performance obligation within a contract, the Company evaluates whether it acts as the principal or as an agent. When the Company acts as the principal, revenue is recognized in the gross amount of the consideration received from the customer at the point in time the services are completed. When the Company acts as the agent, revenue is recognized net of the consideration due to a third party at the point in time when the services are provided.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

In contracts with multiple performance obligations, the Company allocates the transaction price to each distinct performance obligation proportionately based on the estimated stand-alone selling price ("SSP") of each performance obligation. The Company uses an observable price to determine the SSP for each performance obligation. Where observable prices are not available, an expected cost-plus margin approach is used. The Company then determines how the services are transferred to the customer to determine the timing of revenue recognition.

From time to time we provide promotions and incentives to Buyers and Sellers in various forms including discounts on fees, credits and rebates. Promotions and incentives which are consideration payable to a customer are recognized as a reduction of revenue when revenue is recognized.

Commissions paid to sales representatives and related payroll taxes are considered costs to obtain a contract. ASC 340 requires costs to obtain a contract with a customer within the scope of ASC 606 to be capitalized and amortized over the period of benefit. The Company has elected the practical expedient available under ASC 340-40-25-4 to immediately expense the incremental cost of obtaining a contract when the underlying related asset would have been amortized over one year or less.

The Company has utilized the practical expedient available under ASC 606-10-50-14 and does not disclose the value of unsatisfied performance obligations for contracts with an original expected length of one year or less.

Marketplace and service revenue—Marketplace and service revenue consists principally of revenues earned from facilitating an auction on the Marketplace and arranging for the transportation of vehicles purchased on the Marketplace to the Buyer. In the course of facilitating an auction on the marketplace, the Seller may elect for the Company to perform a wholesale auction inspection of the vehicle. Marketplace and service revenue also consists of data services that offer insights into the condition and value of used vehicles for transactions both on and off our Marketplace, by providing the customer an inspection of the vehicle and an inspection report.

Revenue earned from facilitating a vehicle auction through the Marketplace is recognized at a point in time when the vehicle is sold. The Company acts as an agent when facilitating a vehicle auction through the Marketplace. Accordingly, auction and related fees charged to the Buyer and Seller are reported as revenue on a net basis, excluding the price of the auctioned vehicle in the transaction.

Revenue from transportation services is recognized over time as delivery is completed. In providing its transportation services, the Company leverages its network of third-party transportation carriers and arranges for the transportation of the vehicle to the Buyer. The Company is the principal for transportation services. Transportation fees charged to the Buyer are reported on a gross basis.

Data services revenue is recognized at a point in time when the vehicle inspection and report is completed and delivered to the customer.

Deferred revenue primarily consists of fees received for transportation services related to unsatisfied performance obligations at the end of the period. Due to the generally short-term duration of contracts, the performance obligations are satisfied, and the deferred revenue is recognized in the following reporting period.

Timing of revenue recognition may differ from the timing of payment from customers. Accounts receivable represents amounts invoiced, which include the price of the auctioned vehicle and related fees charged to a Buyer, where the Company has the unconditional right to payment.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The Company offers short-term financing to eligible customers purchasing vehicles through the Marketplace. These financing fees are accounted for under ASC 310-20, *Nonrefundable Fees and Other Costs*, and therefore are not subject to evaluation under ASC 606. Financing fees are recognized ratably over the duration of the financing arrangement. Financing fees were not material for the years ended December 31, 2020 and 2019.

Customer assurance revenue—Customer assurance revenue represents the implied premium received for certain guarantees. Refer to Note 6 for additional information.

Marketplace and service cost of revenue—Marketplace and service cost of revenue consists of third-party transportation carrier costs, titles shipping costs, customer support, website hosting costs, inspection costs related to data services, and various other costs. These costs include personnel-related costs and related stock-based compensation expenses.

Customer assurance cost of revenue—Customer assurance cost of revenue consists of the costs related to satisfying claims against guarantees. Refer to Note 6 for additional information.

Operations and technology – Operations and technology costs consist of expenses for wholesale auction inspections, personnel costs related to payments and titles processing, transportation processing, product and engineering, and other general operations and technology expenses. These costs include personnel-related costs and related stock-based compensation expenses.

Selling, general and administrative—Selling, general and administrative expense consists of costs resulting from sales, accounting, finance, legal, marketing, human resources, executive, and other administrative activities. These costs include personnel-related costs, related stock-based compensation expenses, and legal and other professional services expenses.

Also included in selling, general and administrative is advertising and marketing costs to promote our services, which are expensed as incurred. Advertising and marketing expenses were \$2.3 million and \$3.6 million for the years ended December 31, 2020 and 2019, respectively.

Depreciation and amortization—Depreciation and amortization expense consists of depreciation of fixed assets, and amortization of acquired intangible assets and internal-use software. Amortization of implementation costs for hosted software arrangements is included within Operations and technology and Selling, general, and administrative, as applicable, consistently with the classification of the related hosted software fees. For the years ended December 31, 2020 and 2019, amortization of hosted software has been reported in the Consolidated Statements of Operations as follows (in thousands):

	<u>2020</u>	<u>2019</u>
Operations and technology	\$ 1,076	\$ 448
Selling, general, and administrative	68	106

Stock-Based Compensation—The Company uses the fair value recognition provisions of ASC 718, *Compensation – Stock Compensation*. The estimated fair value of each Common Stock option award is calculated on the date of grant using the Black-Scholes option pricing model. Application of

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

the Black-Scholes option pricing model requires significant judgment, and involves the use of subjective assumptions including:

Expected Term—The expected term represents the period that the stock-based awards are expected to be outstanding. As the Company does not have sufficient historical experience for determining the expected term of the stock option awards granted, the simplified method was used to determine the expected term for awards issued to employees.

Risk-Free Interest Rate—The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the date of grant for zero-coupon U.S. Treasury constant maturity notes with terms approximately equal to the stock-based awards' expected term.

Expected Volatility—Since the Company is privately held and does not have a trading history of common stock, the expected volatility is derived from the average historical volatilities of the common stock of several public companies considered to be comparable to the Company over a period equivalent to the expected term of the stock-based awards.

Dividend Rate—The expected dividend rate is zero as the Company has not paid and does not anticipate paying any dividends in the foreseeable future.

Fair Value of Common Stock—Because the Company's common stock is not yet publicly traded, the Company must estimate the fair value of common stock. The Board of Directors, with input from management considers numerous objective and subjective factors to determine the fair value of the Company's common stock at each meeting in which awards are approved.

Valuations of the common stock performed by a third-party valuation specialist are in accordance with the guidance outlined in the American Institute of Certified Public Accountants' Accounting and Valuation Guide, Valuation of Privately Held Company Equity Securities Issued as Compensation. Factors taken into consideration in assessing the fair value of the Company's common stock include, but are not limited to: (i) the results of contemporaneous independent third-party valuations of the Company's common stock; (ii) the prices, rights, preferences, and privileges of the Company's convertible preferred stock relative to those of its common stock; (iii) the likelihood and timing of achieving a qualifying event, such as an IPO or sale of the Company given prevailing market conditions; (iv) actual operating and financial results; and (v) precedent transactions involving the Company's shares.

The Company measures all stock options and other stock-based awards granted to employees, directors, consultants and other nonemployees based on the fair value on the date of the grant. The options vest based on a graded scale over the stated vesting period, and compensation expense is recognized based on their grant date fair value on a straight-line basis over the vesting period. Forfeitures are recognized as they occur.

The fair value of restricted stock awards and units are determined based on the estimated market price of the Company's Common Stock on the grant date. The awards and units vest over time and compensation expense is recognized based on their grant fair value ratably over the vesting period.

The Company classifies stock-based compensation expense in its Consolidated Statements of Operations in the same way the payroll costs or service payments are classified for the related stock-based award recipient.

Income Taxes—The Company accounts for income taxes in accordance with ASC 740, *Income Taxes*. This standard requires, among other things, recognition of deferred tax assets and liabilities for

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

future tax consequences, measured by enacted rates attributable to temporary differences between financial statement and income tax bases of assets and liabilities, and net operating loss and tax credit carryforwards to the extent that realization of such benefits is more likely than not.

The Company's management evaluates its tax positions to determine whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation, based on the technical merits of the tax position. Management has analyzed the Company's tax positions and has concluded that as of December 31, 2020, there are no uncertain positions taken or expected to be taken that would require recognition or disclosure in the consolidated financial statements. Under the Company's policy, interest and penalties would be expensed as incurred and reported within the Other income section of the Consolidated Statements of Operations.

Foreign Currency—The functional currency of the Company's Canadian subsidiary is the applicable local currency. The translation of the applicable foreign currency into U.S. dollars is performed for assets and liabilities using current exchange rates in effect at the balance sheet date, and for revenue and expense activity using the applicable month's average exchange rates. Foreign currency translation gains and losses are included as a component of the Consolidated Statements of Comprehensive Loss. Foreign currency transaction gains and losses are reported within the Other income section of the Consolidated Statements of Operations.

Net Loss Per Share Attributable to Common Stockholders—Basic net loss per share attributable to common stockholders is computed by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period.

Diluted net loss per share attributable to common stockholders is computed by dividing net income (loss) attributable to common stockholders by the weighted-average number of shares of common stock outstanding for the period, adjusted to reflect potentially dilutive securities using the treasury stock method for the purchase of the Company's common stock, stock option awards and restricted stock awards and units. Due to the Company's loss from continuing operations, net of income taxes: (i) convertible preferred stock, (ii) unvested restricted stock, and (iii) stock options not subject to performance conditions, were not included in the computation of diluted net loss per share attributable to common stockholders, as the effects would be anti-dilutive. Accordingly, basic and diluted net loss per share attributable to common stockholders are equal for the years presented.

Fair Value Measurements and Financial Instruments—Fair value accounting is applied for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (at least annually). Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Assets and liabilities recorded at fair value in the consolidated financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels, which are directly related to the amount of subjectivity, associated with the inputs to the valuation of these assets or liabilities are as follows:

Level 1: Observable inputs such as quoted prices in active markets for identical assets and liabilities.

Level 2: Inputs other than the quoted prices in active markets that are observable either directly or indirectly.

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Level 3: Unobservable inputs in which there is little or no market data which require the Company to develop its own assumptions.

The Company's financial instruments primarily consist of cash and cash equivalents, trade and finance accounts receivable and accounts payable whose carrying values approximate fair value due to the short-term nature of those instruments.

The following table provides a description of accounting standards that were adopted by the Company as well as standards that are not yet adopted that could have an impact to the consolidated financial statements upon adoption.

Accounting Standard Update	Description	Required date of adoption	Effect on consolidated financial statements
Accounting Standards Adopted			
Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (ASU 2018-15)	This guidance outlines the requirements for capitalizing implementation costs incurred in a cloud computing arrangement that is a service contract, along with clarified presentation guidance.	January 1, 2021 Early adoption permitted	This guidance was early adopted as of January 1, 2018 utilizing the retrospective method and did not have a material impact to the consolidated financial statements.
Leases (ASU 2016-02, 2018-01, 2018-10, 2018-11, 2018-20, 2019-01)	The new guidance requires lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets and eliminates certain real estate-specific provisions.	January 1, 2021 Early adoption permitted	The guidance was early adopted as of January 1, 2019 utilizing the modified retrospective method, and elected the practical expedients listed in ASC 842-10-65-1(f).
Simplifying the Test for Goodwill Impairment (ASU 2017-04)	This guidance simplifies the goodwill impairment test by eliminating Step 2.	January 1, 2023 Early adoption permitted	The Company adopted this guidance as of January 1, 2019. It did not have a material impact on the consolidated financial statements.
Accounting Standards Not Yet Adopted			
Measurement of Credit Losses on Financial Instruments (ASU 2016-13, 2018-19, 2019-04, 2019-05, 2019-10, 2019-11, 2020-02, 2020-03)	The guidance changes the methodology for measuring credit losses on financial instruments and the timing of when such losses are recorded.	January 1, 2023 Early adoption permitted	The Company is currently evaluating the impact this guidance may have on the consolidated financial statements.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

<u>Accounting Standard Update</u>	<u>Description</u>	<u>Required date of adoption</u>	<u>Effect on consolidated financial statements</u>
Simplifying the Accounting for Income Taxes (ASU 2019-12)	This guidance simplifies the accounting for income taxes as part as part of FASB's overall initiative to reduce complexity in accounting standards. Amendments include the removal of certain exceptions to the general principles of ASC 740, Income taxes.	January 1, 2022 Early adoption permitted	The Company is currently evaluating the impact this guidance may have on the consolidated financial statements.

The Company reviewed all other recently issued accounting standards and concluded that they were not applicable to the consolidated financial statements.

2. Concentration of Credit Risk

Cash and cash equivalents consist of cash deposited at financial institutions that management believes are of high credit quality, and short-term high credit-quality money market funds. The Company has not experienced any losses on such amounts.

Due to the nature of our business, substantially all revenue is earned and trade and finance receivables are due from dealerships and commercial partners. No individual customer accounted for more than 10% of revenue for the years ended December 31, 2020 and 2019. No individual customer accounted for more than 10% of accounts receivable at December 31, 2020 and 2019.

3. Accounts Receivables & Allowance for Doubtful Receivables

The Company maintains an allowance for doubtful receivables that in management's judgement reflects losses inherent in the portfolio. A provision for doubtful receivables is recorded to adjust the level of the allowance as deemed necessary by management.

Changes in the allowance for doubtful trade receivables for the years ended December 31, 2020 and 2019 were as follows (in thousands):

	<u>2020</u>	<u>2019</u>
Beginning balance	\$ 1,352	\$ 753
Provision for bad debt	5,075	2,735
Net write-offs		
Write-offs	(6,966)	(2,761)
Recoveries	2,632	625
Net write-offs	(4,334)	(2,136)
Ending balance	<u>\$ 2,093</u>	<u>\$ 1,352</u>

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Changes in the allowance for doubtful financing receivables for the years ended December 31, 2020 and 2019 were as follows (in thousands):

	2020	2019
Beginning balance	\$ 65	\$ —
Provision for bad debt	107	65
Net write-offs		
Write-offs	(132)	—
Recoveries	—	—
Net write-offs	(132)	—
Ending balance	<u>\$ 40</u>	<u>\$ 65</u>

No recoveries of financing receivables were recorded for the years ended December 31, 2020 and December 31, 2019. The recorded investment in financing receivables on nonaccrual status was not material as of December 31, 2020 and December 31, 2019. The Company held no financing receivables 90 days or more past due and still accruing.

4. Property and Equipment, net

Property and equipment, net consisted of the following at December 31, 2020 and 2019 (in thousands):

	2020	2019
Computer equipment and devices	\$ 3,470	\$ 1,969
Inspection and trade show equipment	2,446	1,060
Furniture and fixtures	813	691
Leasehold improvements	622	712
	<u>7,351</u>	<u>4,432</u>
Less accumulated depreciation	(2,439)	(912)
Property and equipment, net	<u>\$ 4,912</u>	<u>\$ 3,520</u>

Depreciation expense for the year ended December 31, 2020 and 2019 totaled \$1.7 million and \$0.8 million respectively.

5. Internal-Use Software Costs, net

Internal-use software costs, net consisted of the following (in thousands):

	Useful Lives (in years)	December 31, 2020			December 31, 2019		
		Gross Carrying Amount	Accumulated Amortization	Carrying Value	Gross Carrying Amount	Accumulated Amortization	Carrying Value
Computer Software	3 years	\$ 9,738	\$ (1,963)	\$ 7,775	\$ 4,355	\$ (592)	\$ 3,763

Amortization expense for the years ended December 31, 2020 and 2019 totaled \$1.4 million and \$0.4 million, respectively.

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Estimated amortization expense on existing internal-use software costs for the next three years is as follows (in thousands):

Year ended December 31, 2020	
2021	3,135
2022	2,823
2023	1,817
Total	<u>\$ 7,775</u>

6. Guarantees, Commitments and Contingencies

The Company provides certain guarantees to Sellers in the Marketplace in the ordinary course of business, which are accounted for under ASC 460 as a general guarantee.

Vehicle Condition Guarantees—Sellers must attach a vehicle condition report in the Marketplace for every auction; this vehicle condition report is used by Buyers to inform bid decisions. The Company offers guarantees to Sellers in qualifying situations where the Company performed a vehicle inspection and prepared the vehicle condition report. Sellers must pay an additional fee in exchange for this guarantee. The guarantee provides Sellers protection from paying remedies to Buyers related to a Buyer's claim that the vehicle condition report did not accurately portray the condition of the vehicle purchased on the Marketplace. The guarantee provides the Company with the right to retain proceeds from the subsequent liquidation of the vehicle covered under the guarantee. The guarantee is typically provided for 10 days after the successful sale of the vehicle on the Marketplace. The fair value of vehicle condition guarantees issued is estimated based on historical results and other qualitative factors. The vehicle condition guarantee revenue is recognized on the earlier of the guarantee expiration date or the guarantee settlement date. The maximum potential payment is the sale price of the vehicle. The total sale price of vehicles for which there was an outstanding guarantee was \$95.7 million and \$52.2 million at December 31, 2020 and 2019, respectively. The carrying amount of the liability presented in Accrued other liabilities was \$1.0 million and \$0.7 million at December 31, 2020 and 2019, respectively.

The recognized probable loss contingency, in excess of vehicle condition guarantees recognized, presented in Accrued other liabilities was \$1.1 million and \$1.2 million at December 31, 2020 and 2019, respectively.

Other Price Guarantees—The Company provides Sellers with a price guarantee for vehicles to be sold on the Marketplace from time to time. If a vehicle sells below the guaranteed price, the Company is responsible for paying the Seller the difference between the guaranteed price and the final sale price. The term of the guarantee is typically less than one week. No material unsettled price guarantees existed at December 31, 2020 and 2019.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

7. Borrowings

The Company's outstanding long-term debt consisted of the following at December 31, 2020 (in thousands):

	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>December 31,</u> <u>2020</u>
Revolving credit facility	LIBOR + 5%	June 20, 2022	\$ 4,832
Total long-term debt			<u>\$ 4,832</u>

As of December 31, 2020, the Company had outstanding \$4.8 million of indebtedness, consisting entirely of outstanding borrowings under the revolving credit facility. The company had no outstanding debt as of December 31, 2019.

Revolving credit facility

On December 20, 2019, the Company entered into a revolving credit facility with a maximum principal amount of \$50.0 million and a maturity date of June 20, 2022. The revolving credit facility was established to provide debt financing in support of the short-term finance receivable product offered to eligible customers purchasing vehicles through the Marketplace and is fully secured by the underlying finance receivable assets. The amount available for borrowing under the revolving credit facility is based on the size of the finance receivable portfolio. As of December 31, 2020, \$45.2 million of the revolving line of credit was unused.

The revolving feature on the facility ends on June 20, 2021. Amounts owed at that time will amortize and be due on or before June 20, 2022, depending on the collection of the outstanding finance receivables securing the facility. The facility carried an interest rate of 6% as of December 31, 2020.

The Company's ability to borrow under the credit facility is subject to ongoing compliance with a combination of financial covenants and non-financial collateral performance metrics. As of December 31, 2020, the Company was in compliance with all of its covenants and collateral performance metrics.

8. Leases

The Company leases office space under operating leases expiring at various dates through 2023. For the year ended December 31, 2020 the Company incurred operating lease costs of \$0.8 million. For operating leases, the weighted-average remaining term is 2.6 years with a weighted-average discount rate of 8%

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Maturities of lease liabilities as of December 31, 2020 were as follows (in thousands):

2021	\$ 878
2022	895
2023	508
Total lease payments	2,281
Less imputed interest	(213)
Total	<u>\$ 2,068</u>

9. Convertible Preferred Stock

In 2020, the Company issued 4,642,048 shares of its Series E-1 convertible preferred stock ("Series E-1") at a price per share of \$11.85 for proceeds of approximately \$54.9 million, net of issuance costs.

In 2019, the Company issued an additional 467,861 shares of its Series D convertible preferred stock ("Series D") at a price per share of \$4.70 for proceeds of approximately \$2.1 million, net of issuance costs.

Also in 2019, the Company issued 14,466,016 shares of its Series E convertible preferred stock ("Series E") at a price per share of \$11.06 for proceeds of approximately \$159.8 million, net of issuance costs.

The following table summarizes our authorized, issued, and outstanding convertible preferred stock (in thousands, except for share data):

	2020					Conversion Price per Share
	Shares Authorized	Shares Issued and Outstanding	Net Proceeds	Liquidation Preference per Share	Liquidation Value	
Series Seed convertible preferred stock	9,615,250	4,807,624	\$ 1,000	\$ 0.20	\$ 1,000	\$ 0.20
Series Seed 2 convertible preferred stock	6,699,600	3,349,799	998	\$ 0.30	998	\$ 0.30
Series A convertible preferred stock	36,231,850	18,115,923	5,000	\$ 0.28	5,000	\$ 0.28
Series B convertible preferred stock	62,748,330	31,374,164	15,000	\$ 0.48	15,000	\$ 0.48
Series C convertible preferred stock	36,535,641	18,267,813	34,656	\$ 1.90	34,698	\$ 1.90
Series D convertible preferred stock	40,491,675	20,245,834	94,998	\$ 4.70	95,200	\$ 4.70
Series E convertible preferred stock	28,932,045	14,466,016	159,816	\$ 11.06	160,000	\$ 11.06
Series E-1 convertible preferred stock	9,284,110	4,642,048	54,864	\$ 11.85	55,000	\$ 11.85
Total	<u>230,538,501</u>	<u>115,269,221</u>	<u>\$ 366,332</u>		<u>\$ 366,896</u>	

	2019					Conversion Price per Share
	Shares Authorized	Shares Issued and Outstanding	Net Proceeds	Liquidation Preference per Share	Liquidation Value	
Series Seed convertible preferred stock	9,615,250	4,807,624	\$ 1,000	\$ 0.20	\$ 1,000	\$ 0.20
Series Seed 2 convertible preferred stock	6,699,600	3,349,799	998	\$ 0.30	998	\$ 0.30
Series A convertible preferred stock	36,231,850	18,115,923	5,000	\$ 0.28	5,000	\$ 0.28
Series B convertible preferred stock	62,748,330	31,374,164	15,000	\$ 0.48	15,000	\$ 0.48
Series C convertible preferred stock	36,535,641	18,267,813	34,656	\$ 1.90	34,698	\$ 1.90
Series D convertible preferred stock	40,491,675	20,245,834	94,998	\$ 4.70	95,200	\$ 4.70
Series E convertible preferred stock	28,932,045	14,466,016	159,816	\$ 11.06	160,000	\$ 11.06
Total	<u>221,254,391</u>	<u>110,627,173</u>	<u>\$ 311,468</u>		<u>\$ 311,896</u>	

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The various series of convertible preferred stock presented in the tables above are collectively referred to as "preferred stock". The rights, privileges, and preferences of the shares of the convertible preferred stock are summarized as follows:

Dividends—Preferred stockholders are entitled to receive dividends on a pari passu basis when and if declared and on a noncumulative basis at the respective dividend rate. For Series Seed and Series Seed 2 preferred stock the dividend rate is 4% of the applicable original purchase price; for Series A, B, C, D, E, and E-1 preferred stock the dividend rate is 8% of the applicable original purchase price. Any additional dividends or distributions shall be distributed among all holders of common stock and Series A preferred, Series B preferred, Series C preferred, Series D preferred, Series E preferred stock, and Series E-1 preferred stock in proportion to the greatest number of whole shares of common stock that would be held by each such holder if all shares of preferred stock were converted to common stock at the then effective conversion rate.

Voting Rights—Holders of preferred stock shall be entitled to vote on all matters on an as-converted basis.

Board of Directors—Holders of Series A preferred, Series B preferred, and Series C preferred stock as a separate class elect three directors. The lead Series D investor has the right to designate one of the at-large directors. Holders of common stock shall elect the then-acting Chief Executive Officer of the Company. Two independent directors may be elected by a majority of the other directors. The rights of the holders of preferred stock to elect directors expire under certain circumstances. In the case of the rights of the holders of the Series A preferred, Series B preferred and Series C preferred stock to elect three directors, those rights apply only as long as at least 4,528,975 shares of Series A preferred and Series B preferred remain outstanding. In the case of the lead Series D investor, its ability to designate one of the at-large directors terminates upon either (i) it no longer owning at least 25% of the shares of Series D preferred stock purchased by it under the Series D purchase agreement or (ii) a qualified public offering or deemed liquidation event with respect to the Company.

Liquidation and Liquidation Preference—In the event of any liquidation of the Company, either voluntary or involuntary, holders of Series Seed preferred, Series A preferred, Series B preferred, Series C preferred, Series D preferred, Series E preferred stock, and Series E-1 preferred stock ("Senior Preferred Stock") are entitled to be paid on a pari passu basis out of the assets of the Company available for distribution to its stockholders and before any payment shall be made to the holders of Series Seed 2 preferred and common stock an amount equal to the greater of (i) the applicable original issue price plus any declared but unpaid dividends and (ii) the amount per share as would have been payable had all shares of such series of Senior Preferred Stock been converted into common stock immediately prior to liquidation. If the residual assets are insufficient to pay the preferred shareholders the full amount, holders of the Senior Preferred Stock share ratably in proportion to the respective amounts they would otherwise be paid in full ("Primary Liquidation Amount"). After the Primary Liquidation Amount is paid to Senior Preferred Stock holders, Series Seed 2 preferred stock holders are entitled to be paid on a pari passu basis out of the assets of the Company available for distribution to its stockholders and before any payment shall be made to the holders of common stock an amount equal to the greater of (i) the applicable original issue price plus any declared but unpaid dividends and (ii) the amount per share as would have been payable had all shares of Series Seed 2 preferred stock been converted into common stock immediately prior to liquidation. If the residual assets are insufficient to pay the Series Seed 2 preferred stock holders the full amount, they share ratably in proportion to the respective amounts they would otherwise be paid in full. Any residual amount is then paid ratably to holders of common stock.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Optional Conversion—Each share of preferred stock is convertible, at the option of the holder and without additional consideration, into the number of fully paid and nonassessable shares of common stock at the then effective rate at which shares of the respective series of preferred stock may be converted into shares of common stock.

Mandatory Conversion—Upon either (a) the closing of the sale of shares of common stock to the public in a firm-commitment underwritten public offering resulting in at least \$75.0 million of gross proceeds to the Company, or (b) the election of the requisite holders, all outstanding shares of preferred stock shall automatically be converted into shares of common stock at the then effective rate.

Down-Round Protection—If the Company shall issue any additional stock without consideration or for a consideration per share that is less than the conversion price applicable to any series of preferred stock in effect immediately prior to the issuance of such additional stock, the conversion price for such series in effect immediately prior to each such issuance shall forthwith be determined by multiplying such conversion price by a fraction, the numerator of which shall be the number of shares of common stock outstanding immediately prior to such issuance plus the number of shares of common stock that the aggregate consideration received by this corporation for such issuance would purchase at such conversion price; and the denominator of which shall be the number of shares of common stock outstanding immediately prior to such issuance plus the number of shares of such additional stock.

Other—Convertible preferred stock is classified outside of stockholders' deficit because the shares contain certain liquidation features that are not solely within the Company's control. During the years ended December 31, 2020 and 2019, the carrying values of the convertible preferred stock were not adjusted to the deemed liquidation value of such shares as a qualifying liquidation event was not probable. Subsequent adjustments to increase the carrying values to the ultimate redemption values will be made only when it becomes probable that such a liquidation event will occur.

10. Revenue

The following table summarizes the primary components of revenue, this level of disaggregation takes into consideration how the nature, amount, timing, and uncertainty of revenue and cash flows are affected by economic factors (in thousands):

	2020	2019
Auction marketplace revenue	\$ 99,205	\$ 49,216
Transportation, data, and other services revenue	\$ 73,915	\$ 38,534
Marketplace and service revenue	<u>\$ 173,120</u>	<u>\$ 87,750</u>

Revenue presented in the table above, including the subsequent cash flows, could be negatively impacted by fluctuations in the supply or demand of used vehicles, especially in the case of an economic downturn in the United States.

11. Stock-Based Employee Compensation

Effective March 20, 2015, the Company adopted the ACV Auctions Inc. 2015 Long-Term Incentive Plan (the "Plan"). Employees, outside directors, consultants and advisors of the Company are eligible to participate in the Plan. The Plan allows for the grant of incentive or nonqualified common

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

stock options to purchase shares of the Company's common stock and also to issue restricted shares of the common stock. The number of common stock reserved for issuance under the Plan was 13,417,176 as of December 31, 2020 and 2019. Each common stock option or restricted stock agreement stipulates the terms of the grant, including vesting, contractual life, exercise price, and other provisions. Common stock options generally vest and become exercisable over a four-year service period with 25% vesting one year from the date of grant or service-inception date and 1/48 vesting monthly over the remaining three-year period. The options expire ten years after the grant date. Restricted shares generally vest over a four-year period from the date of award. There were 339,129 and 3,542,243 awards available for future grant under the Plan at December 31, 2020 and 2019, respectively.

The following table summarizes the stock option activity for the years ended December 31, 2020 and 2019 (in thousands, except for share data):

	Number of Options	Weighted- Average Exercise Price Per Share	Intrinsic Value	Weighted- Average Remaining Contractual Term (in years)
Outstanding, January 1, 2019	7,706,975	\$ 0.34		
Granted	2,595,900	2.08		
Exercised	(711,541)	0.36		
Forfeited	(1,344,619)	0.88		
Expired	(12,690)	0.48		
Outstanding, December 31, 2019	8,234,026	\$ 0.80	\$ 30,415	8.06
Granted	3,433,287	5.20		
Exercised	(1,253,500)	1.46		
Forfeited	(446,905)	2.48		
Expired	(33,560)	0.84		
Outstanding, December 31, 2020	9,933,348	\$ 2.16	\$ 129,358	7.80
Exercisable, December 31, 2020	4,934,196	\$ 0.62	\$ 71,893	6.66
Expected to Vest, December 31, 2020	4,998,906	\$ 3.70	\$ 57,465	8.93

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The following table summarizes the restricted stock award activity for the years ended December 31, 2020 and 2019 (in thousands, except for share data):

	<u>Number</u>	<u>Weighted-Average Grant-Date Fair Value</u>
Outstanding, January 1, 2019	3,527,778	\$ 0.02
Granted	—	—
Vested	(2,777,778)	0.02
Forfeited	—	—
Outstanding, December 31, 2019	750,000	\$ 0.02
Granted	—	—
Vested	(750,000)	0.02
Forfeited	—	—
Outstanding, December 31, 2020	—	\$ —

The following table summarizes the restricted stock unit activity for the years ended December 31, 2020 and 2019 (in thousands, except for share data):

	<u>Number</u>	<u>Weighted-Average Grant-Date Fair Value</u>
Outstanding, January 1, 2019	—	\$ —
Granted	—	—
Vested	—	—
Forfeited	—	—
Outstanding, December 31, 2019	—	\$ —
Granted	250,000	10.52
Vested	—	—
Forfeited	—	—
Outstanding, December 31, 2020	250,000	\$ 10.52

The following weighted-average assumptions for options issued in 2020 and 2019:

	<u>2020</u>	<u>2019</u>
Expected term (in years)	5.91	5.99
Risk-free interest rate	0.66%	2.22%
Expected volatility	53.84%	62.08%
Expected dividend yield	0.00%	0.00%

The fair value of options vested and the intrinsic value from the exercise of options during 2020 and 2019 are as follows (in thousands):

	<u>2020</u>	<u>2019</u>
Fair value of options vested	\$ 40,746	\$ 10,551
Intrinsic value of options exercised	\$ 17,219	\$ 2,940

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The weighted-average grant date fair value of options issued in 2020 and 2019 was \$5.16 and \$1.22 for each option based on the assumptions outlined above. The cash received from the exercise of options granted under stock-based payment arrangements for the year ended December 31, 2020 and 2019 was \$1.8 million and \$0.3 million, respectively.

The grant date fair value of shares vested from restricted stock awards at December 31, 2020 and 2019 was \$0.4 million. Total stock-based compensation expense is recognized for restricted stock and common stock options granted to employees and non-employees and has been reported in the Consolidated Statements of Operations as follows (in thousands):

	2020	2019
Marketplace and service cost of revenue (excluding depreciation & amortization)	\$ 56	\$ 11
Operations and technology	864	172
Selling, general, and administrative	4,785	815
Stock-based compensation expense	\$ 5,705	\$ 998

In 2020 and 2019, there is approximately \$19.2 million and \$2.8 million, respectively, of compensation expense to the unvested portion of common stock options and restricted stock agreements that will be recorded as compensation expense over a weighted-average period of 1.37 and 1.01, respectively.

Secondary Sales of Common Stock—During the year ended December 31, 2020, certain investors acquired 435,455 shares of outstanding common stock from certain executives at purchase prices in excess of the estimated fair value at the time of the transactions (“secondary stock sales”). As a result, the Company recorded a total of \$2.4 million in stock-based compensation expense for the difference between the price paid by these investors and the estimated fair value on the date of the transaction for the year ended December 31, 2020. This expense was recorded in the Selling, general, and administrative expense line of the Consolidated Statements of Operations. No secondary stock sales resulting in stock-based compensation expense occurred during the year ended December 31, 2019.

12. Employee Benefit Plan

The Company sponsors a 401(k) Profit Sharing Plan covering eligible employees. The Company contributes to this plan on a discretionary basis. No discretionary contributions were made for the years ended December 31, 2020 and 2019.

13. Income Taxes

The Company’s management evaluates its tax positions to determine whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation, based on the technical merits of the tax position. Management has analyzed the Company’s tax positions, and concluded that, as of December 31, 2020 and 2019, there are no uncertain tax positions taken or expected to be taken that would require recognition or disclosure in the consolidated financial statements. The Company recorded no interest expense or penalties in its Consolidated Statements of Operations during the years ended December 31, 2020 and 2019. The Company believes it is no longer subject to examination by federal and state taxing authorities for years prior to December 31, 2017.

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The components of income tax expense for the years ended December 31, 2020 and 2019 are summarized below (in thousands):

	<u>2020</u>	<u>2019</u>
Current expense (benefit):		
Federal	\$ —	\$ —
Foreign	33	6
State	76	21
Total current expense (benefit)	<u>109</u>	<u>27</u>
Deferred expense (benefit):		
Federal	165	—
Foreign	—	—
State	215	—
Total deferred expense (benefit)	<u>380</u>	<u>—</u>
Total income tax expense	<u>\$489</u>	<u>\$ 27</u>

The Company's deferred tax assets (liabilities) consisted of the following at December 31, 2020 and 2019 (in thousands):

	<u>2020</u>	<u>2019</u>
Deferred tax assets:		
Net operating loss carryforwards	\$ 37,224	\$ 28,449
Deferred compensation	771	190
Lease liability	519	497
Accruals and reserves	3,806	2,073
Total gross deferred tax asset	<u>42,320</u>	<u>31,209</u>
Less valuation allowance	<u>(40,114)</u>	<u>(29,643)</u>
Total net deferred tax asset	<u>2,206</u>	<u>1,566</u>
Deferred tax liabilities:		
Excess depreciation and amortization	(1,045)	(1,085)
Right of use asset	(502)	(481)
Indefinite lived intangible	(1,038)	—
Net deferred tax asset	<u>\$ (379)</u>	<u>\$ —</u>

The Company measures deferred tax assets and liabilities using enacted tax rates that apply in the year in which the temporary differences are expected to be recovered or paid. A valuation allowance is provided for deferred tax assets (excluding certain deferred tax liabilities related to indefinite lived intangibles) if management believes that it is more likely than not that these items will either expire before the Company is able to realize their benefit or that future realizability is uncertain. The Company recorded a valuation allowance of \$40.1 million and \$29.6 million at December 31, 2020 and 2019, respectively against its net deferred tax assets due to the uncertainty surrounding the recoverability of such net deferred tax assets, which is an increase of \$10.5 million and \$20.0 million in the total valuation allowance during 2020 and 2019, respectively.

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

A reconciliation of income taxes at the federal statutory rate of 21% to actual income taxes for the years ended December 31, 2020 and 2019 is as follows (in thousands):

	<u>2020</u>	<u>2019</u>
Income tax benefit at federal statutory rate	\$ (8,513)	\$ (16,210)
State income taxes, net of federal income tax benefit	(1,584)	(4,014)
Foreign Rate Differential	7	1
Permanent differences	108	248
Increase in valuation allowance	<u>10,471</u>	<u>20,002</u>
Provision for Income Taxes	<u>\$ 489</u>	<u>\$ 27</u>

At December 31, 2020 the provision for income taxes includes a non-cash tax charge of approximately \$0.4 million relating to changes in the Company's long-term deferred tax liability for indefinite-lived intangibles that are not available to offset certain deferred tax assets in determining changes to the Company's income tax valuation allowance.

At December 31, 2020, the Company has approximately \$147.4 million of federal and \$118.2 million of state net operating loss carryforwards for income tax purposes. These carryforwards may be used to offset future taxable income, with a portion starting to expire in 2035 and the remainder available indefinitely.

Utilization of the net operating loss and credit carryforwards may be subject to an annual limitation due to the ownership limitations provided by the Internal Revenue Code of 1986, as amended (the "Code"), and similar state provisions. Any annual limitation may result in the expiration of net operating losses and credits before utilization.

14. Acquisitions

ASI Services LLC

On April 20, 2020, the Company acquired certain assets from ASI Services LLC ("ASI") for a total purchase consideration of \$11.2 million. The transaction was accounted for as a business combination under the acquisition method. ASI, headquartered in Cincinnati, OH, was a privately held corporation that primarily focused on providing inspection services for off-lease vehicles to financial institutions. The acquisition of ASI enabled the Company to expand its position in the used vehicle industry and enhance its service offerings with dealers and commercial partners.

The acquisition date fair value of the consideration for the above transaction consisted of the following as of April 20, 2020 (in thousands):

Cash consideration	\$ 5,500
Contingent consideration	<u>5,700</u>
Fair value of purchase consideration	<u>\$ 11,200</u>

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The following table summarizes the allocation of the aggregate purchase consideration to the fair values of the assets acquired and liabilities assumed as of April 20, 2020 (in thousands):

Assets Acquired	
Goodwill	\$ 5,750
Other intangible assets, net	5,450
Operating lease right-of-use assets	718
Total assets acquired	<u>\$ 11,918</u>
Liabilities Assumed	
Operating lease liabilities	207
Long-term operating lease liabilities	511
Total liabilities assumed	<u>718</u>
Net assets acquired	<u><u>\$ 11,200</u></u>

As of the April 20, 2020 acquisition date, the fair value of the contingent consideration liability was determined to be \$5.7 million and was based on the achievement of a revenue target for the 12 months ended December 31, 2020.

The remaining consideration liability was determined to be \$2.6 million as of December 31, 2020, is due in 2022, and is recorded in Other long-term liabilities line on the Consolidated Balance Sheet. The revenue target was not met for the year ended December 31, 2020, resulting in the Company recording a \$3.1 million gain recorded in the Selling, general and administrative line of the Consolidated Statement of Operations.

The results of operations of ASI have been included in the Company's consolidated financial results since the date of acquisition. As the Company has determined that the acquisition is not material to its existing operations, certain disclosures, including pro forma financial information, have not been included. The Company incurred acquisition-related legal and consulting fees of \$0.3 million in 2020, which were recorded in the Selling, general, and administrative expenses line of the Consolidated Statement of Operations. Goodwill of \$2.7 million is deductible for income tax purposes and will be amortized on a straight-line basis over 15 years.

TruePartners USA LLC

On December 16, 2019, the Company acquired 100% of the equity of TruePartners USA LLC ("TruePartners") for a purchase price of \$26.5 million. The transaction was accounted for as a business combination under the acquisition method. TruePartners, headquartered in Fort Lauderdale, FL, was a privately held corporation that specializes in performing comprehensive vehicle inspections for dealers and commercial partners. The acquisition of TruePartners enabled the Company to expand its position in the used vehicle industry and enhance its service offerings with dealers and commercial partners.

The acquisition date fair value of the consideration for the above transaction consisted of the following as of December 16, 2019 (in thousands):

Cash consideration	\$ 15,560
Fair value of upfront stock consideration	10,969
Fair value of purchase consideration	<u>\$ 26,529</u>

[Table of Contents](#)

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

The following table summarizes the allocation of the aggregate purchase consideration to the fair values of the assets acquired and liabilities assumed as of December 16, 2019 (in thousands):

Assets Acquired	
Cash and cash equivalents	\$ 887
Trade receivables	931
Other current assets	8
Property & equipment, net	21
Goodwill	16,070
Other intangible assets, net	9,100
Operating lease right-of-use assets	227
Total assets acquired	<u>\$ 27,244</u>
Liabilities Assumed	
Accounts payable	13
Accrued payroll	324
Accrued other liabilities	151
Operating lease liabilities	50
Long-term operating lease liabilities	177
Total liabilities assumed	<u>715</u>
Net assets acquired	<u><u>\$ 26,529</u></u>

The Company has a contingent liability related to an earn-out provision based on TruePartners achieving certain revenue targets for fiscal year 2020 and 2021. This contingent liability is accounted for as compensation expense and was not included in the calculation of purchase consideration. The revenue target was not achieved for fiscal year 2020.

The results of operations of TruePartners have been included in the Company's consolidated financial results since the date of acquisition. As the Company has determined that the acquisition is not material to its existing operations, certain disclosures, including pro forma financial information, have not been included. The Company incurred acquisition-related legal and consulting fees of \$0.4 million in 2019, which were recorded in the Selling, general, and administrative expenses line of the Consolidated Statements of Operations. The total amount of goodwill of \$16.1 million is deductible for income tax purposes and will be amortized on a straight-line basis over 15 years.

15. Goodwill and Acquired Intangibles

Goodwill consisted of the following (in thousands):

	<u>2020</u>
Beginning balance	16,070
Increase for acquisition activity	5,750
Ending balance	<u><u>\$ 21,820</u></u>

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

Acquired intangible assets, net consisted of the following (in thousands):

	Useful Lives (in years)	December 31, 2020			December 31, 2019		
		Gross Carrying Amount	Accumulated Amortization	Carrying Value	Gross Carrying Amount	Accumulated Amortization	Carrying Value
Vendor Relationships	5 years	6,650	(1,387)	5,263	6,650	(57)	6,593
Customer Relationships	10 -15 years	4,950	(273)	4,677	750	(3)	747
Technology	1 - 2 years	2,950	(1,399)	1,551	1,700	(37)	1,663
Total		<u>\$ 14,550</u>	<u>\$ (3,059)</u>	<u>\$ 11,491</u>	<u>\$ 9,100</u>	<u>\$ (97)</u>	<u>\$ 9,003</u>

Estimated amortization expense on acquired intangible assets for the next five years is as follows (in thousands):

Year ended December 31,	
2021	3,080
2022	1,842
2023	1,685
2024	1,628
2025	355
Thereafter	2,901
Total	<u>\$ 11,491</u>

16. Fair Value Measurement

The following table summarizes the Company's fair value hierarchy for its financial assets measured at fair value on a recurring basis (in thousands):

December 31, 2020	Level 1	Level 2	Level 3	Total
Cash equivalents:				
Money market funds	\$135,756	\$ —	\$ —	\$135,756

The Company records guarantees accounted for under ASC 460 at fair value when issued. The fair value of guarantees outstanding as of December 31, 2020 and 2019 was \$1.0 million and \$0.7 million, respectively. The estimated fair value of the guarantees outstanding is determined based on historical guarantee claim costs, adjusted for qualitative factors and a market participant estimated margin. Historical claim costs and qualitative factors are assumptions that are not readily observable in the marketplace, and the related nonrecurring fair value measurement adjustments have been generally classified as Level 3.

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

17. Net Loss Per Share

The numerators and denominators of the basic and diluted net loss per share computations for our common stock are calculated as follows for the year ended December 31, 2020 (in thousands, except share data):

	<u>2020</u>	<u>2019</u>
Numerator:		
Net loss attributable to common stockholders	\$ <u>(41,021)</u>	\$ <u>(77,216)</u>
Denominator:		
Weighted-average number of shares of common stock - Basic and diluted	<u>21,596,379</u>	<u>18,370,224</u>
Net loss per share attributable to common stockholders:		
Basic and diluted	\$ <u>(1.90)</u>	\$ <u>(4.20)</u>

The following table presents the total weighted-average number of potentially dilutive shares that were excluded from the computation of diluted net loss per share attributable to common stockholders because their effect would have been anti-dilutive for the period presented:

	<u>2020</u>	<u>2019</u>
Convertible Preferred Stock Series Seed I, Seed II, A, B, C, D, E and E1	112,153,209	98,437,210
Unvested RSAs and RSUs	174,288	729,010
Stock options not subject to performance conditions	7,532,424	3,765,178

18. Reverse Stock Split

On March 11, 2021, the Board of Directors and the stockholders of the Company approved a 1-for-2 reverse stock split of the Company's outstanding common stock and convertible preferred stock. All common stock, convertible preferred stock, and per share information have been retroactively adjusted to give effect to this reverse stock split for all periods presented. Shares of common stock underlying outstanding stock options, restricted stock units, and restricted stock awards were proportionately decreased and the retrospective per share value and exercise prices, if applicable, were proportionately increased in accordance with the terms of the agreements governing such securities. There were no changes in the par values of the Company's common stock and convertible preferred stock as a result of the reverse stock split.

19. Subsequent Events

Subsequent events have been evaluated through February 26, 2021 which is the date the financial statements were available to be issued.

From January 1, 2021 to February 26, 2021, the Company granted stock options to purchase an aggregate of 633,700 shares of the Company's common stock at an exercise price of \$8.10 per share, and also granted 1,896,233 restricted stock units. The Company expects to recognize aggregate stock-based compensation expense related to these stock option and restricted stock unit grants of approximately \$48.9 million over the vesting period. Vesting periods on individual grants are generally

ACV Auctions Inc.
Notes to Consolidated Financial Statements
December 31, 2020 and 2019

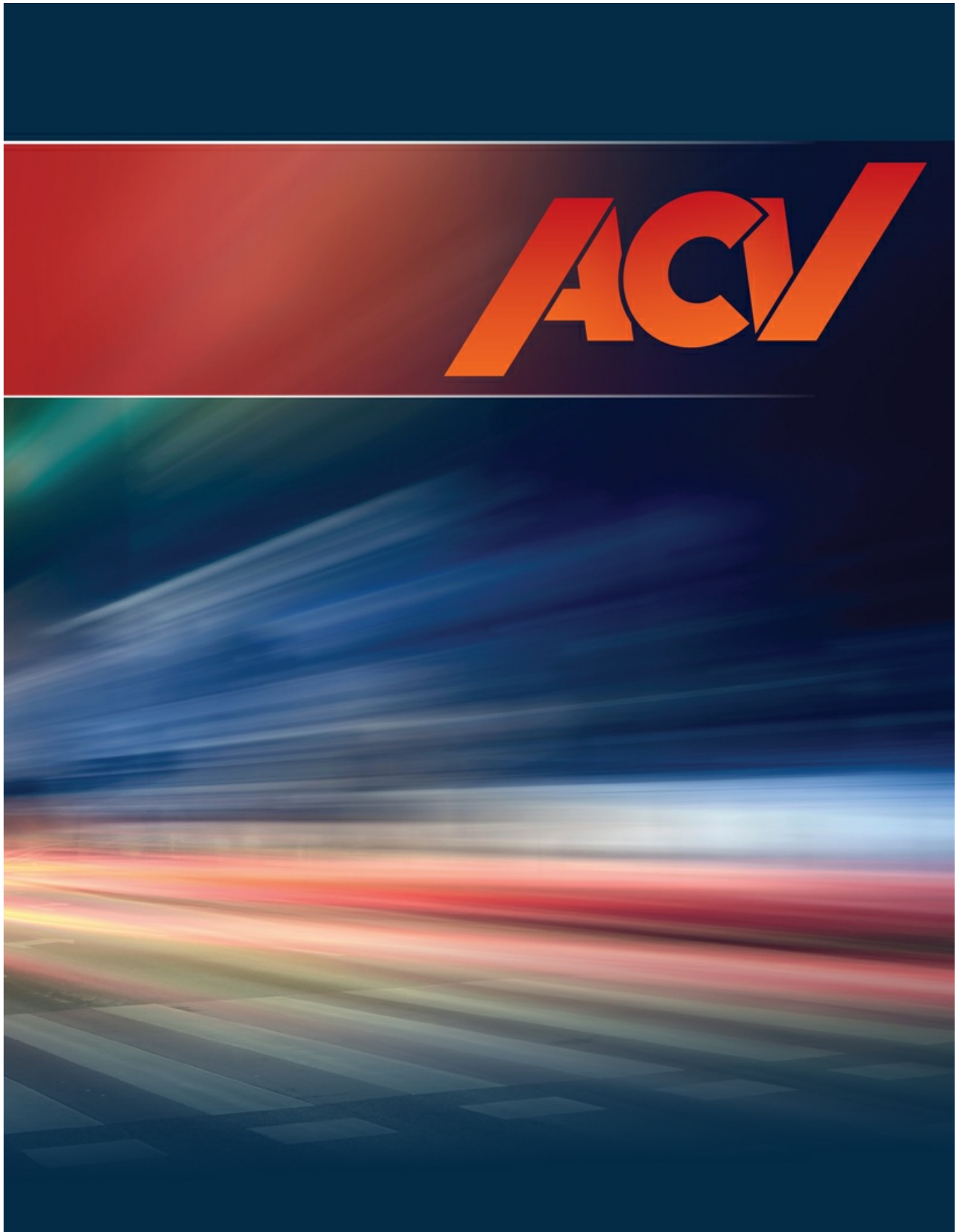
3 or 4 years. The restricted stock units also require that a liquidity event occurs, such as an IPO, in order to begin vesting. The final fair value of these awards will take into account the final pricing of our common stock in the anticipated IPO, and thus the expected aggregate stock-based compensation expense is subject to change.

20. Subsequent Events (Unaudited)

On March 11, 2021, the Board of Directors and the stockholders of the Company approved an amended and restated certificate of incorporation that will implement a dual class common stock structure where all existing shares of common stock will convert to Class B common stock and a new class of common stock, Class A common stock, will be authorized. This amended and restated certificate of incorporation will become effective immediately prior to the closing of this offering. When effective, the authorized share capital of Class A common stock of the Company will be 2,000,000,000 and the authorized share capital for Class B common stock will be 160,000,000. The Class A common stock will be entitled to one vote per share and the Class B common stock will be entitled to ten votes per share. The Class A and Class B common stock will have the same rights and privileges and rank equally, share ratably, and are identical in all respects for all matters except for the voting, conversion, and transfer rights. The Class B common stock converts to Class A common stock at any time at the option of the holder. The accompanying financial statements have not been adjusted to reflect the dual class common stock structure and the changes in the number of authorized shares of common stock.

Also on March 11, 2021, the Board of Directors and the stockholders of the Company approved the 2021 Equity Incentive Plan (the “2021 Plan”). The 2021 Plan will become effective on the date immediately prior to the effective date of the registration statement of which this prospectus forms a part. The Company has reserved 13,600,000 shares of the Company’s Class A common stock to be issued under the 2021 Plan. Any reserved shares not issued or subject to outstanding grants under the Company’s 2015 Plan on the effective date of the 2021 Plan will become available for grant under the 2021 Plan and will be issued as Class A common stock. The number of shares reserved for issuance under the 2021 Plan will increase automatically each year commencing on January 1, 2022 through January 1, 2031 by the number of shares of the Company’s Class A common stock equal to 5% of the total outstanding shares of all of the Company’s classes of common stock as of the immediately preceding December 31, or a lesser amount as determined by the Board of Directors.

Also on March 11, 2021, the Board of Directors and the stockholders of the Company approved the 2021 Employee Stock Purchase Plan (the “2021 ESPP”). The 2021 ESPP will become effective on the effective date of the registration statement of which this prospectus forms a part. The Company has reserved 2,800,000 shares of the Company’s Class A common stock to be issued under the 2021 ESPP. The number of shares reserved for issuance under the 2021 ESPP will increase automatically each year commencing on January 1, 2022 through January 1, 2031 by the number of shares of Class A common stock equal to the lesser of (i) 1% of the total outstanding shares of all of the Company’s classes of common stock as of the immediately preceding December 31, (ii) 4,200,000 shares of Class A common stock, or (iii) a lesser amount as determined by the Board of Directors.



PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Unless otherwise indicated, all references to “ACV,” the “company,” “we,” “our,” “us” or similar terms refer to ACV Auctions Inc. and its subsidiaries.

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all expenses to be paid by us, other than underwriting discounts and commissions, in connection with this offering. All amounts shown are estimates except for the Securities and Exchange Commission, or the SEC, registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the exchange listing fee.

SEC registration fee	\$ 41,529
FINRA filing fee	57,598
Exchange listing fee	150,000
Printing and engraving expenses	550,000
Legal and other advisory fees and expenses	1,700,000
Accounting fees and expenses	1,300,000
Custodian, transfer agent and registrar fees	5,200
Miscellaneous	195,673
Total	\$ 4,000,000

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. Our amended and restated certificate of incorporation that will be in effect upon the completion of this offering permits indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law, and our amended and restated bylaws that will be in effect upon the completion of this offering provide that we will indemnify our directors and executive officers and permit us to indemnify our other officers, employees and other agents, in each case to the maximum extent permitted by the Delaware General Corporation Law.

We have entered into indemnification agreements with our directors and executive officers, whereby we have agreed to indemnify our directors and executive officers to the fullest extent permitted by law, including indemnification against expenses and liabilities incurred in legal proceedings to which the director or executive officer was, or is threatened to be made, a party by reason of the fact that such director or executive officer is or was a director, executive officer, employee or agent of ACV Auctions Inc., provided that such director or executive officer acted in good faith and in a manner that the director or executive officer reasonably believed to be in, or not opposed to, the best interest of ACV Auctions Inc. At present, there is no pending litigation or proceeding involving a director or executive officer of ACV Auctions Inc. regarding which indemnification is sought, nor is the registrant aware of any threatened litigation that may result in claims for indemnification.

Table of Contents

We maintain insurance policies that indemnify our directors and officers against various liabilities arising under the Securities Act and the Exchange Act, which might be incurred by any director or officer in his capacity as such.

The underwriters are obligated, under certain circumstances, under the underwriting agreement to be filed as Exhibit 1.1 hereto, to indemnify us and our officers and directors against liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

The following sets forth information regarding all unregistered securities sold since January 1, 2018:

- (1) We have granted under our 2015 Plan options to purchase an aggregate of 10,164,772 shares of our Class B common stock to a total of 1,882 employees, consultants and directors, having exercise prices ranging from \$0.66 to \$8.10 per share. 3,051,365 of the options granted under our 2015 Plan have been exercised at a weighted-average exercise price of \$0.86 per share.
- (2) We have granted under our 2015 Plan restricted stock units representing an aggregate of 2,146,233 shares of our Class B common stock to eight employees and directors.
- (3) In January 2018 and February 2018, we issued and sold an aggregate of 18,267,813 shares of our Series C convertible preferred stock to 29 accredited investors at a price per share of \$1.8994, for an aggregate purchase price of \$34.7 million.
- (4) In December 2018, we issued and sold an aggregate of 20,245,834 shares of our Series D convertible preferred stock to 17 accredited investors at a price per share of \$4.7022, for an aggregate purchase price of \$95.2 million.
- (5) In October 2019 and December 2019, we issued and sold an aggregate of 14,466,016 shares of our Series E convertible preferred stock to 25 accredited investors at a price per share of \$11.0604, for an aggregate purchase price of \$160.0 million.
- (6) In September 2020, we issued and sold an aggregate of 4,642,048 shares of our Series E-1 convertible preferred stock to 33 accredited investors at a price per share of \$11.8482, for an aggregate purchase price of \$55.0 million.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. Unless otherwise specified above, we believe these transactions were exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act (and Regulation D or Regulation S promulgated thereunder) or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or under benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed on the share certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us. The sales of these securities were made without any general solicitation or advertising.

Table of Contents

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

The following exhibits are included herein or incorporated herein by reference:

Exhibit Number	Description
1.1	Form of Underwriting Agreement.
3.1	Ninth Amended and Restated Certificate of Incorporation of Registrant, as amended, as currently in effect.
3.2	Form of Amended and Restated Certificate of Incorporation of Registrant, to be in effect upon the completion of the offering.
3.3#	Amended and Restated Bylaws of Registrant, as currently in effect.
3.4	Form of Amended and Restated Bylaws of Registrant, to be in effect upon the completion of the offering.
4.1	Form of Class A Common Stock Certificate.
5.1	Opinion of Cooley LLP.
10.1#	Fifth Amended and Restated Investors' Rights Agreement, dated as of September 2, 2020.
10.2+	2015 Long-Term Incentive Plan, as amended March 11, 2021, and forms of agreements thereunder.
10.3+	2021 Equity Incentive Plan and forms of agreements thereunder.
10.4+	2021 Employee Stock Purchase Plan.
10.5+	Form of Indemnity Agreement entered into by and between Registrant and each director and executive officer.
10.6+#	Amended and Restated Employment Agreement, dated August 12, 2016, by and between the Registrant and George Chamoun.
10.7#	Lease Agreement, dated as of November 30, 2017, by and between the Registrant and 640 Ellicott Street, LLC.
10.8#	Lease Agreement, dated as of September 26, 2019, by and between the Registrant and Innovation Center Annex, LLC.
10.9+	Form of Confirmatory Offer of Employment.
10.10+	Performance Bonus Plan.
10.11+	Non-Employee Director Compensation Policy.
10.12+	Severance and Change in Control Plan.
21.1#	List of Subsidiaries of Registrant.
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm.
23.2	Consent of Cooley LLP (included in Exhibit 5.1).
24.1#	Power of Attorney (included on signature page to this registration statement).

Previously filed.

+ Indicates management contract or compensatory plan.

(b) Financial Statement Schedules.

All financial statement schedules are omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or the notes thereto.

[Table of Contents](#)

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant under the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance on Rule 430A and contained in a form of prospectus filed by the registrant under Rule 424(b)(1) or (4) or 497(h) under the Securities Act will be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Buffalo, New York, on March 15, 2021.

ACV AUCTIONS INC.

By: /s/ George Chamoun
Name: George Chamoun
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ George Chamoun</u> George Chamoun	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 15, 2021
<u>/s/ William Zerella</u> William Zerella	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 15, 2021
<u>*</u> Kirsten Castillo	Director	March 15, 2021
<u>*</u> Robert P. Goodman	Director	March 15, 2021
<u>*</u> Brian Hirsch	Director	March 15, 2021
<u>*</u> René F. Jones	Director	March 15, 2021
<u>*</u> Eileen A. Kamerick	Director	March 15, 2021
<u>*</u> Brian Radecki	Director	March 15, 2021

*By: /s/ George Chamoun
George Chamoun
Attorney-in-Fact

ACV Auctions Inc.

Class A Common Stock, Par Value \$0.001 Per Share

Underwriting Agreement

[●], 2021

Goldman Sachs & Co. LLC,
J.P. Morgan Securities LLC and
Citigroup Global Markets Inc.

As representatives (the "Representatives") of the several Underwriters
named in Schedule I hereto,

c/o Goldman Sachs & Co. LLC,
200 West Street,
New York, New York 10282

c/o J.P. Morgan Securities LLC
383 Madison Avenue
New York, New York 10179

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

ACV Auctions Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated in this agreement (this "Agreement"), to issue and sell to the Underwriters named in Schedule I hereto (the "Underwriters") an aggregate of [●] shares of the Company's Class A common stock, par value \$0.001 per share ("Class A Common Stock") and, at the election of the Underwriters, up to [●] additional shares of Class A Common Stock, and the stockholders of the Company named in Schedule II hereto (the "Selling Stockholders") propose, subject to the terms and conditions stated in this Agreement, to sell to the Underwriters, at the election of the Underwriters, up to [●] shares of Class A Common Stock. The aggregate of [●] shares of Class A Common Stock to be sold by the Company is herein called the "Firm Shares" and the aggregate of [●] additional shares of Class A Common Stock to be sold by the Selling Stockholders is herein called the "Optional Shares". The Firm Shares and the Optional Shares that the Underwriters elect to purchase pursuant to Section 2 hereof are herein collectively called the "Shares." The shares of the Company's Class B common stock, par value \$0.001 per share, are hereinafter referred to as the "Class B Common Stock." The Class A common stock and Class B Common Stock are hereinafter referred to as the "Stock."

The Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, (an affiliate of BofA Securities, Inc., a participating Underwriter, hereafter referred to as "Merrill Lynch") agree that up to 5% of the Firm Shares to be purchased by Underwriters (the "Reserved Securities") shall be reserved for sale by Merrill Lynch to certain persons designated by the Company (the "Participants"), as part of the distribution of the Shares by the Underwriters, subject to the terms of this Agreement, the applicable rules, regulations and interpretations of FINRA and all other applicable laws, rules and regulations. The Company has solely determined, without any direct or indirect participation by the underwriters or Merrill Lynch, the Invitees who will purchase Reserved Securities (including the amount to be purchased by such persons) sold by Merrill Lynch. To the extent that such Reserved Securities are not orally confirmed for purchase by Invitees by 11:59 PM. (New York City time) on the date of this Agreement, such Reserved Securities may be offered to the public as part of the public offering contemplated hereby.

1. (a) The Company represents and warrants to, and agrees with, each of the Underwriters that:

(i) A registration statement on Form S-1 (File No. 333-253617) (the "Initial Registration Statement") in respect of the Shares has been filed with the Securities and Exchange Commission (the "Commission"); the Initial Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered to the Representatives, have been declared effective by the Commission in such form; other than a registration statement, if any, increasing the size of the offering (a "Rule 462(b) Registration Statement"), filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Act"), which became effective upon filing, no other document with respect to the Initial Registration Statement has been filed with the Commission; and no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or, to the Company's knowledge, threatened by the Commission (any preliminary prospectus included in the Initial Registration Statement or filed with the Commission pursuant to Rule 424(a) under the Act is hereinafter called a "Preliminary Prospectus"; the various parts of the Initial Registration Statement and the Rule 462(b) Registration Statement, if any, including all exhibits thereto and including the information contained in the form of final prospectus filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof and deemed by virtue of Rule 430A under the Act to be part of the Initial Registration Statement at the time it was declared effective, each as amended at the time such part of the Initial Registration Statement became effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, are hereinafter collectively called the "Registration Statement"; the Preliminary Prospectus relating to the Shares that was included in the Registration Statement immediately prior to the Applicable Time (as defined in Section 1(a)(iii) hereof) is hereinafter called the "Pricing Prospectus"; such final prospectus, in the form first filed pursuant to Rule 424(b) under the Act, is hereinafter called the "Prospectus"; any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Act or Rule 163B under the Act is hereinafter called a "Testing-the-Waters Communication"; and any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Act is hereinafter called a "Written Testing-the-Waters Communication"; and any "issuer free writing prospectus" as defined in Rule 433 under the Act relating to the Shares is hereinafter called an "Issuer Free Writing Prospectus");

(ii) (A) No order preventing or suspending the use of any Preliminary Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and (B) each Preliminary Prospectus, at the time of filing thereof, (x) conformed in all material respects to the requirements of the Act and the rules and regulations of the Commission thereunder, and (y) did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information (as defined in Section 9(b) of this Agreement).

(iii) For the purposes of this Agreement, the "Applicable Time" is [●]:[●] m (Eastern time) on the date of this Agreement; the Pricing Prospectus, as supplemented by the information listed on Schedule II(c) hereto, taken together (collectively, the "Pricing Disclosure Package"), as of the Applicable Time, did not, and as of each Time of Delivery (as defined in Section 4(a) of this Agreement) will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Issuer Free Writing Prospectus and each Written Testing-the-Waters Communication does not conflict with the information contained in the Registration Statement, the Pricing Prospectus or the Prospectus, and each Issuer Free Writing Prospectus and each Written Testing-the-Waters Communication, as supplemented by and taken together with the Pricing Disclosure Package, as of the Applicable Time, did not, and as of each Time of Delivery, will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to statements or omissions made in reliance upon and in conformity with the Underwriter Information;

(iv) No documents were filed with the Commission since the Commission's close of business on the business day immediately prior to the date of this Agreement and prior to the execution of this Agreement, except as set forth on Schedule III(b) hereto;

(v) The Registration Statement (i) conforms, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will conform, in all material respects to the requirements of the Act and the rules and regulations of the Commission thereunder and (ii) do not and will not, as of the applicable effective date as to each part of the Registration Statement, as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, and as of each Time of Delivery, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information; and provided, further, that clause (ii) of this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information;

(vi) The Company and its subsidiaries do not own any real property. The Company and its subsidiaries have good and marketable title to all personal property owned by them (other than with respect to Intellectual Property, title to which is addressed exclusively in subsection (xxii)), in each case free and clear of all liens, encumbrances and defects except such as are

described in the Pricing Prospectus or such as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them, to the Company's knowledge, under valid, subsisting and enforceable leases (subject to the effects of (i) bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights or remedies of creditors generally; (ii) the application of general principles of equity (including without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether enforcement is considered in proceedings at law or in equity); and (iii) applicable law and public policy with respect to rights to indemnity and contribution) with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries;

(vii) Each of the Company and each of its "significant subsidiaries" (as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Act) has been (i) duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with power and authority (corporate and other) to own and/or lease its properties and conduct its business as described in the Pricing Prospectus, and (ii) duly qualified as a foreign corporation or other business organization for the transaction of business and is in good standing (where such concept exists) under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except, in the case of this clause (ii), where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and each significant subsidiary of the Company has been listed in the Registration Statement;

(viii) The Company has an authorized capitalization as set forth in the Pricing Prospectus and all of the issued shares of capital stock of the Company, including the Shares to be sold by the Selling Stockholders, have been duly and validly authorized and issued and are fully paid and non-assessable and conform in all material respects to the description thereof contained in the Pricing Disclosure Package and the Prospectus; and all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and (except, in the case of any foreign subsidiary, for directors' qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens or encumbrances described in the Pricing Prospectus and the Prospectus;

(ix) The Shares to be issued and sold by the Company to the Underwriters hereunder have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued and fully paid and non-assessable and will conform in all material respects to the description thereof contained in the Pricing Disclosure Package and the Prospectus; and the issuance of the Shares is not subject to any preemptive or similar rights that have not been complied with or waived;

(x) The issue and sale of the Shares to be sold by the Company and the compliance by the Company with this Agreement and the consummation of the transactions contemplated in this Agreement and the Pricing Prospectus will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, (A) any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or

any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (B) the certificate of incorporation or by-laws (or other applicable organizational document) of the Company or any of its subsidiaries, or (C) any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except, in the case of clauses (A) and (C) for such defaults, breaches, or violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue of the Shares to be sold by the Company and the sale of the Shares or the consummation by the Company of the transactions contemplated by this Agreement, except such as have been obtained under the Act, the approval by the Financial Industry Regulatory Authority ("FINRA") of the underwriting terms and arrangements and such consents, approvals, authorizations, orders, registrations or qualifications as may have been obtained or as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters;

(xi) Neither the Company nor any of its subsidiaries is (i) in violation of its certificate of incorporation or by-laws (or other applicable organization document), (ii) in violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, except, in the case of the foregoing clauses (ii) and (iii), for such violations or defaults as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(xii) Neither the Company nor any of its subsidiaries has, since the date of the latest audited financial statements included in the Pricing Prospectus, (i) sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree or (ii) entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole, in each case otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Pricing Prospectus, there has not been (x) any change in the capital stock (other than as a result of (i) the exercise, if any, of stock options or settlement of restricted stock units (including any "net" or "cashless" exercises or settlements), if any, or the award of stock options, restricted stock units, restricted stock or other awards, in each case in the ordinary course of business pursuant to the Company's equity plans that are described in the Pricing Prospectus and the Prospectus, (ii) the repurchase of shares of capital stock upon termination of the holder's employment or service with the company pursuant to agreements providing for an option to repurchase or a right of first refusal on behalf of the Company, or (iii) the issuance, if any, of stock upon exercise or conversion of Company securities as described in the Pricing Prospectus and the Prospectus) or increase in long-term debt of the Company or any of its subsidiaries or (y) any Material Adverse Effect (as defined below); as used in this Agreement, "Material Adverse Effect" shall mean any material adverse change or effect, or any development

involving a prospective material adverse change or effect, in or affecting (i) the business, properties, general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole, except as set forth or contemplated in the Pricing Prospectus, or (ii) the ability of the Company to perform its obligations under this Agreement, including the issuance and sale of the Shares, or to consummate the transactions contemplated in the Pricing Prospectus and the Prospectus;

(xiii) The statements set forth in the Pricing Prospectus and the Prospectus under the caption "Description of Capital Stock," insofar as they purport to constitute a summary of the terms of the Stock and under the caption "Underwriting", insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair in all material respects; the statements in the Pricing Prospectus and the Prospectus under the heading "Material U.S. Federal Income Tax Consequences to Non-U.S. Holders of Common Stock," insofar as such statements purport to summarize matters of U.S. federal income tax laws, fairly present, to the extent required by the Act and the rules and regulations thereunder such U.S. federal income tax laws, in all material respects;

(xiv) Other than as set forth in the Pricing Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries or, to the Company's knowledge, any officer or director of the Company is a party or of which any property or assets of the Company or any of its subsidiaries or, to the Company's knowledge, any officer or director of the Company is the subject which, if determined adversely to the Company or any of its subsidiaries (or such officer or director), would individually or in the aggregate reasonably be expected to have a Material Adverse Effect; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others;

(xv) The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof, will not be an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act");

(xvi) At the time of filing the Initial Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Shares, and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Act;

(xvii) Ernst & Young LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder;

(xviii) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that (i) complies with the requirements of the Exchange Act applicable to the Company (ii) has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles ("GAAP") and (iii) is designed

to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets, (C) access to assets is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences and the Company's internal control over financial report is effective (it being understood that this subsection shall not require the Company to comply with Section 404 of the Sarbanes Oxley Act of 2002, as amended, and the rules and regulations promulgated in connection therewith (the "Sarbanes Oxley Act") as of an earlier date than it would otherwise be required to do so under applicable law). Except as disclosed in the Pricing Prospectus and the Prospectus, the Company is not aware of any material weaknesses in its internal control over financial reporting;

(xix) Since the date of the latest audited financial statements included in the Pricing Prospectus, there has been no change in the Company's internal control over financial reporting that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company's internal control over financial reporting;

(xx) To the extent required by applicable law, the Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that are designed to comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures are effective;

(xxi) This Agreement has been duly authorized, executed and delivered by the Company;

(xxii) None of the Company or any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries has (i) made, offered, promised or authorized any unlawful contribution, gift, entertainment or other unlawful expense (or taken any act in furtherance thereof); (ii) made, offered, promised or authorized any direct or indirect unlawful payment; or (iii) violated or is in violation of any applicable provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law;

(xxiii) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with the requirements of applicable anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the applicable anti-money laundering laws of the various jurisdictions in which the Company and its subsidiaries conduct business (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

(xxiv) None of the Company or any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently the subject or the target of any applicable sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person,” the European Union, Her Majesty’s Treasury, the United Nations Security Council, or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or any of its subsidiaries located, organized, or resident in a country or territory that is the subject or target of Sanctions, and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions;

(xxv) The financial statements included in the Registration Statement, the Pricing Prospectus and the Prospectus, together with the related schedules and notes, present fairly in all material respects the financial position of the Company and its subsidiaries at the dates indicated therein, and the statement of operations, stockholders’ equity and cash flows of the Company and its subsidiaries for the periods specified; said financial statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects and in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the Pricing Prospectus and the Prospectus present fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included in the Registration Statement, the Pricing Prospectus or the Prospectus under the Act or the rules and regulations promulgated thereunder. All disclosures contained in the Registration Statement, the Pricing Prospectus and the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Act, to the extent applicable;

(xxvi) From the time of initial confidential submission of a registration statement relating to the Shares with the Commission through the date hereof, the Company has been and is an “emerging growth company” as defined in Section 2(a)(19) of the Act (an “Emerging Growth Company”);

(xxvii) The Company has specifically directed in writing the allocation of Shares to each Participant in the Reserved Share Program, and neither the Merrill Lynch nor any other Underwriter has had any involvement or influence, directly or indirectly, in such allocation decision;

(xxviii) The Company is in compliance with the terms of, all adequate certificates, authorizations, franchises, licenses and permits (“Licenses”) necessary to the conduct of the

business now conducted or proposed in the Pricing Disclosure Package to be conducted by them, except where failure of such possession or compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and have not received any notice of proceedings relating to the revocation or modification of any Licenses that would individually or in the aggregate be reasonably expected to have a Material Adverse Effect;

(xxix) No labor dispute with the employees of the Company exists or, to the knowledge of the Company, is imminent that would reasonably be expected have a Material Adverse Effect;

(xxx) Any third-party statistical and market-related data included in the Pricing Prospectus, the Prospectus or any Issuer Free Writing Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects;

(xxxı) Except as disclosed in the Pricing Disclosure Package, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against the Company or any of its respective properties that would individually or in the aggregate be reasonably expected to have a Material Adverse Effect, or would reasonably be expected to materially and adversely affect the ability of the Company to perform its obligations under this Agreement; and, no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are, to the Company's knowledge, threatened or contemplated.

(xxxıı) The Company is insured by insurers with appropriately rated claims paying abilities against such losses and risks and in such amounts as are prudent in the Company's reasonable judgment and customary for the businesses in which they are engaged, except where the failure to maintain such insurance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; all policies of insurance insuring the Company or its businesses, assets, employees, officers and directors are in full force and effect, except as such would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; the Company is in compliance with the terms of such policies and instruments, except where the failure to comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(xxxııı) Except as disclosed in the Registration Statement, Pricing Disclosure Package or Prospectus, and except as would not reasonably be expected to have a Material Adverse Effect (i) the Company and its subsidiaries own or possess or, to the Company's knowledge, can obtain on reasonable terms, adequate rights to use all patents, trademarks, service marks, trade names, domain names, copyrights, software, know-how (including trade secrets and other proprietary or confidential information, including systems or procedures) and other technology and intellectual property rights, including registrations and applications for registration thereof (collectively, "Intellectual Property") used in or necessary to the conduct of their businesses as described in the Registration Statement, the Prospectus and the Pricing Disclosure Package (collectively, "Company Intellectual Property"); (ii) neither the Company nor any of its subsidiaries has received any written notice of any infringement of, or conflict with asserted rights of others with respect to, any Intellectual Property that would reasonably be expected to render any material Company Intellectual Property invalid, unenforceable or inadequate to protect the interest of the Company or any of its subsidiaries therein if the subject of an unfavorable decision, ruling or finding; (iii) to the Company's knowledge, the Company's and its

subsidiaries' conduct of their business does not infringe, misappropriate or otherwise violate, and has not infringed, misappropriated, or otherwise violated, Intellectual Property rights of a third party; and (iv) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by any third party (A) challenging the ownership, validity, enforceability or scope of any Company Intellectual Property, or (B) alleging that the Company or any of its subsidiaries has infringed, misappropriated or otherwise violated asserted rights of any others with respect to any Intellectual Property or any of the foregoing;

(xxxiv) Except as described in the Pricing Disclosure Package and except as would not have a Material Adverse Effect, to the Company's knowledge, (i) there has been no security breach or incident, unauthorized access or disclosure, or other compromise of the Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, technology, data and databases, including the data and information of their respective customers and employees and any sensitive third-party data collected, maintained, processed or stored by or on behalf of the Company and its subsidiaries (collectively, "IT Systems and Data"); (ii) the IT Systems and Data are adequate for, and operate and perform as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted; (iii) the Company and its subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and technical safeguards designed to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and Data, reasonably consistent with industry standards; and (iv) the Company and its subsidiaries are presently in material compliance with all applicable laws and statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of any personally identifiable information included in their IT Systems and Data;

(xxxv) The Company has not offered, or caused the Merrill Lynch or its affiliates to offer, Shares to any person pursuant to the Reserved Share Program (i) for any consideration other than the cash payment of the initial public offering price per share set forth in Schedule II hereof or (ii) with the specific intent to unlawfully influence (x) a customer or supplier of the Company to alter the customer or supplier's terms, level or type of business with the Company or (y) a trade journalist or publication to write or publish favorable information about the Company or its products; and

(xxxvi) The holders of shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock that have not delivered executed lock-up agreements (as described in Section 8(j)) to the Representatives as of the date hereof are bound by market standoff provisions with the Company pursuant to which such holders have agreed not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of such holder's securities during the Company Lock-Up Period (as defined below) without the consent of the Company ("Market Standoff Provisions") that are enforceable by the Company. Each such Market Standoff Provision is in full force and effect as of the date hereof and shall remain in full force and effect during the Restricted Period, except that this provision shall not prevent the Company from effecting such a waiver or amendment to permit a transfer of securities which would be permissible if such securities were subject to the terms of the lock-up agreement in the form attached as Annex II hereto.

(b) Each of the Selling Stockholders, severally and not jointly, represents and warrants to, and agrees with, each of the Underwriters and the Company that:

(i) All consents, approvals, authorizations and orders necessary for the execution and delivery by such Selling Stockholder of this Agreement and the Power of Attorney and the Custody Agreement referred to below, and for the sale and delivery of the Shares to be sold by such Selling Stockholder hereunder, have been obtained except for the registration under the Act of the Shares and such consents, approvals, authorizations and orders as may be required under state securities or Blue Sky laws, the rules and regulations of FINRA or the approval for listing on the Exchange or such consents, approvals, authorizations and orders that, if not obtained, would not individually or in the aggregate, affect the validity of the Shares to be sold by such Selling Stockholder or reasonably be expected to materially impair the ability of such Selling Stockholder to consummate the transactions contemplated by this Agreement; and such Selling Stockholder has full right, power and authority to enter into this Agreement, the Power-of-Attorney and the Custody Agreement and to sell, assign, transfer and deliver the Shares to be sold by such Selling Stockholder hereunder;

(ii) The sale of the Shares to be sold by such Selling Stockholder hereunder and the compliance by such Selling Stockholder with this Agreement, the Power of Attorney and the Custody Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach or violation of (A) any of the terms or provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which such Selling Stockholder is a party or by which such Selling Stockholder is bound or to which any of the property or assets of such Selling Stockholder is subject, (B) the provisions of the Certificate of Incorporation or By-laws of such Selling Stockholder if such Selling Stockholder is a corporation, the Partnership Agreement of such Selling Stockholder if such Selling Stockholder is a partnership (or similar applicable organizational document) or (C) any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over such Selling Stockholder or any of its subsidiaries or any property or assets of such Selling Stockholder, except, in the case of clauses (A) or (C), as would not, individually or in the aggregate, materially impair the ability of such Selling Stockholder to consummate the transactions contemplated by this Agreement, the Power of Attorney and the Custody Agreement (a "Seller Material Adverse Effect");

(iii) Such Selling Stockholder has, and immediately prior to the applicable Time of Delivery (as defined in Section 4 hereof) such Selling Stockholder will have, good and valid title to, or a valid "security entitlement" within the meaning of Section 8-501 of the New York Uniform Commercial Code in respect of, the Shares to be sold by such Selling Stockholder hereunder at such Time of Delivery, free and clear of all liens, encumbrances, equities or claims other than those set forth in the Custody Agreement; and, upon delivery of such Shares and payment therefor pursuant hereto, good and valid title to such Shares, free and clear of all liens, encumbrances, equities or claims, will pass to the several Underwriters; provided, that for purposes of this representation, the Selling Stockholders may assume that when delivery of such Shares, payment therefor pursuant hereto and crediting of such Shares on the books of DTC to the securities accounts of the Underwriters occurs, (x) such Shares will have been registered in the name of Cede or another nominee designated by DTC, in each case on the Company's share registry in accordance with its charter, bylaws or other organizational document and applicable law, (y) DTC will be registered as a "clearing corporation" within the meaning of Section 8-102 of the UCC, and (z) appropriate entries to the accounts of the several Underwriters on the records of DTC will have been made pursuant to the UCC;

(iv) On or prior to the date of the Pricing Prospectus, such Selling Stockholder has executed and delivered to the Underwriters an agreement substantially in the form of Annex II hereto;

(v) Such Selling Stockholder has not taken and will not take, directly or indirectly, any action that is designed to or that has constituted or might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares, it being agreed that such representation does not include any action taken by the Company or any Underwriter with respect to the Selling Stockholders' Shares;

(vi) To the extent that any statements or omissions made in the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement thereto are made in reliance upon and in conformity with written information furnished to the Company by such Selling Stockholder pursuant to Items 7 and 11(m) of Form S-1 expressly for use therein, such Registration Statement and Preliminary Prospectus did, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will, when they become effective or are filed with the Commission, as the case may be, not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, it being understood and agreed that the only information furnished by such Selling Stockholder to the Company consists of (i) the legal name of such Selling Stockholder, (ii) the number of Shares beneficially owned by such Selling Stockholder before and after the offering and (iii) the address and other information with respect to such Selling Stockholder (excluding percentages) which appears in the Registration Statement, the Pricing Disclosure Package and the Pricing Prospectus in the table (and corresponding footnote) under the caption "Principal and Selling Stockholders" (with respect to such Selling Stockholder, the "Selling Stockholder Information");

(vii) In order to document the Underwriters' compliance with the reporting and withholding provisions of the Tax Equity and Fiscal Responsibility Act of 1982 with respect to the transactions herein contemplated, such Selling Stockholder will deliver to the Representatives prior to or at the First Time of Delivery a properly completed and executed United States Treasury Department Form W-9 (or other applicable form or statement specified by Treasury Department regulations in lieu thereof);

(viii) Certificates in negotiable form or book-entry securities entitlements representing all of the Shares to be sold by such Selling Stockholder hereunder have been placed in custody under a Custody Agreement, in the form heretofore furnished to the Representatives (the "Custody Agreement"), duly executed and delivered by such Selling Stockholder to [●], as custodian (the "Custodian"), and such Selling Stockholder has duly executed and delivered a Power of Attorney, in the form heretofore furnished to the Representatives (the "Power of Attorney"), appointing the persons indicated in Schedule II hereto, and each of them, as such Selling Stockholder's attorneys-in-fact (the "Attorneys-in-Fact") with authority to execute and deliver this Agreement on behalf of such Selling Stockholder, to determine the purchase price to be paid by the Underwriters to the Selling Stockholders as provided in Section 2 hereof, to

authorize the delivery of the Shares to be sold by such Selling Stockholder hereunder and otherwise to act on behalf of such Selling Stockholder in connection with the transactions contemplated by this Agreement and the Custody Agreement;

(ix) The Shares held in custody for such Selling Stockholder under the Custody Agreement are subject to the interests of the Underwriters hereunder; the arrangements made by such Selling Stockholder for such custody, and the appointment by such Selling Stockholder of the Attorneys-in-Fact by the Power of Attorney, are to that extent irrevocable; the obligations of the Selling Stockholders hereunder shall not be terminated by operation of law, whether by the death or incapacity of any individual Selling Stockholder or, in the case of an estate or trust, by the death or incapacity of any executor or trustee or the termination of such estate or trust, or in the case of a partnership or corporation, by the dissolution of such partnership, limited liability company or corporation, or by the occurrence of any other event; if any individual Selling Stockholder or any such executor or trustee should die or become incapacitated, or if any such estate or trust should be terminated, or if any such partnership, limited liability company or corporation should be dissolved, or if any other such event should occur, before the delivery of the Shares to be sold by such Selling Stockholder hereunder, certificates representing the Shares to be sold by such Selling Stockholder hereunder shall be delivered by or on behalf of the Selling Stockholders in accordance with the terms and conditions of this Agreement and of the Custody Agreements; and actions taken by the Attorneys-in-Fact pursuant to the Powers of Attorney shall be as valid as if such death, incapacity, termination, dissolution or other event had not occurred, regardless of whether or not the Custodian, the Attorneys-in-Fact, or any of them, shall have received notice of such death, incapacity, termination, dissolution or other event;

(x) Such Selling Stockholder will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions, or in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions, or (ii) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any Money Laundering Laws or any applicable anti-bribery or anti-corruption laws; and

(xi) Such Selling Stockholder is not prompted by any material non-public information concerning the Company or any of its subsidiaries that is not disclosed in the Pricing Prospectus to sell its Shares pursuant to this Agreement.

2. Subject to the terms and conditions herein set forth, (a) the Company agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price per share of \$[●] the number of Firm Shares as set forth opposite their respective names in Schedule I hereto and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Optional Shares as provided below, the Selling Stockholders, as and to the extent indicated in Schedule II hereto agree, severally and not jointly, to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from each of the Selling Stockholders, at the purchase price per share set forth in clause (a) of this Section 2

(provided that the purchase price per Optional Share shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Optional Shares), that portion of the number of Optional Shares as to which such election shall have been exercised (to be adjusted by the Representatives so as to eliminate fractional shares) determined by multiplying such number of Optional Shares by a fraction, the numerator of which is the maximum number of Optional Shares which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the maximum number of Optional Shares that all of the Underwriters are entitled to purchase hereunder.

The Selling Stockholders, as and to the extent indicated in Schedule II hereto, hereby grants, severally and not jointly, to the Underwriters the right to purchase at their election up to [●] Optional Shares, at the purchase price per share set forth in the paragraph above, for the sole purpose of covering sales of shares in excess of the number of Firm Shares, provided that the purchase price per Optional Share shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Optional Shares. Any such election to purchase Optional Shares shall be made in proportion to the maximum number of Optional Shares to be sold by all Selling Stockholders as set forth in Schedule II hereto. Any such election to purchase Optional Shares may be exercised only by written notice from the Representatives to the Company and the Attorneys-in-Fact, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate number of Optional Shares to be purchased and the date on which such Optional Shares are to be delivered, as determined by the Representatives but in no event earlier than the First Time of Delivery (as defined in Section 4 hereof) or, unless the Representatives and the Company and the Attorneys-in-Fact otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

3. Upon the authorization by the Representatives of the release of the Firm Shares, the several Underwriters propose to offer the Firm Shares for sale upon the terms and conditions set forth in the Prospectus.

4. (a) The Shares to be purchased by each Underwriter hereunder, in definitive or book-entry form, and in such authorized denominations and registered in such names as the Representatives may request upon at least forty-eight hours' prior notice to the Company and the Selling Stockholders shall be delivered by or on behalf of the Company and the Selling Stockholders to the Representatives, through the facilities of the Depository Trust Company ("DTC"), for the account of such Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the accounts specified by the Company and the Custodian to the Representatives at least forty-eight hours in advance. The Company and the Selling Stockholders will cause the certificates, if any, representing the Shares to be made available for checking and packaging at least twenty-four hours prior to the Time of Delivery (as defined below) with respect thereto at the office of DTC or its designated custodian (the "Designated Office"). The time and date of such delivery and payment shall be, with respect to the Firm Shares, 9:30 a.m., New York time, on [●], 2021 or such other time and date as the Representatives and the Company may agree upon in writing, and, with respect to the Optional Shares, 9:30 a.m., New York time, on the date specified by the Representatives in each written notice given by the Representatives of the Underwriters' election to purchase such Optional Shares, or such other time and date as the Representatives, the Company and the Attorneys-in-Fact may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the "First Time of Delivery", each such time and date for delivery of the Optional Shares, if not the First Time of Delivery, is herein called the "Second Time of Delivery", and each such time and date for delivery is herein called a "Time of Delivery".

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 8 hereof, including the cross receipt for the Shares and any additional documents requested by the Underwriters pursuant to Section 8(l) hereof will be delivered at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (the "Closing Location"), and the Shares will be delivered at the Designated Office, all at such Time of Delivery. A meeting will be held at the Closing Location at [●] p.m., New York City time, on the New York Business Day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 4, "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close.

5. The Company agrees with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by the Representatives and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Act; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Time of Delivery which shall be reasonably disapproved by the Representatives promptly after reasonable notice thereof; to advise the Representatives, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish the Representatives with copies thereof; to file promptly all materials required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Act; to advise the Representatives, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus in respect of the Shares, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus or suspending any such qualification, to promptly use its reasonable best efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as the Representatives may reasonably request to qualify the Shares for offering and sale under the securities laws of such jurisdictions as the Representatives may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation (where not otherwise required) or subject itself to taxation for doing business in any jurisdiction in which it is not otherwise subject to taxation or to file a general consent to service of process in any jurisdiction (where not otherwise required);

(c) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement (or such later time as may be agreed by the Company and the

Representative) and from time to time, to furnish the Underwriters with written and electronic copies of the Prospectus in New York City in such quantities as the Representatives may reasonably request, and, if the delivery of a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Shares and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus in order to comply with the Act, to notify the Representatives and upon their request to prepare and furnish without charge to each Underwriter and to any dealer (whose name and address the Underwriters shall furnish to the Company in connection with such request) in securities as many written and electronic copies as the Representatives may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance; and in case any Underwriter is required to deliver a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) in connection with sales of any of the Shares at any time nine months or more after the time of issue of the Prospectus, upon the Representatives' request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as the Representatives may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act;

(d) To make generally available to its securityholders as soon as practicable (which may be satisfied by filing with the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR")), but in any event not later than sixteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(e) (i) During the period beginning from the date hereof and continuing to and including the date 180 days after the date of the Prospectus (the "Company Lock-Up Period"), not to (i) offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to the Commission a registration statement under the Act relating to, any securities of the Company that are substantially similar to the Shares, including but not limited to any options or warrants to purchase shares of Stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, Stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Stock or such other securities, in cash or otherwise, without the prior written consent of Goldman Sachs & Co. LLC, provided however, that the foregoing restrictions shall not apply to (i) Shares to be sold hereunder, (ii) the issuance by the Company of shares of Class A Common Stock or Class B Common Stock, of the Company upon the exercise of options or the settlement of restricted stock units outstanding as of the date of this Agreement or issued after the date of this Agreement pursuant to the Company's equity plans described in the Pricing Prospectus, or upon the conversion or exchange of convertible or exchangeable securities outstanding as of the date of this Agreement, (iii) the award or issuance by the Company of shares of Class A Common Stock or Class B Common Stock or securities convertible into,

exchangeable for or that represent the right to receive shares of Class A Common Stock or Class B Common Stock pursuant to the Company's equity plans described in the Pricing Prospectus, (iv) as a bona fide gift to a charitable organization provided that any such transfer shall not involve a disposition for value, (v) the issuance by the Company of shares of Class A Common Stock upon the conversion of shares of Class B Common Stock, (vi) the issuance by the Company of shares of Class A Common Stock or other securities convertible into, exchangeable for or that represent the right to receive shares of Class A Common Stock in connection with (x) the acquisition by the Company or any of its subsidiaries of the securities, business, technology, property, personnel or other assets of another person or entity or pursuant to an employee benefit plan assumed by the Company in connection with such acquisition, and the issuance of any such securities pursuant to any such agreement, or (y) the issuance by the Company of Class A Common Stock or securities convertible into, exchangeable for or that represent the right to receive shares of Class A Common Stock in connection with the Company's joint ventures, commercial relationships and other strategic relationships, or (vii) the filing of any registration statement(s) on Form S-8 relating to the securities granted or to be granted pursuant to (A) the Company's equity plans that are described in the Pricing Prospectus or (B) any assumed employee benefit plan; provided, that the aggregate number of shares of Class A Common Stock or Class B Common Stock that the Company may sell or issue or agree to sell or issue pursuant to clause (vi) shall not exceed 10% of the total number of shares of common stock of the Company outstanding immediately following the issuance of the Shares contemplated by this Agreement; and provided further, that in the case of clause (ii), (iii) (except with respect to issuances by the Company of options or restricted stock units that do not vest during the Lock-Up Period), and (iv), the Company shall cause each recipient of such securities to execute and deliver to the Representatives, on or prior to the issuance of such securities, a lock-up letter on substantially the same terms as the lock-up letters referenced in Section 8 hereof for the remainder of the Lock-Up Period (as defined therein) and enter stop transfer instructions with the Company's transfer agent and registrar on such securities, which the Company agrees it will not waive or amend without the prior written consent of Goldman Sachs & Co. LLC.

In addition, during the Restricted Period, the Company agrees to (a) enforce the Market Standoff Provisions and any similar transfer restrictions contained in any agreement between the Company and any of its securityholders, including, without limitation, through the issuance of stop transfer instructions to the Company's transfer agent with respect to any transaction that would constitute a breach of, or default under, the transfer restrictions, except that this provision shall not prevent the Company from effecting such a waiver or amendment to permit a transfer of securities that would be permissible under the terms of the lock-up agreement in the form attached as Annex II hereto, and (b) not amend or waive any such transfer restrictions with respect to any such holder without the prior written consent of Goldman Sachs & Co. LLC;

(ii) If Goldman Sachs & Co. LLC, in its sole discretion, agrees to release or waive the restrictions in lock-up letters pursuant to Section 1(b)(iv) or Section 8(j) hereof, in each case for an officer or director of the Company and including, for the avoidance of doubt, in the case of a Blackout-Related Release or an Early Lock-Up Expiration (each as defined in the lock-up letters delivered pursuant to Sections 1(b)(iv) or Section 8(j)), and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Annex III hereto through a major news service at least two business days before the effective date of the release or waiver;

(f) During a period of three years from the effective date of the Registration Statement, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act, to furnish to its stockholders as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flows of the Company and its consolidated subsidiaries certified by independent public accountants) and, as soon as practicable after the end of each of the first three quarters of each fiscal year (beginning with the fiscal quarter ending after the effective date of the Registration Statement), to make available to its stockholders consolidated summary financial information of the Company and its subsidiaries for such quarter in reasonable detail; provided, however, that any report, communication or financial statement that is furnished or filed by the Company and publicly available on the Commission's EDGAR system shall be deemed to have been furnished and delivered to the stockholders at the same time furnished to or filed with the Commission;

(g) During a period of three years from the effective date of the Registration Statement, so long as the Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act, to furnish to the Representatives copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to the Representatives (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission); provided, however, that no report, communication or financial statement need be furnished pursuant to this subsection (g) to the extent (a) they are furnished or filed by the Company and publicly available on the Commission's EDGAR system, in which case they shall be deemed to have been furnished and delivered to the Representatives at the same time furnished to or filed with the Commission or (b) in the case of clause (ii), the provision of which would require public disclosure by the Company under Regulation FD;

(h) To use the net proceeds received by it from the sale of the Shares pursuant to this Agreement in the manner specified in the Pricing Prospectus under the caption "Use of Proceeds";

(i) To use its best efforts to list for trading, subject to official notice of issuance, the Shares on the Nasdaq Stock Market (the "Exchange");

(j) To file with the Commission such information on Form 10-Q or Form 10-K as may be required by Rule 463 under the Act;

(k) If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 p.m., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 3a(c) of the Commission's Informal and Other Procedures (16 CFR 202.3a);

(l) Upon request of any Underwriter, to furnish, or cause to be furnished, to such Underwriter an electronic version of the Company's trademarks, servicemarks and corporate logo for use on the website, if any, operated by such Underwriter for the purpose of facilitating the on-line offering of the Shares (the "License"); provided, however, that the License shall be used solely for the purpose described above, is granted without any fee and may not be assigned or transferred;

(m) To promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Shares within the meaning of the Act and (ii) the last Time of Delivery;

(n) To comply with all applicable securities and other laws, rules and regulations in each jurisdiction in which the Reserved Securities are offered in connection with the Reserved Share Program; and

(o) In connection with the Reserved Share Program, the Company will ensure that the Reserved Securities will be restricted to the extent required by FINRA or the FINRA rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of the effectiveness of the Registration Statement. The Designated Underwriter will notify the Company as to which Participants will need to be so restricted. The Company will direct the transfer agent to place stop transfer restrictions upon such securities for such period of time.

6. (a) The Company represents and agrees that, without the prior consent of the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a “free writing prospectus” as defined in Rule 405 under the Act; each Selling Stockholder represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus; and each Underwriter represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus required to be filed with the Commission; any such free writing prospectus the use of which has been consented to by the Company and the Representatives is listed on Schedule III(a) hereto;

(b) The Company has complied and will comply with the requirements of Rule 433 under the Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending and the Company represents that it has satisfied and agrees that it will satisfy the conditions under Rule 433 under the Act to avoid a requirement to file with the Commission any electronic road show;

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus or Written Testing-the-Waters Communication any event occurred or occurs as a result of which such Issuer Free Writing Prospectus or Written Testing-the-Waters Communication would conflict with the information in the Registration Statement, the Pricing Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus, Written Testing-the-Waters Communication or other document which will correct such conflict, statement or omission;

(d) The Company represents and agrees that (i) it has not engaged in, or authorized any other person to engage in, any Testing-the-Waters Communications, other than Testing-the-Waters

Communications with the prior consent of the Representatives with entities that the Company reasonably believes are qualified institutional buyers as defined in Rule 144A under the Act or institutions that are accredited investors as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Act; and (ii) it has not distributed, or authorized any other person to distribute, any Written Testing-the-Waters Communication, other than those distributed with the prior consent of the Representatives that are listed on Schedule III(d) hereto; and the Company reconfirms that the Underwriters have been authorized to act on its behalf in engaging in Testing-the-Waters Communications; and

(e) Each Underwriter represents and agrees that (i) any Testing-the-Waters Communications undertaken by it were with entities that such Underwriter reasonably believes are qualified institutional buyers as defined in Rule 144A under the Act or institutions that are accredited investors as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Act and (ii) it will not distribute, or authorize any other person to distribute, any Testing-the-Waters Communication, other than with the prior written authorization of the Company.

7. The Company and each of the Selling Stockholders covenant and agree with one another and with the several Underwriters that (a) the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Shares under the Act and all other expenses incurred in connection with the preparation, printing, reproduction and filing of the Registration Statement, any Preliminary Prospectus, any Written Testing-the-Waters Communication, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, the Blue Sky Memorandum, if any, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (iii) all expenses incurred in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 5(b) hereof, including the reasonable and documented fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey; (iv) all fees and expenses in connection with listing the Shares on the Exchange; (v) all reasonable and documented fees and disbursements of counsel for Merrill Lynch in connection with the Reserved Share Program and stamp duties, similar taxes or duties or other taxes, if any, incurred by Merrill Lynch in connection with the Reserved Share Program; (vi) the filing fees incident to, and the reasonable and documented fees and disbursements of counsel for the Underwriters in connection with, any required review by FINRA of the terms of the sale of the Shares; (vii) the cost of preparing stock certificates; if applicable (ii) the cost and charges of any transfer agent or registrar, and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section, provided, however, that the reasonable fees and disbursements of the counsel to the Underwriters described in subsection (a)(iii) and (a)(vi) shall not exceed \$35,000 in the aggregate; and (b) such Selling Stockholder will pay or cause to be paid all costs and expenses incident to the performance of such Selling Stockholder's obligations hereunder with respect to (i) any fees and expenses of counsel for such Selling Stockholder other than those being paid for by the Company and (ii) all taxes incident to the sale and delivery of the Shares to be sold by such Selling Stockholder to the Underwriters hereunder. In connection with clause (c)(iii) of the preceding sentence, the Representatives agree to pay New York State stock transfer tax, and the Selling Stockholder agrees to reimburse the Representatives for associated carrying costs if such tax payment is not rebated on the day of payment and for any portion of such tax payment not rebated. It is understood, however, that the Company shall bear, and the Selling Stockholders shall not be required to pay or to reimburse the Company for, the

cost of any other matters not directly relating to the sale and purchase of the Shares pursuant to this Agreement, and that, except as provided in this Section, and Sections 9, 10 and 12 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Shares by them, their own lodging, travel and meal expenses (including expenses for group meals attended by the Company, the underwriters, and potential investors) in connection with any "roadshow," and any advertising expenses connected with any offers they may make, and that the Underwriters shall be responsible for 50% of the cost of any chartered plane, jet, private aircraft, other aircraft or other transportation chartered in connection with any "roadshow" presentation to investors undertaken in connection with the offering of the Shares hereunder.

8. The obligations of the Underwriters hereunder, as to the Shares to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company and the Selling Stockholders herein are, at and as of the Applicable Time and such Time of Delivery, true and correct, the condition that the Company and the Selling Stockholders shall have performed all of its and their obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5(a) hereof; all material required to be filed by the Company pursuant to Rule 433(d) under the Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433; if the Company has elected to rely upon Rule 462(b) under the Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 p.m., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or, to the Company's knowledge, threatened by the Commission no stop order suspending or preventing the use of the Pricing Prospectus, Prospectus or any Issuer Free Writing Prospectus shall have been initiated or, to the Company's knowledge, threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representatives' reasonable satisfaction;

(b) Davis Polk & Wardwell LLP, counsel for the Underwriters, shall have furnished to the Representatives such written opinion and negative assurance letter, dated such Time of Delivery, in form and substance satisfactory to the Representatives, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(c) Cooley LLP, counsel for the Company, shall have furnished to the Representatives their written opinion and negative assurance letter dated such Time of Delivery, in form and substance satisfactory to the Representatives;

(d) The respective counsel for each of the Selling Stockholders, as indicated in Schedule II hereto, each shall have furnished to the Representatives their written opinion with respect to each of the Selling Stockholders for whom they are acting as counsel dated such Time of Delivery, in form and substance satisfactory to the Representatives;

(e) On the date of the Prospectus at a time prior to the execution of this Agreement, at 9:30 a.m., New York City time, on the effective date of any post-effective amendment to the Registration

Statement filed subsequent to the date of this Agreement and also at each Time of Delivery, Ernst & Young LLP shall have furnished to the Representatives a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to the Representatives;

(f) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included in the Pricing Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus, and (ii) since the respective dates as of which information is given in the Pricing Prospectus there shall not have been any change in the capital stock (other than as a result of (A) the exercise of stock options or settlement of restricted stock units (including any "net" or "cashless" exercises or settlements), or the award of stock options, restricted stock units, restricted stock or other awards in the ordinary course of business pursuant to the Company's equity plans described in the Pricing Prospectus, (B) the repurchase of shares of capital stock upon termination of the holder's employment or service with the Company pursuant to agreements providing for an option to repurchase or a right of first refusal on behalf of the Company, or (C) the issuance, if any, of capital stock upon exercise or conversion of Company securities as described in the Pricing Prospectus or Prospectus) or any increase in long-term debt of the Company or any of its subsidiaries or any change or effect, or any development involving a prospective change or effect, in or affecting (x) the business, properties, general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole, except as set forth or contemplated in the Pricing Prospectus and the Prospectus, or (y) the ability of the Company to perform its obligations under this Agreement, including the issuance and sale of the Shares, or to consummate the transactions contemplated in the Pricing Prospectus and the Prospectus, the effect of which, in any such case described in clause (i) or (ii), is in the Representatives' judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Pricing Prospectus and the Prospectus;

(g) On or after the Applicable Time (i) no downgrading shall have occurred in the rating accorded the Company's debt securities or preferred stock by any "nationally recognized statistical rating organization," as defined in Section 3(a)(62) of the Exchange Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred stock;

(h) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the Exchange; (ii) a suspension or material limitation in trading in the Company's securities on the Exchange; (iii) a general moratorium on commercial banking activities declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in the Representatives' judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Pricing Prospectus and the Prospectus;

(i) The Shares to be sold at such Time of Delivery shall have been duly listed, subject to official notice of issuance, on the Exchange;

(j) The Company shall have obtained and delivered to the Underwriters executed copies of an agreement from each stockholder of the Company, and if applicable, Participants listed on Schedule IV hereto, substantially to the effect set forth in Annex II hereto in form and substance satisfactory to the Representatives;

(k) The Company shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement;

(l) The Company and the Selling Stockholders shall have furnished or caused to be furnished to the Representatives at such Time of Delivery certificates of officers of the Company and of the Selling Stockholders, respectively, satisfactory to the Representatives as to the accuracy of the representations and warranties of the Company and the Selling Stockholders, respectively, herein at and as of such Time of Delivery, as to the performance by the Company and the Selling Stockholders of all of its and their respective obligations hereunder to be performed at or prior to such Time of Delivery, as to such other matters as the Representatives may reasonably request, and the Company shall have furnished or caused to be furnished certificates as to the matters set forth in subsections (a) and (f) of this Section 8 and;

(m) The Representatives shall have received a certificate executed by the Chief Financial Officer of the Company (i) on the date hereof and (ii) on such Time of Delivery, dated as of such date, in form and substance satisfactory to the Representatives.

9. (a) The Company will indemnify and hold harmless each Underwriter and the Selling Stockholders against any losses, claims, damages or liabilities, joint or several, to which such Underwriter or the Selling Stockholders may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any "roadshow" as defined in Rule 433(h) under the Act (a "roadshow"), any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Act or any Testing-the-Waters Communication prepared or authorized by the Company, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter and the Selling Stockholders for any legal or other expenses reasonably incurred by such Underwriter or the Selling Stockholders in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, any roadshow, or any Testing-the-Waters Communication, in reliance upon and in conformity with (i) the Underwriter Information with respect to the Company's indemnification obligation to each Underwriter, and (ii) the Selling Stockholder Information with respect to the Company's indemnification obligations to the Selling Stockholder.

(b) The Selling Stockholders, severally and not jointly, will indemnify and hold harmless each Underwriter and the Company against any losses, claims, damages or liabilities, joint or several, to which such Underwriter or the Company may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any roadshow or any Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto or any Issuer Free Writing Prospectus, or any roadshow or any Testing-the-Waters Communication, in reliance upon and in conformity with Selling Stockholder Information; and will reimburse each Underwriter and the Company, as applicable, for any legal or other expenses reasonably incurred by such Underwriter or the Company in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that such Selling Stockholder shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus or any amendment or supplement thereto or any Issuer Free Writing Prospectus in reliance upon and in conformity with the Underwriter Information provided further, that the liability of a Selling Stockholder pursuant to this subsection (b) shall not exceed the product of the number of shares sold by such Selling Stockholder and the initial public offering price of the Shares as set forth in the Prospectus (net of any underwriting discounts and commissions but before deducting expenses) (the "Selling Stockholder Proceeds").

(c) Each Underwriter, severally and not jointly, will indemnify and hold harmless the Company and each Selling Stockholder against any losses, claims, damages or liabilities to which the Company or such Selling Stockholder may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or any roadshow, or any Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or any roadshow, or any Testing-the-Waters Communication, in reliance upon and in conformity with the Underwriter Information; and will reimburse the Company and each Selling Stockholder for any legal or other expenses reasonably incurred by the Company or such Selling Stockholder in connection with investigating or defending any such action or claim as such expenses are incurred. As used in this Agreement with respect to an Underwriter and an applicable document, "Underwriter Information" shall mean the written information furnished to the Company by such Underwriter through the Representatives expressly for use therein; it being understood and agreed upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: the concession figures appearing in the second sentence of the fifth paragraph under the caption "Underwriting", and the information contained in the eleventh and twelfth paragraphs under the caption "Underwriting".

(d) Promptly after receipt by an indemnified party under subsection (a) or (b) of this Section 9 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; provided that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under the preceding paragraphs of this Section 9 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under the preceding paragraphs of this Section 9. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation unless (i) such indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the indemnifying party, (ii) the indemnifying party has failed within a reasonable time to retain counsel reasonably satisfactory to the indemnified party, or (iii) the named parties in any such proceeding (including any impleaded parties) include both the indemnifying person and the indemnified person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(e) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a),(b) or (c) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Selling Stockholders on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company and the Selling Stockholders on the one hand and the Underwriters on the other shall be deemed to be

in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Selling Stockholders bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Selling Stockholders on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, each of the Selling Stockholders and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d) no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission, and (ii) the contribution by each Selling Stockholder pursuant to this subsection (e) shall not exceed its Selling Stockholder Proceeds (reduced by any amounts such Selling Stockholder is obligated to pay under subsection (b) above). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint and the Selling Stockholders' obligations in this subsection (e) to contribute are several in proportion to their Selling Stockholder Proceeds and not joint.

(f) The obligations of the Company and the Selling Stockholders under this Section 9 shall be in addition to any liability which the Company and the Selling Stockholders may otherwise have and shall extend, upon the same terms and conditions, to each employee, officer and director of each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Act and each broker-dealer or other affiliate of any Underwriter; and the obligations of the Underwriters under this Section 9 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company (including any person who, with his or her consent, is named in the Registration Statement as about to become a director of the Company) and of the Selling Stockholders and to each person, if any, who controls the Company or any Selling Stockholder within the meaning of the Act.

10. (a) The Company will indemnify and hold harmless Merrill Lynch against any losses, claims, damages and liabilities to which Merrill Lynch may become subject, under the Act or otherwise, insofar as such losses, claims damages or liabilities (or actions in respect thereof) (i) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Reserved Share Program or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) caused by the failure of any Participant to pay for and accept delivery of Reserved Securities which have been orally confirmed for purchase by any Invitee by 11:59 P.M. (New York City

time) on the date of the Agreement, or (iii) are related to, arise out of, or are in connection with the Reserved Share Program, and will reimburse Merrill Lynch for any legal or other expenses reasonably incurred by Merrill Lynch in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that with respect to clauses (ii) and (iii) above, the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability is finally judicially determined to have resulted from the bad faith or gross negligence of the Merrill Lynch.

(b) Promptly after receipt by Merrill Lynch of notice of the commencement of any action, Merrill Lynch shall, if a claim in respect thereof is to be made against the Company, notify the Company in writing of the commencement thereof; provided that the failure to notify the Company shall not relieve the Company from any liability that it may have under the preceding paragraph of this Section 10 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the Company shall not relieve it from any liability that it may have to Merrill Lynch otherwise than under the preceding paragraph of this Section 10. In case any such action shall be brought against Merrill Lynch and it shall notify the Company of the commencement thereof, the Company shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel satisfactory to Merrill Lynch (who shall not, except with the consent of Merrill Lynch, be counsel to the Company), and, after notice from the Company to Merrill Lynch of its election so to assume the defense thereof, the Company shall not be liable to Merrill Lynch under this subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by Merrill Lynch, in connection with the defense thereof other than reasonable costs of investigation. The Company shall not, without the written consent of Merrill Lynch, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not Merrill Lynch is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of Merrill Lynch from all liability arising out of such action or claim and (ii) does not include a statement as to an admission of fault, culpability or a failure to act, by or on behalf of Merrill Lynch.

(c) If the indemnification provided for in this Section 10 is unavailable to or insufficient to hold harmless Merrill Lynch under subsection (a) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then the Company shall contribute to the amount paid or payable by Merrill Lynch as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and Merrill Lynch on the other from the offering of the Reserved Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then the Company shall contribute to such amount paid or payable by Merrill Lynch in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and Merrill Lynch on the other in connection with any statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and Merrill Lynch on the other shall be deemed to be in the same proportion as the total net proceeds from the offering of the Reserved Securities (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by Merrill Lynch for the Reserved Securities. If the loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement of a material fact or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, the relative fault shall be determined by reference to, among

other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or Merrill Lynch on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and Merrill Lynch agree that it would not be just and equitable if contribution pursuant to this subsection (c) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (c). The amount paid or payable by Merrill Lynch as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (c) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by Merrill Lynch in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (c), Merrill Lynch shall not be required to contribute any amount in excess of the amount by which the total price at which the Reserved Securities sold by it and distributed to the Participants exceeds the amount of any damages which Merrill Lynch has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The obligations of the Company under this Section 10 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each employee, officer and director of Merrill Lynch and each person, if any, who controls Merrill Lynch within the meaning of the Act and each broker-dealer or other affiliate of Merrill Lynch.

11. (a) If any Underwriter shall default in its obligation to purchase the Shares that it has agreed to purchase hereunder at a Time of Delivery, the Representatives may in their discretion arrange for the Representatives or another party or other parties to purchase such Shares on the terms contained herein. If within thirty-six hours after such default by any Underwriter the Representatives do not arrange for the purchase of such Shares, then the Company and the Selling Stockholders shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to the Representatives to purchase such Shares on such terms. In the event that, within the respective prescribed periods, the Representatives notify the Company and the Selling Stockholders that the Representatives have so arranged for the purchase of such Shares, or the Company or a Selling Stockholder notifies the Representatives that it has so arranged for the purchase of such Shares, the Representatives or the Company or the Selling Stockholders shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in the Representatives' opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the Representatives, the Company and the Selling Stockholders as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased does not exceed one-eleventh of the aggregate number of all the Shares to be purchased at such Time of Delivery, then the Company and the Selling Stockholders shall have the right to require each non-defaulting Underwriter to purchase the number of Shares which such Underwriter agreed to

purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by the Representatives, the Company and the Selling Stockholders as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased exceeds one-eleventh of the aggregate number of all of the Shares to be purchased at such Time of Delivery, or if the Company and the Selling Stockholders shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Shares of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to a Second Time of Delivery, the obligations of the Underwriters to purchase and of the Selling Stockholders to sell the Optional Shares) shall thereupon terminate, without liability on the part of any non-defaulting Underwriter, the Company or the Selling Stockholders, except for the expenses to be borne by the Company, the Selling Stockholders and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 and 10 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

12. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Selling Stockholders and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any of the Selling Stockholders, or any officer or director or controlling person of the Company, or any controlling person of any Selling Stockholder, and shall survive delivery of and payment for the Share.

13. If this Agreement shall be terminated pursuant to Section 10 hereof, neither the Company nor the Selling Stockholders shall then be under any liability to any Underwriter except as provided in Sections 7 and 9 hereof; but, if for any other reason (other than those set forth in clauses (i), (iii), (iv) and (v) of Section 8(g) hereof) any Shares are not delivered by or on behalf of the Company and the Selling Stockholders as provided herein, or the Underwriters decline to purchase the Shares for any reason permitted under this Agreement, the Company will reimburse the Underwriters through the Representatives for all documented out-of-pocket expenses approved in writing by the Representatives, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Shares not so delivered, but the Company and the Selling Stockholders shall then be under no further liability to any Underwriter except as provided in Sections 7 and 9 hereof.

14. In all dealings hereunder, the Representatives shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representatives jointly or by Goldman Sachs & Co. LLC on behalf of you as the Representatives; and in all dealings with any Selling Stockholder hereunder, the Representatives and the Company shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of such Selling Stockholder made or given by any or all of the Attorneys-in-Fact for such Selling Stockholder.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company and the Selling Stockholders, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, Attention: Registration Department; at J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179, Attention: Equity Syndicate Desk (Fax: (212) 622-8358) and at Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York 10013, Attention: General Counsel; if to any Selling Stockholder shall be delivered or sent by mail, telex or facsimile transmission to each of the Attorneys-in-Fact named in the Power of Attorney, c/o the Company at the address set forth on the cover of the Registration Statement, Attention: General Counsel with a copy, which shall not constitute notice, to Whalen LLP, 1601 Dove Street, Suite 270, Newport Beach, California 92660; if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth on the cover of the Registration Statement, Attention: Secretary; and if to any stockholder that has delivered a lock-up letter described in Section 8(j) hereof shall be delivered or sent by mail to his or her respective address provided in Schedule IV hereto or such other address as such stockholder provides in writing to the Company; provided, however, that any notice to an Underwriter pursuant to Section 9(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire or telex constituting such Questionnaire, which address will be supplied to the Company or the Selling Stockholders by the Representatives on request. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

15. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company and the Selling Stockholders and, to the extent provided in Sections 9 and 11 hereof, the officers and directors of the Company and each person who controls the Company, any Selling Stockholder or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Shares from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

16. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

17. The Company and the Selling Stockholders acknowledge and agree that (i) the purchase and sale of the Shares pursuant to this Agreement is an arm's-length commercial transaction between the Company and the Selling Stockholders, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company or any Selling stockholder, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company or any Selling Stockholder with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any Selling Stockholder on other matters) or any other obligation to the Company or any Selling Stockholder except the obligations expressly set forth in this Agreement; (iv) the Company and each Selling Stockholder has consulted its own legal and financial advisors to the extent it deemed appropriate and

(v) none of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice, or solicitation of any action by the Underwriters with respect to any entity or natural person. The Company and each Selling Stockholder agrees that it will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company or any Selling Stockholder, in connection with such transaction or the process leading thereto.

18. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Selling Stockholders and the Underwriters, or any of them, with respect to the subject matter hereof.

19. This Agreement and any transaction contemplated by this Agreement and any claim, controversy or dispute arising under or related thereto shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws that would result in the application of any other law than the laws of the State of New York. The Company and each Selling Stockholder agree that any suit or proceeding arising in respect of this Agreement or any transaction contemplated by this Agreement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in The City and County of New York and the Company and each Selling Stockholder agree to submit to the jurisdiction of, and to venue in, such courts.

20. The Company, each Selling Stockholder and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

21. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

22. Notwithstanding anything herein to the contrary, the Company and the Selling Stockholders are authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company and the Selling Stockholders relating to that treatment and structure, without the Underwriters imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment.

23. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) As used in this section:

“BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

If the foregoing is in accordance with your understanding, please sign and return to us one for the Company and each of the Representatives plus one for each counsel and the Custodian counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement among each of the Underwriters, the Company and each of the Selling Stockholders. It is understood that your acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company and the Selling Stockholders for examination, upon request, but without warranty on your part as to the authority of the signers thereof.

Any person executing and delivering this Agreement as Attorney-in-Fact for a Selling Stockholder represents by so doing that he has been duly appointed as Attorney-in-Fact by such Selling Stockholder pursuant to a validly existing and binding Power-of-Attorney that authorizes such Attorney-in-Fact to take such action.

Very truly yours,

ACV Auctions Inc.

By: _____

Name:

Title:

Selling Stockholders

By: _____

Name:

Title:

As Attorney-in-Fact acting on behalf of each of the Selling Stockholders named in Schedule II to this Agreement.

Accepted as of the date hereof
in [●], 2021

Goldman Sachs & Co. LLC

By: _____

Name:

Title:

J.P. Morgan Securities LLC

By: _____

Name:

Title:

By: _____

Name:

Title:

On behalf of each of the Underwriters

SCHEDULE I

<u>Underwriter</u>	<u>Total Number of Firm Shares to be Purchased</u>	<u>Number of Optional Shares to be Purchased if Maximum Option Exercised</u>
Goldman Sachs & Co. LLC		
J.P. Morgan Securities LLC		
Citigroup Global Markets Inc.		
BofA Securities, Inc.		
Jefferies LLC		
Canaccord Genuity LLC		
Guggenheim Securities, LLC		
JMP Securities LLC		
Piper Sandler & Co.		
Raymond James & Associates, Inc.		
Total		

SCHEDULE II

	Total Number of Firm Shares to be Sold	Number of Optional Shares to be Sold if Maximum Option Exercised
The Company.		
The Selling Stockholder(s):		
[•](a)		
[•](b)	_____	_____
Total	=====	=====

(d) This Selling Stockholder is represented by **[Name and Address of Counsel]** and has appointed **[Names of Attorneys-in-Fact (not less than two)]**, and each of them, as the Attorneys-in-Fact for such Selling Stockholder.

(e) This Selling Stockholder is represented by **[Name and Address of Counsel]** and has appointed **[Names of Attorneys-in-Fact (not less than two)]**, and each of them, as the Attorneys-in-Fact for such Selling Stockholder.

SCHEDULE III

- (a) Issuer Free Writing Prospectuses not included in the Pricing Disclosure Package
Electronic Roadshow dated [●]
- (b) Information other than the Pricing Prospectus that comprise the Pricing Disclosure Package
The initial public offering price per share for the Shares is \$[●]
The number of Shares purchased by the Underwriters is [●]
- (c) Written Testing-the-Waters Communications
[●]

SCHEDULE IV

Name of Stockholder

Address

[FORM OF PRESS RELEASE]**ACV Auctions Inc.**

[●]

ACV Auctions Inc. announced today that Goldman Sachs & Co. LLC, the lead book-running manager in the recent public sale of _____ shares of the Company's common stock, is [waiving] [releasing] a lock-up restriction with respect to _____ shares of the Company's common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on _____, 20____, and the shares may be sold on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

NINTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ACV AUCTIONS INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

ACV Auctions Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is ACV Auctions Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law on December 30, 2014.

2. That the Board of Directors of this corporation (the "*Board of Directors*") duly adopted resolutions proposing to amend and restate the Eighth Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Eighth Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is ACV Auctions Inc. (the "*Corporation*").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

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

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 311,100,000 shares of Common Stock, \$0.001 par value per share ("*Common Stock*") and (ii) 230,538,501 shares of Preferred Stock, \$0.001 par value per share ("*Preferred Stock*").

Effective immediately upon the effectiveness of the filing of this Ninth Amended and Restated Certificate of Incorporation (the "*Certificate of Incorporation*") with the Secretary of State of the State of Delaware (the "*Effective Time*"), the outstanding shares of the Corporation's capital stock shall, automatically and without any action on the part of the respective holders thereof, be reverse split such that (a) every two (2) issued and outstanding shares of Common Stock automatically and without any action on the part of the

respective holders thereof, shall be changed, reclassified and combined into and shall constitute one (1) fully paid and nonassessable share of Common Stock and (ii) every two (2) issued and outstanding shares of Preferred Stock automatically and without any action on the part of the respective holders thereof, shall be changed, reclassified and combined into and shall constitute one (1) fully paid and nonassessable share of the same series of Preferred Stock (together, the "**Reverse Stock Split**"). Unless otherwise specifically set forth herein, all share and per share numbers set forth in this Certificate of Incorporation are on a post-Reverse Stock Split basis. All shares of each class or series of capital stock held by a stockholder of the Corporation shall be aggregated for purposes of determining whether the Reverse Split would result (absent provision in this Certificate of Incorporation to the contrary) in the issuance of any fractional share; if after the aforementioned aggregation the Reverse Split would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock or Preferred Stock, as applicable, (as determined by the Board) on the date of the Reverse Stock Split. For the avoidance of doubt, there shall be no fractional shares issued as a result of the Reverse Stock Split, but the Corporation shall instead pay to any stockholder who would be entitled to receive a fractional share any amounts owing in respect thereof as provided in the preceding sentence. The Reverse Stock Split shall occur whether or not the certificates representing such holders' shares of Common Stock or Preferred Stock held prior to the Effective Time are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares held by any holder resulting from the Reverse Stock Split unless either the certificates evidencing such shares of Common Stock or Preferred Stock are delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. At and after the Effective Time, any outstanding stock certificate that immediately prior to the Effective Time evidenced ownership of and represented shares of capital stock of the Corporation shall from and after the Effective Time, automatically and without the necessity of presenting the same for exchange be deemed for all purposes to evidence ownership of and to represent that number of whole shares of Common Stock or Preferred Stock into which the shares of Common Stock or Preferred Stock held immediately prior to the Effective Time shall have been reclassified pursuant to this Certificate of Incorporation and, from and after the Effective Time, the registered owner thereof on the books and records of the Corporation shall have and be entitled to exercise any voting and other rights with respect to, and to receive any dividend and other distributions upon, all such shares of capital stock. Notwithstanding anything herein to the contrary, the par value of each share of the Corporation's outstanding Common Stock and Preferred Stock will not be adjusted in connection with the Reverse Stock Split.

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, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written action lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation 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 the Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

9,284,110 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series E-1 Preferred Stock**", 28,932,045 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series E Preferred Stock**"; 40,491,675 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series D Preferred Stock**"; 36,535,641 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series C Preferred Stock**"; 62,748,330 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**"; 36,231,850 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**"; 9,615,250 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series Seed Preferred Stock**" and 6,699,600 shares of the authorized Preferred Stock of the Corporation are hereby designated "**Series Seed 2 Preferred Stock**". The Series Seed Preferred Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series E-1 Preferred Stock are referred to collectively herein as the "**Senior Preferred Stock**". The Series Seed Preferred Stock and the Series Seed 2 Preferred Stock are referred to collectively herein as the "**Combined Series Seed Preferred Stock**". The shares of Preferred Stock have the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "sections" or "subsections" in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

1. Dividends.

1.1 Preferred Stock. In any calendar year, the holders of outstanding shares of each series of Preferred Stock shall be entitled to receive on a *pari passu* basis dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the rate per annum of the applicable Original Issue Price (as defined below) for such

series of Preferred Stock equal to the applicable Dividend Rate (as defined below) for such series of Preferred Stock, payable in preference and priority to any declaration or payment of any distribution on Common Stock of the Corporation in such calendar year. No distributions shall be made with respect to the Common Stock unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) dividends on the Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Preferred Stock have been paid or set aside for payment to the holders of Preferred Stock. The right to receive dividends on shares of Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. “**Dividend Rate**” shall mean (i) eight percent (8.0%) for shares of Series E-1 Preferred Stock, Series E Preferred Stock, Series D Preferred Stock, Series C Preferred Stock, Series B Preferred Stock and Series A Preferred Stock and (ii) four percent (4.0%) for shares of Combined Series Seed Preferred Stock. The “**Series E-1 Original Issue Price**” shall mean \$11.8482 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series E-1 Preferred Stock). The “**Series E Original Issue Price**” shall mean \$11.0604 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series E Preferred Stock). The “**Series D Original Issue Price**” shall mean \$4.7022 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series E Preferred Stock). The “**Series C Original Issue Price**” shall mean \$1.8994 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series C Preferred Stock). The “**Series B Original Issue Price**” shall mean \$0.4781 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series B Preferred Stock). The “**Series A Original Issue Price**” shall mean \$0.276 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series A Preferred Stock). The “**Series Seed Original Issue Price**” shall mean \$0.208 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series Seed Preferred Stock). The “**Series Seed 2 Original Issue Price**” shall mean \$0.298 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to the Series Seed 2 Preferred Stock). “**Original Issue Price**” shall mean the Series E-1 Original Issue Price with respect to the Series E-1 Preferred Stock, the Series E Original Issue Price with respect to the Series E Preferred Stock, the Series D Original Issue Price with respect to the Series D Preferred Stock, the Series C Original Issue Price with respect to the Series C Preferred Stock, the Series B Original Issue Price with respect to the Series B Preferred Stock, the Series A Original Issue Price with respect to the Series A Preferred Stock, the Series Seed Original Issue Price with respect to the Series Seed Preferred Stock and the Series Seed 2 Original Issue Price with respect to the Series Seed 2 Preferred Stock, as applicable.

1.2 Common Stock. After the payment or setting aside for payment of the dividends described in Subsection 1.1, any additional dividends set aside or paid in any fiscal year shall be set aside or paid among the holders of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, the Series E-1 Preferred Stock and Common Stock then outstanding in proportion to the greatest whole number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted at the then-effective conversion rate as calculated pursuant to Subsection 4.1.

2. Liquidation, Dissolution or Winding Up: Certain Mergers, Consolidations and Asset Sales

2.1 Preferential Payments to Holders of Senior Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event (as defined below), the holders of shares of Senior Preferred Stock then outstanding shall be entitled to be paid on a *pari passu* basis out of the assets of the Corporation available for distribution to its stockholders or out of the Available Proceeds (as defined below), as applicable, before any payment shall be made to the holders of Series Seed 2 Preferred Stock and Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the applicable Original Issue Price for such series of Senior Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of such series of Senior Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (such greater amount payable in respect of a series of Senior Preferred Stock is hereinafter referred to as the “**Primary Liquidation Amount**”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Senior Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Senior Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Preferential Payments to Holders of Series Seed 2 Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment in full of all preferential amounts required to be paid to the holders of shares of Senior Preferred Stock pursuant to Subsection 2.1, the holders of shares of Series Seed 2 Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders or out of the remaining Available Proceeds, as the case may be, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the applicable Original Issue Price for the Series Seed 2 Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series Seed 2 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (such greater amount payable in respect of the Series Seed 2 Preferred Stock is hereinafter referred to as the “**Secondary Liquidation Amount**” and together with the Primary Liquidation Amount, the “**Liquidation Amount**”). If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series Seed 2 Preferred Stock the full amount to which they shall be entitled under this Subsection 2.2, the holders of shares of Series Seed 2 Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of such shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.3 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed

Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or the remaining Available Proceeds, as the case may be, shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

2.4 Deemed Liquidation Events.

2.4.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of (a) (i) at least sixty-one percent (61%) of the then outstanding shares of Series A Preferred Stock (voting as a separate class), (ii) a majority of the then outstanding shares of Series B Preferred Stock (voting as a separate class), (iii) a majority of the then outstanding shares of Series C Preferred Stock (voting as a separate class), (iv) a majority of the then outstanding shares of Series D Preferred Stock (voting as a separate class), (v) at least sixty percent (60%) of the then outstanding shares of Series E Preferred Stock (voting as a separate class), and (vi) at least a majority of the then outstanding shares of Series E-1 Preferred Stock (voting as a separate class) (collectively, the “**Requisite Holders**”) and (b) the Series D Holder (as defined in the Sixth Amended and Restated Voting Agreement by and between the Corporation and certain stockholders of the Corporation dated as of the date on which the first share of Series E-1 Preferred Stock was issued (the “**Series E-1 Original Issue Date**”), as it may be amended and/or restated from time to time) for so long as the Series D Holder continues to beneficially own at least twenty five percent (25%) of the Series D Preferred Stock it held on the Series E-1 Original Issue Date (the “**Series D Requisite Holder**”), elect otherwise by written notice sent to the Corporation at least ten (10) days prior to the effective date of any such event:

(a) a merger or consolidation in which

- (i) the Corporation is a constituent party or
- (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation, except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation;

(b) any transaction or series of related transactions to which the Corporation is a party in which in excess of fifty percent (50%) of the Corporation's voting power is transferred; provided, that, such transaction or series of related transaction shall not include any transaction or series of transactions involving the issuance of equity of the Corporation solely for bona fide equity financing purposes in which cash is received by the Corporation or any successor or indebtedness of the Corporation is cancelled or converted or a combination thereof; or

(c) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets or intellectual property of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets or intellectual property of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.4.2 Effecting a Deemed Liquidation Event

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.4.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 and 2.3.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.4.1(a)(ii), 2.4.1(b) or 2.4.1(c), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) unless the Requisite Holders otherwise agree in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the "**Available Proceeds**"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event (the "**Redemption Date**"), to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable Liquidation Amount for each such respective series of Preferred Stock. The applicable Liquidation Amount payable to the holders of outstanding shares of Preferred Stock to be redeemed pursuant to the preceding sentence is referred to herein as the applicable "**Redemption Price**" and notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, (A) if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock but are sufficient to redeem all outstanding shares of Senior Preferred Stock, the Corporation shall redeem each holder's shares of Senior Preferred Stock in full and then ratably redeem each holder's shares of Series Seed 2 Preferred

Stock to the fullest extent of the remaining Available Proceeds, and shall redeem the remaining shares of Series Seed 2 Preferred Stock as soon as it may lawfully do so under the General Corporation Law of the State of Delaware governing distributions to stockholders or (B) if the Available Proceeds are not sufficient to redeem all outstanding shares of Senior Preferred Stock (without consideration of the redemption of Series Seed 2 Preferred Stock), the Corporation shall ratably redeem each holder's shares of Senior Preferred Stock to the fullest extent of the remaining Available Proceeds, and shall redeem, first, the remaining shares of Senior Preferred Stock and, second, the outstanding shares of Series Seed 2 Preferred Stock as soon as it may lawfully do so under the General Corporation Law of the State of Delaware governing distributions to stockholders. Prior to the distribution or redemption provided for in this Subsection 2.4.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business. A redemption of Preferred Stock pursuant to this Subsection 2.4.2(b) shall be effected in accordance with Subsection 2.4.2(c) below.

(c) Redemption Following a Deemed Liquidation Event

- (i) Redemption Notice. The Corporation shall send written notice of the redemption (the "***Redemption Notice***") to each holder of record of Preferred Stock not less than 20 days prior to the Redemption Date. Each Redemption Notice shall state: (A) the number of shares of Preferred Stock held by such holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice; (B) the Redemption Date and the applicable Redemption Price for such holder's shares of Preferred Stock; (C) the date upon which the holder's right to convert shares of Preferred Stock terminates (as determined in accordance with Section 4); and (D) that the holder is to surrender to the Corporation, in the manner and at the place designated in the Redemption Notice, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.
- (ii) Surrender of Certificates; Payment. On or before the Redemption Date, each holder of shares of Preferred Stock to be redeemed on the Redemption Date (unless such holder has exercised his, her or its right to convert such shares as provided in Section 4) shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement

reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the applicable Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner 94 thereof.

- (iii) Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the applicable Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, all rights with respect to such shares of Preferred Stock shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the applicable Redemption Price without interest, upon surrender of their certificate or certificates therefor.

2.4.3 Amount Deemed Paid or Distributed. If the amount deemed paid or distributed under this Subsection 2.4.3 is made in property other than in cash, the value of such distribution shall be the fair market value of such property, rights or securities, which shall be determined as follows:

(a) If the value of such property is established in the definitive documentation entered into in connection with such transaction (the "*Acquisition Agreement*"), then the fair market value shall be established using the method set forth in the Acquisition Agreement; provided that the Acquisition Agreement is approved by the holders of at least a majority of the outstanding shares of Preferred Stock.

(b) If Subsection 2.4.3(a) is not applicable, then for securities not subject to investment letters or other similar restrictions on free marketability,

- (i) if traded on a securities exchange, the value shall be deemed to be the average of the

closing prices of the securities on such exchange or market over the thirty (30) day period ending three (3) days prior to the closing of such transaction;

- (ii) if actively over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing of such transaction; or
- (iii) if there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors (to include the affirmative approval of at least two of the Preferred Directors (as defined below)).

(c) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors, to include the affirmative approval of at least two of the Preferred Directors) from the market value as determined pursuant to clause (a) above so as to reflect the approximate fair market value thereof.

2.4.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.4.1(a) (i), if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of any series of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of such holder's Preferred Stock are respectively convertible as of the record date for determining stockholders entitled to vote on such matter.

Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis.

3.2 Election of Directors. As long as at least 4,528,975 shares of Series A Preferred Stock and Series B Preferred Stock (each subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such series of Preferred Stock) remain outstanding, the holders of record of the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, exclusively and as a single class, shall be entitled to elect three (3) directors of the Corporation (the "*Preferred Directors*"). For so long as the Series D Requisite Holder has the right to designate the Series D Director pursuant to the Voting Agreement, such Series D Director shall also be deemed to be a Preferred Director. The holders of record of the shares of Common Stock, exclusively and as a separate class, shall elect the then-acting Chief Executive Officer of the Corporation to the Board of Directors. Two (2) directors shall be independent directors designated and elected by a majority of the other directors. Any Preferred Director may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. The independent directors may be removed without cause by, and only by, the affirmative vote of a majority of the other directors. If the holders of shares of a series of Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class pursuant to the first, second and third sentences of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the series of Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2. The rights of the holders of the Series A Preferred Stock and Series B Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Series E-1 Original Issue Date on which there are issued and outstanding less than 1,811,590 shares of Series A Preferred Stock and Series B Preferred Stock (each subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to such series of Preferred Stock).

3.3 Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E1 Preferred Stock Protective Provisions. At any time when at least 905,795 shares of Series A Preferred Stock, 1,783,120 shares of Series B Preferred Stock, 897,481 shares of Series C Preferred Stock,

5,316,660 shares of Series D Preferred Stock, 3,390,474 shares of Series E Preferred Stock and 1,160,514 shares of Series E-1 Preferred Stock (each subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such series of Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series E-1 Preferred Stock (exclusively and voting together as a single class and on an as-converted to Common Stock basis) given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class (on an as-converted basis), and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.3.1 alter or change the rights, preferences or privileges of any series of Preferred Stock;

3.3.2 increase or decrease in the authorized number of shares of any series of Preferred Stock or Common Stock;

3.3.3 issue, authorize or designate, whether by reclassification or otherwise, any new class or series of stock or any other securities convertible into equity securities of the Company having rights, preferences and privileges on parity with or senior to any series of Preferred Stock with respect to dividends, liquidation preference, voting or antidilution protection;

3.3.4 purchase or redeem Common Stock or Preferred Stock (other than pursuant to warrants or equity incentive agreements with service providers giving the Corporation the right to repurchase shares at the cessation of service at the lower of the original purchase price or the then-current fair market value thereof);

3.3.5 liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

3.3.6 amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

3.3.7 increase or decrease the authorized number of directors constituting the Board of Directors;

3.3.8 take any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock ranking junior to any series of Preferred Stock other than dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock;

3.3.9 take action that results in a security interest being placed on all or substantially all of the Corporation's assets or intellectual property;

3.3.10 cause or permit any of its subsidiaries to sell, issue, sponsor, create or distribute any digital tokens, cryptocurrency or other blockchain-based assets

(collectively, “*Tokens*”), including through a pre-sale, initial coin offering, token distribution event or crowdfunding, or through the issuance of any instrument convertible into or exchangeable for Tokens; or

3.3.11 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by, either directly or indirectly, amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.3.1 - 3.3.10 above if taken by the Corporation.

3.4 Series E-1 Preferred Stock Protective Provisions. At any time when at least 1,160,514 shares of Series E-1 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E-1 Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series E-1 Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.4.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series E-1 Preferred Stock;

3.4.2 any increase or decrease of the total number of authorized shares of Series E-1 Preferred Stock;

3.4.3 any amendment, termination or waiver of clause (vi) of the definition of “Requisite Holders” in Section 2.4.1;

3.4.4 any amendment, termination or waiver of the last sentence of Section 4.4.2;

3.4.5 any amendment, termination or waiver of Section 5.1(b);

3.4.6 any amendment, termination or waiver of the first sentence of Section 7; or

3.4.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.4.1 - 3.4.2 above if taken by the Corporation.

3.5 Series E Preferred Stock Protective Provisions. At any time when at least 3,390,474 shares of Series E Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least sixty percent (60%) of the then outstanding shares of Series E Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.5.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series E Preferred Stock;

3.5.2 any increase or decrease of the total number of authorized shares of Series E Preferred Stock;

3.5.3 any amendment, termination or waiver of clause (v) of the definition of “Requisite Holders” in Section 2.4.1;

3.5.4 any amendment, termination or waiver of the second to last sentence of Section 4.

3.5.5 any amendment, termination or waiver of Section 5.1(b);

3.5.6 any amendment, termination or waiver of the second sentence of Section 7; or

3.5.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.5.1 - 3.5.2 above if taken by the Corporation.

3.6 Series D Preferred Stock Protective Provisions. At any time when at least 5,316,660 shares of Series D Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series D Preferred Stock (voting as a separate class), only if such majority includes the Series D Requisite Holder, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.6.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series D Preferred Stock;

3.6.2 any increase or decrease of the total number of authorized shares of Series D Preferred Stock;

3.6.3 any amendment, termination or waiver of clause (iv) of the definition of “Requisite Holders” in Section 2.4.1;

3.6.4 any amendment, termination or waiver of the fourth sentence of Section 4.4.2;

3.6.5 any amendment, termination or waiver of Section 5.1(b);

3.6.6 any amendment, termination or waiver of the third sentence of Section 7; or

3.6.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.6.1 - 3.6.2 above if taken by the Corporation.

3.7 Series C Preferred Stock Protective Provisions. At any time when at least 897,481 shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series C Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.7.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series C Preferred Stock;

3.7.2 any increase or decrease of the total number of authorized shares of Series C Preferred Stock;

3.7.3 any amendment, termination or waiver of clause (iii) of the definition of "Requisite Holders" in Section 2.4.1;

3.7.4 any amendment, termination or waiver of the third sentence of Section 4.4.2;

3.7.5 any amendment, termination or waiver of Section 5.1(b);

3.7.6 any amendment, termination or waiver of the fourth sentence of Section 7; or

3.7.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.7.1 - 3.7.2 above if taken by the Corporation.

3.8 Series B Preferred Stock Protective Provisions. At any time when at least 1,783,120 shares of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series B Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.8.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series B Preferred Stock;

3.8.2 any increase or decrease of the total number of authorized shares of Series B Preferred Stock;

3.8.3 any amendment, termination or waiver of clause (ii) of the definition of “Requisite Holders” in Section 2.4.1;

3.8.4 any amendment, termination or waiver of the second sentence of Section 4.4.2;

3.8.5 any amendment, termination or waiver of Section 5.1(b);

3.8.6 any amendment, termination or waiver of the fifth sentence of Section 7; or

3.8.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.8.1 - 3.8.2 above if taken by the Corporation.

3.9 Series A Preferred Stock Protective Provisions. At any time when at least 905,795 shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least sixty-one percent (61%) of the then outstanding shares of Series A Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect.

3.9.1 any action, including an amendment of any provision of the Certificate of Incorporation, which adversely and disproportionately alters or changes the powers, preferences or special rights of the Series A Preferred Stock;

3.9.2 any increase or decrease of the total number of authorized shares of Series A Preferred Stock;

3.9.3 any amendment, termination or waiver of clause (i) of the definition of “Requisite Holders” in Section 2.4.1;

3.9.4 any amendment, termination or waiver of the first sentence of Section 4.4.2;

3.9.5 any amendment termination or waiver of Section 5.1(b);

3.9.6 any amendment, termination or waiver of the second to last sentence of Section 7; or

3.9.7 permit any direct or indirect subsidiary of the Corporation to effect or validate any action (whether by amendment, merger, consolidation, or otherwise) that would be prohibited by subsections 3.9.1 - 3.9.2 above if taken by the Corporation.

3.10 Series Seed Preferred Stock Protective Provisions. At any time when at least 1,201,900 shares of Series Seed Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series Seed Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

3.10.1 alter or change the rights, preferences or privileges of the Series Seed Preferred Stock in a manner uniquely adverse to the Series Seed Preferred Stock; or

3.10.2 increase or decrease the authorized number of shares of Series Seed Preferred Stock.

3.11 Series Seed 2 Preferred Stock Protective Provisions. At any time when at least 837,450 shares of Series Seed 2 Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed 2 Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series Seed 2 Preferred Stock (voting as a separate class), given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

3.11.1 alter or change the rights, preferences or privileges of the Series Seed 2 Preferred Stock in a manner unique to the Series Seed 2 Preferred Stock; or

3.11.2 increase or decrease in the authorized number of shares of Series Seed 2 Preferred Stock.

4. Optional Conversion.

The holders of Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

4.1 Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the then applicable Original Issue

Price of such series of Preferred Stock by the Conversion Price (as defined below) in effect at the time of conversion. The “**Series E-1 Conversion Price**” shall initially be equal to the Series E-1 Original Issue Price. The “**Series E Conversion Price**” shall initially be equal to the Series E Original Issue Price. The “**Series D Conversion Price**” shall initially be equal to the Series D Original Issue Price. The “**Series C Conversion Price**” shall initially be equal to the Series C Original Issue Price. The “**Series B Conversion Price**” shall initially be equal to the Series B Original Issue Price. The “**Series A Conversion Price**” shall initially be equal to the Series A Original Issue Price. The “**Series Seed Conversion Price**” shall initially be equal to the Series Seed Original Issue Price. The “**Series Seed 2 Conversion Price**” shall initially be equal to the Series Seed 2 Original Issue Price. Such initial Series E-1 Conversion Price, initial Series E Conversion Price, initial Series D Conversion Price, initial Series C Conversion Price, initial Series B Conversion Price, initial Series A Conversion Price, initial Series Seed Conversion Price or initial Series Seed 2 Conversion Price, as applicable, is sometimes referred to herein as the “**Conversion Price.**” Each Conversion Price, and the rate at which shares of each series of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of any shares of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors (to include the affirmative approval of at least two of the Preferred Directors). Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation’s transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder’s shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder’s shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder’s name or the names of the nominees in which such holder wishes the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the “**Conversion Time**”), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record

as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price for a particular series of Preferred Stock below the then par value of the shares of Common Stock issuable upon conversion of such series of Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Conversion Price for a series of Preferred Stock shall be made for any declared but unpaid dividends on the shares of such series of Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Effective Time, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, “**Exempted Securities**”):

- (i) shares of Common Stock, Options or Convertible Securities issued as a pro rata dividend or distribution on all Preferred Stock;
- (ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8 (including, for the avoidance of doubt, pursuant to the Reverse Stock Split);
- (iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to (X) the Company’s 2015 Long-Term Incentive Plan, as amended and restated, or (Y) any similar plan, agreement or arrangement approved by the Board of Directors, including at least two of the Preferred Directors;
- (iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors,

pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors, including at least two of the Preferred Directors;

- (vi) shares of Common Stock, Options or Convertible Securities issued as consideration for the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by the Board of Directors, including at least two of the Preferred Directors; or
- (vii) shares of Common Stock, Options or Convertible Securities issued as consideration for joint ventures, development or other strategic transactions approved by the Board of Directors, including at least two of the Preferred Directors.

(b) “*Convertible Securities*” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(c) “*Option*” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

4.4.2 No Adjustment of Conversion Price. No adjustment in the Conversion Price for the Series A Preferred Stock, Series Seed Preferred Stock, or Series Seed 2 Preferred Stock, shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least sixty-one percent (61%) of the then outstanding shares of Series A Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Conversion Price for the Series B Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series B Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Conversion Price for the Series C Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series C Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Conversion

Price for the Series D Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series D Preferred Stock, only if such majority includes the Series D Requisite Holder, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Conversion Price for the Series E Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least sixty percent (60%) of the then outstanding shares of Series E Preferred Stock, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock. No adjustment in the Conversion Price for the Series E-1 Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series E-1 Preferred Stock, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock

(a) If the Corporation at any time or from time to time after the Effective Time shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Conversion Price for one or more series of Preferred Stock pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price for such series of Preferred Stock computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Conversion Price for such series of Preferred Stock to an amount which exceeds the lower of (i) the Conversion Price for such series of Preferred Stock in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price for such series of

Preferred Stock that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Conversion Price for one or more series of Preferred Stock pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price for such series of Preferred Stock then in effect, or because such Option or Convertible Security was issued before the Effective Time), are revised after the Effective Time as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Conversion Price for one or more series of Preferred Stock pursuant to the terms of Subsection 4.4.4, the Conversion Price for such series of Preferred Stock shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price for one or more series of Preferred Stock provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price for such series of Preferred Stock that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price for such series of Preferred Stock that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time or from time to time after the Effective Time issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Conversion Price for one or more series of Preferred Stock in effect immediately prior to such issuance or deemed issuance, then the Conversion Price for such series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) + (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "CP2" shall mean the Conversion Price for such series of Preferred Stock in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

(b) "CP1" shall mean the Conversion Price for such series of Preferred Stock in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued or deemed issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to CP1 (determining dividing the aggregate consideration received by the Corporation in respect of such issuance or deemed issuance by CP1); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

-
- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors (to include the affirmative approval of at least two of the Preferred Directors); and
 - (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors (to include the affirmative approval of at least two of the Preferred Directors).

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by
- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the

exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price for one or more series of Preferred Stock pursuant to the terms of Subsection 4.4.4, then, upon the final such issuance, the Conversion Price for one or more series of Preferred Stock shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Effective Time effect a subdivision of the outstanding Common Stock, the Conversion Price for one or more series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Effective Time combine the outstanding shares of Common Stock, the Conversion Price for one or more series of Preferred Stock in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective. For the avoidance of doubt, no adjustment shall be made pursuant to this Section 4.5 in respect of the Reverse Stock Split.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Effective Time shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price for one or more series of Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price for one or more series of Preferred Stock then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for one or more series of Preferred Stock shall be recomputed accordingly as of the close of

business on such record date and thereafter the Conversion Price for one or more series of Preferred Stock shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of such series of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Effective Time shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of each series of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each series of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of such series of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of such series of Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price of such series of Preferred Stock) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series E-1 Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Series E-1 Preferred Stock in any such appraisal proceeding.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of Conversion Price of a series of Preferred Stock pursuant to this

Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which shares of such series of Preferred Stock are convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of such series of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price for such series of Preferred Stock then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of shares of such series of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion

5.1 Trigger Events. Upon either (a) immediately prior to the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$75,000,000 of gross proceeds to the Corporation (before deduction of underwriters commissions and expenses) (the "**Qualified Public Offering**") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the (i) Requisite Holders and (ii) Series D Requisite Holder (the time of such closing or the date and time specified or the

time of the event specified in such vote or written consent is referred to herein as the “**Mandatory Conversion Time**”), then (A) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (B) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof; upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Preferred Stock converted. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

6. No Redemption. Except as set forth in Section 2.4.2(b), the shares of Preferred Stock shall not be mandatorily redeemable.

7. Waiver. Any of the rights, powers, preferences and other terms of the Series E-1 Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares Series E-1 Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of the Series E Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of at least sixty percent (60%) of the shares Series E Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of the Series D Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares Series D Preferred Stock then outstanding, except that a waiver of a provision which requires the consent of the Series D Requisite Holder pursuant to the

provisions of Subsections 2.4.1, 3.6, 4.4.2, 5.1, or otherwise) shall also require the consent of Series D Requisite Holder. Any of the rights, powers, preferences and other terms of the Series C Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares Series C Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of the Series B Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares Series B Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of at least sixty-one percent (61%) of the shares Series A Preferred Stock then outstanding. Any of the rights, powers, preferences and other terms of each series of Combined Series Seed Preferred Stock set forth herein may be waived on behalf of all holders of such series of Combined Series Seed Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of such series of Combined Series Seed Preferred Stock then outstanding.

8. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission,

FIFTH: Subject to any additional vote required by the Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting 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 General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of

the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or (b) increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

ELEVENTH: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee, affiliate, of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, the persons referred to in clauses (i) and (ii) are “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Eleventh will only be prospective and will not affect the rights under this Article Eleventh in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Amended and Restated Certificate of Incorporation, the affirmative vote of the Requisite Holders will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Eleventh.

* * *

3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Ninth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation’s Eighth Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

* * *

IN WITNESS WHEREOF, this Ninth Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 12th day of March, 2021.

By: /s/ George Chamoun
Name: George Chamoun
Title: Chief Executive Officer

[Signature Page to Ninth Amended and Restated Certificate of Incorporation]

**TENTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ACV AUCTIONS INC.**

ACV Auctions Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify that:

ONE: The name of this corporation is ACV Auctions Inc. The date of filing of the original certificate of incorporation of this corporation with the Secretary of State of the State of Delaware was December 30, 2014

TWO: This Tenth Amended and Restated Certificate of Incorporation, which restates and integrates and also further amends the provisions of the corporation’s certificate of incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL. Stockholder approval of the adoption of this Tenth Amended and Restated Certificate of Incorporation of the Corporation was effected by written consent in accordance with Section 228 of the DGCL.

THREE: Pursuant to Sections 242 and 245 of the DGCL, the certificate of incorporation of this corporation, as heretofore amended, is hereby amended, integrated and restated to read in its entirety as follows:

I.

The name of this corporation is ACV Auctions Inc. (the “**Corporation**”).

II.

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, 19801, and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the “**DGCL**”).

IV.

A. The Corporation is authorized to issue three classes of stock to be designated, respectively, “Class A Common Stock,” “Class B Common Stock” and “Preferred Stock.” The total number of shares that the Corporation is authorized to issue is 2,180,000,000 shares, consisting of 2,000,000,000 shares of Class A Common Stock, par value \$0.001 per share (“**Class A Common Stock**”), 160,000,000 shares of Class B Common Stock, par value \$0.001 per share (“**Class B Common Stock**” and, together with the Class A Common Stock, the “**Common Stock**”), and 20,000,000 shares of Preferred Stock, par value \$0.001 per share (“**Preferred Stock**”). At the Effective Time (as defined below), each share of common stock, par value \$0.001 per share, of the Corporation (“**Pre-IPO Common Stock**”) issued and outstanding immediately prior to the Effective Time shall automatically and without further action on the part of the Corporation or any holder of Pre-IPO Common Stock, and whether or not the certificates representing such shares of Pre-IPO Common Stock are surrendered to the Corporation or its transfer agent, be reclassified as and converted into one fully paid and non-assessable share of Class B Common Stock. Certificates representing shares of Pre-IPO Common Stock prior to the Effective Time shall, from and after the Effective Time, no longer represent shares of Pre-IPO Common Stock and shall represent only the number of shares of Class B Common Stock into which the shares of Pre-IPO Common Stock previously represented by such certificate were reclassified and converted pursuant hereto.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the **Board of Directors**) is hereby expressly authorized to provide for the issue of all or any of the remaining shares of the Preferred Stock, in one or more series, and to fix the number of shares of such series and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors and filed in accordance with the DGCL.

C. The number of authorized shares of Class A Common Stock, Class B Common Stock or Preferred Stock, or any series thereof, may be increased or decreased (but not below the number of shares thereof then outstanding plus, if applicable, the number of shares of such class or series reserved for issuance) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the Class A Common Stock, Class B Common Stock or Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

D. Except as provided above, the rights, preferences, privileges, restrictions and other matters relating to the Class A Common Stock and Class B Common Stock are as follows:

1. Definitions.

a. **“Acquisition”** means (A) any consolidation or merger of the Corporation with or into any other Entity, other than any such consolidation or merger in which the stockholders of the Corporation immediately prior to such consolidation or merger continue to hold a majority of the voting power of the surviving Entity in substantially the same proportions (or, if the surviving Entity is a wholly owned subsidiary of another Entity, the surviving Entity’s Parent) immediately after such consolidation, merger or reorganization; or (B) any transaction or series of related transactions to which the Corporation is a party in which in excess of 50% of the Corporation’s voting power is transferred or issued; provided that an Acquisition shall not include any transaction or series of transactions principally for bona fide equity financing purposes as determined in good faith by the Board.

b. **“Asset Transfer”** means the sale, lease, exclusive license, exchange or other disposition of all or substantially all the assets of the Corporation.

c. **“Bylaws”** means the bylaws of the Corporation, as amended and/or restated from time to time.

d. **“Certificate of Incorporation”** means the certificate of incorporation of the Corporation, as amended and/or restated from time to time, including the terms of any certificate of designation of any series of Preferred Stock.

e. **“close of business”** means 6:00 p.m. local time at the principal executive offices of the corporation on any calendar day, whether or not the day is a Trading Day;

f. **“Entity”** means any corporation, partnership, limited liability company or other legal entity.

g. **“Effective Time”** means the time this Tenth Amended and Restated Certificate of Incorporation is filed with the Secretary of State of the State of Delaware.

h. “Family Member” means with respect to any natural person, the spouse, parents, grandparents, lineal descendants, siblings and lineal descendants of siblings (in each case whether by blood relation or adoption) of such person.

i. “Final Conversion Date” means 5:00 p.m. in New York City, New York on the earlier of (A) the last Trading Day of the fiscal quarter immediately following the tenth anniversary of the Effective Time and (B) the last Trading Day of the fiscal quarter during which the then-outstanding shares of Class B Common Stock first represent less than 5% of the aggregate number of then-outstanding shares of Class A Common Stock and Class B Common Stock; provided, however, if the first day the shares of Class B Common Stock first represent less than 5% of the aggregate number of shares of the then-outstanding Class A Common Stock and Class B Common Stock occurs in the 15 days prior to the end of a fiscal quarter, such last Trading Day shall be the last Trading Day of the following fiscal quarter; provided further, if the Final Conversion Date would otherwise occur on a date on or between the record date for any annual or special meeting of the stockholders of the Corporation and the actual date of such meeting, the Final Conversion Date shall be the fifteenth Trading Day following the date of such meeting of the stockholders.

j. “Liquidation Event” means (i) any Asset Transfer or Acquisition in which cash or other property is, pursuant to the express terms of the Asset Transfer or Acquisition, to be distributed to the stockholders in respect of their shares of capital stock in the Corporation or (ii) any liquidation, dissolution and winding up of the Corporation.

k. “Parent” of an Entity means any Entity that directly or indirectly owns or controls a majority of the voting power of the voting securities or interests of such Entity.

l. “Permitted Entity” means, with respect to a Qualified Stockholder, any Entity in which such Qualified Stockholder directly, or indirectly through one or more Permitted Transferees, has sole dispositive power and exclusive Voting Control with respect to all shares of Class B Common Stock held of record by such Entity.

m. “Permitted Transfer” means, and shall be restricted to, any Transfer of a share of Class B Common Stock:

(i) by a Qualified Stockholder who is a natural person (including a natural person serving in a trustee capacity with regard to a trust for the benefit of himself or herself and/or his or her Family Members), to the trustee of a Permitted Trust of such Qualified Stockholder or to such Qualified Stockholder in his or her individual capacity or as a trustee of a Permitted Trust of such Qualified Stockholder;

(ii) by the trustee of a Permitted Trust of a Qualified Stockholder, to such Qualified Stockholder, the trustee of any other Permitted Trust of such Qualified Stockholder or any Permitted Entity of such Qualified Stockholder;

(iii) by a Qualified Stockholder to any Permitted Entity of such Qualified Stockholder; or

(iv) by a Permitted Entity of a Qualified Stockholder to such Qualified Stockholder or any other Permitted Entity or the trustee of a Permitted Trust of such Qualified Stockholder.

n. “Permitted Transferee” means a transferee of shares of Class B Common Stock received in a Transfer that constitutes a Permitted Transfer.

o. **“Permitted Trust”** of a Qualified Stockholder means a validly created and existing trust, the beneficiaries of which are either the Qualified Stockholder or Family Members of the Qualified Stockholder or both, or a trust under the terms of which such Qualified Stockholder has retained a “qualified interest” within the meaning of §2702(b)(1) of the Internal Revenue Code (as amended from time to time) and/or a reversionary interest, in each case so long as the Qualified Stockholder has sole dispositive power and exclusive Voting Control with respect to all shares of Class B Common Stock held by such trust.

p. **“Qualified Stockholder”** means (i) the record holder of a share of Class B Common Stock at the Effective Time; (ii) the initial record holder of any share of Class B Common Stock that is originally issued by the Corporation thereafter; and (iii) a Permitted Transferee of a Qualified Stockholder.

q. **“Trading Day”** means any day on which The Nasdaq Stock Market and the New York Stock Exchange are open for trading.

r. **“Transfer”** of a share of Class B Common Stock means any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law, including, without limitation, a transfer of a share of Class B Common Stock to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control (as defined below) over such share by proxy or otherwise; provided, however, that the following shall not be considered a “Transfer” within the meaning of this Article IV:

(i) the granting of a revocable proxy to officers or directors of the Corporation at the request of the Board of Directors in connection with actions to be taken at an annual or special meeting of stockholders;

(ii) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with stockholders who are holders of Class B Common Stock that (A) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (B) either has a term not exceeding one year or is terminable by the holder of the shares subject thereto at any time, and (C) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner;

(iii) the pledge of shares of Class B Common Stock by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise exclusive Voting Control over such pledged shares; provided, however, that a foreclosure on such shares or other similar action by the pledgee shall constitute a “Transfer” unless such foreclosure or similar action qualifies as a “Permitted Transfer”; or

(iv) entering into, or reaching an agreement, arrangement or understanding regarding, a support or similar voting or tender agreement (with or without granting a proxy) in connection with a Liquidation Event, Asset Transfer or Acquisition that has been approved by the Board of Directors.

A **“Transfer”** shall also be deemed to have occurred with respect to a share of Class B Common Stock beneficially held by (i) a Permitted Transferee of a Qualified Stockholder on the date that such Permitted Transferee ceases to meet the qualifications to be a Permitted Transferee of the Qualified Stockholder who effected the Transfer of such shares to such Permitted Transferee, or (ii) an Entity that is a Qualified Stockholder, if there occurs a Transfer on a cumulative basis, from and after the Effective Time, of a majority of the voting power of the voting securities of such Entity or any Parent of such Entity, other than a Transfer to parties that were, as of the Effective Time, holders of voting securities of any such Entity or Parent of such Entity.

s. **“Voting Control”** means, with respect to a share of Class B Common Stock, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement or otherwise.

2. Generally Identical Rights. Except as otherwise provided in the Certificate of Incorporation or required by applicable law, shares of Class A Common Stock and Class B Common Stock shall have the same rights, privileges and powers, rank equally (including as to dividends and distributions, and upon any liquidation, dissolution, distribution of assets or winding up of the Corporation), share ratably and be identical in all respects and as to all matters.

3. Rights Relating to Dividends, Subdivisions and Combinations.

a. Subject to the rights of holders of any Preferred Stock at the time outstanding having prior rights as to dividends, the holders of the Class A Common Stock and Class B Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors. Except as permitted in Subsection 3(b) of Section D of Article IV, any dividends paid to the holders of shares of Class A Common Stock and Class B Common Stock shall be paid pro rata, on an equal priority, pari passu basis, unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and a majority of the outstanding shares of Class B Common Stock, each voting separately as a class.

b. The Corporation shall not declare or pay any dividend to the holders of Class A Common Stock or Class B Common Stock payable in securities of the Corporation unless the same dividend with the same record date and payment date shall be declared and paid on all shares of Common Stock; provided, however, that (i) dividends payable in shares of Class A Common Stock or rights to acquire shares of Class A Common Stock may be declared and paid to the holders of Class A Common Stock without the same dividend or distribution being declared and paid to the holders of the Class B Common Stock if, and only if, a dividend payable in shares of Class B Common Stock, or rights to acquire shares of Class B Common Stock, as applicable, are declared and paid to the holders of Class B Common Stock at the same rate and with the same record date and payment date; and (ii) dividends payable in shares of Class B Common Stock or rights to acquire shares of Class B Common Stock may be declared and paid to the holders of Class B Common Stock without the same dividend being declared and paid to the holders of the Class A Common Stock if, and only if, a dividend payable in shares of Class A Common Stock, or rights to acquire shares of Class A Common Stock, as applicable, are declared and paid to the holders of Class A Common Stock at the same rate and with the same record date and payment date.

c. If the Corporation in any manner subdivides or combines (including by reclassification) the outstanding shares of Class A Common Stock or Class B Common Stock, then the outstanding shares of all Common Stock will be subdivided or combined in the same proportion and manner; unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and a majority of the outstanding shares of Class B Common Stock, each voting separately as a class.

4. Liquidation Rights. In the event of a Liquidation Event, upon the completion of the distributions required with respect to any Preferred Stock that may then be outstanding, the remaining assets of the Corporation legally available for distribution to stockholders, or consideration payable to the stockholders of the Corporation, in the case of an Acquisition constituting a Liquidation Event, shall be distributed on an equal priority, pro rata basis to the holders of Class A Common Stock and Class B

Common Stock (and the holders of any Preferred Stock that may then be outstanding, to the extent required by the Certificate of Incorporation, including any certificate of designation with respect to any series of Preferred Stock), unless different treatment of the shares of each such class is approved by the affirmative vote of the holders of a majority of the outstanding shares of Class A Common Stock and a majority of the outstanding shares of Class B Common Stock, each voting separately as a class; *provided, however*, for the avoidance of doubt, that compensation pursuant to any employment, consulting, severance or other compensatory arrangement to be paid to or received by a person who is also a holder of Class A Common Stock or Class B Common Stock does not constitute consideration or a “distribution to stockholders” in respect of the Class A Common Stock or Class B Common Stock.

5. Voting Rights.

a. Class A Common Stock. Each holder of shares of Class A Common Stock shall be entitled to one vote for each share thereof held.

b. Class B Common Stock. Each holder of shares of Class B Common Stock shall be entitled to ten votes for each share thereof held.

c. Voting Generally. Except as required by applicable law or the Certificate of Incorporation, the holders of Preferred Stock, Class A Common Stock and Class B Common Stock shall vote together and not as separate series or classes. Except as otherwise required by applicable law, holders of Class A Common Stock and Class B Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation 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 the Certificate of Incorporation or applicable law.

6. Optional Conversion.

a. Optional Conversion of the Class B Common Stock. At the option of the holder thereof, each share of Class B Common Stock shall be convertible, at any time or from time to time, into one fully paid and nonassessable share of Class A Common Stock as provided herein.

b. Procedures. Each holder of Class B Common Stock who elects to convert the same into shares of Class A Common Stock shall surrender the certificate or certificates therefor (if any), duly endorsed, at the office of the Corporation or any transfer agent for the Class B Common Stock, or notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of Class B Common Stock being converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Class B Common Stock to be converted or, in the case of lost, stolen or destroyed certificates, an executed agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, or, if the shares are uncertificated, immediately prior to the close of business on the date that the holder delivers notice of such conversion to the Corporation’s transfer agent and the person entitled to receive the shares of Class A Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Class A Common Stock at such time.

7. Automatic Conversion of the Class B Common Stock.

a. Conversion on Transfer (other than Permitted Transfer). Each share of Class B Common Stock shall automatically be converted into one fully paid and nonassessable share of Class A Common Stock upon a Transfer, other than a Permitted Transfer, of such share of Class B Common Stock. Such conversion shall occur automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares (if any) are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless the certificates (if any) evidencing such shares of Class B Common Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Class B Common Stock, the holders of Class B Common Stock so converted shall surrender the certificates representing such shares (if any) at the office of the Corporation or any transfer agent for the Class A Common Stock.

b. Conversion upon Death.

(i) Each share of Class B Common Stock held of record by a natural person, including a natural person serving in a trustee capacity, or by a Permitted Transferee of such natural person, shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock upon the death of such natural person.

(ii) Such conversion shall occur automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares (if any) are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless the certificates evidencing such shares of Class B Common Stock are delivered to the Corporation or its transfer agent as provided below. Upon the occurrence of such automatic conversion of the Class B Common Stock, the holders of Class B Common Stock so converted shall surrender the certificates representing such shares (if any) at the office of the Corporation or any transfer agent for the Class A Common Stock.

c. Final Conversion. On the Final Conversion Date, each issued share of Class B Common Stock shall automatically, without any further action, convert into one fully paid and nonassessable share of Class A Common Stock. Following the Final Conversion Date, the Corporation shall not issue any additional shares of Class B Common Stock. Such conversion shall occur automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares (if any) are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Class A Common Stock issuable upon such conversion unless the certificates evidencing such shares of Class B Common Stock are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Class B Common Stock, the holders of Class B Common Stock so converted shall surrender the certificates representing such shares (if any) at the office of the Corporation or any transfer agent for the Class A Common Stock.

d. Procedures. The Corporation may, from time to time, establish such policies and procedures relating to the conversion of Class B Common Stock to Class A Common Stock and the general administration of this dual class stock structure, including the issuance of stock certificates (or the establishment of book-entry positions) with respect thereto, as it may deem reasonably necessary or advisable, and may from time to time request that holders of shares of Class B Common Stock furnish certifications, affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock and to confirm that a conversion to Class A Common Stock has not occurred. A determination by the Secretary of the Corporation as to whether a Transfer results in a conversion to Class A Common Stock shall be conclusive and binding.

e. Immediate Effect. In the event of a conversion of shares of Class B Common Stock to shares of Class A Common Stock, such conversion(s) shall:

(i) if converted pursuant to Subsection 7(a) of this Section D of Article IV, be deemed to have occurred at the time the Transfer of shares occurred;

(ii) if, converted pursuant to Subsection 7(b) of this Section D of Article IV, be deemed to have occurred at the time of death of the applicable natural person;

(iii) if, converted pursuant to Subsection 7(c) of this Section D of Article IV, immediately prior to the close of business on the Final Conversion Date, as applicable.

Upon any conversion of Class B Common Stock to Class A Common Stock, all rights of the holder of shares of Class B Common Stock shall cease and the person or persons in whose names or names the certificate or certificates (or book-entry position(s)) representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock.

8. Redemption. The Common Stock is not redeemable.

9. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of the Class B Common Stock, as applicable, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Class B Common Stock, as applicable, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purpose.

10. Prohibition on Reissuance of Shares. Shares of Class B Common Stock that are acquired by the Corporation for any reason (whether by repurchase, upon conversion, or otherwise) shall be retired in the manner required by law and shall not be reissued as shares of Class B Common Stock.

V.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and stockholders, or any class thereof, as the case may be, it is further provided that:

A. Management of the Business. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. Subject to any rights of the holders of shares of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances, the number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

B. Board of Directors.

1. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering of Class A Common Stock to the public (the “*Initial Public Offering*”) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “*1933 Act*”), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Each class shall consist, as nearly as possible, of a number of directors equal to one-third of the number of members of the Board of Directors authorized as provided in Section A of this Article V. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the initial term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the closing of the Initial Public Offering, the initial term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the closing of the Initial Public Offering, the initial term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

2. Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

C. Removal of Directors.

1. Subject to the rights of any series of Preferred Stock to remove directors elected by such series of Preferred Stock, following the closing of the Initial Public Offering, neither the entire Board of Directors nor any individual director may be removed from office without cause.

2. Subject to any limitations imposed by applicable law and the rights of any series of Preferred Stock to remove directors elected by such series of Preferred Stock, any individual director or the entire Board of Directors may be removed from office with cause by the affirmative vote of the holders of at least 66²/₃% of the voting power of all the then-outstanding shares of the capital stock of the Corporation entitled to vote generally at an election of directors.

D. Vacancies. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock to elect additional directors or fill vacancies in respect of such directors, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors or by the sole remaining director, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified or such director’s earlier death, resignation or removal.

E. Bylaw Amendments. The Board of Directors is expressly authorized and empowered to adopt, amend or repeal any provisions of the Bylaws. Any adoption, amendment or repeal of the Bylaws by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least 66²/₃% of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

F. STOCKHOLDER ACTIONS.

1. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.
2. No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders by written consent.
3. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws.

VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent permitted under applicable law. In furtherance thereof, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or may hereafter be amended. Any repeal or modification of the foregoing two sentences shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Corporation shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

B. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise.

C. Any repeal or modification of this Article VI shall only be prospective and shall not adversely affect the rights or protections or increase the liability of any person under this Article VI as in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII.

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action under Delaware statutory or common law: (A) any derivative claim or cause of action brought on behalf of the Corporation; (B) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation, to the Corporation or the Corporation's stockholders; (C) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, arising out of or pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws; (D) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws (including any right, obligation, or remedy thereunder); (E) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (F) any claim or cause of action against the Corporation or any current or former director, officer or other employee of the Corporation, governed by the internal-affairs doctrine or otherwise related to the Corporation's internal affairs, in all cases to the fullest extent permitted by law and subject to the court having personal

jurisdiction over the indispensable parties named as defendants. This Section A of Article VII shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "**1933 Act**"), or the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause or causes of action arising under the 1933 Act, including all causes of action asserted against any defendant to such complaint.

VIII.

A. Any person or entity holding, owning, or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of the Certificate of Incorporation.

B. The Corporation reserves the right to amend, alter, change or repeal, at any time and from time to time, any provision contained in the Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph C. of this Article VIII, and all rights, preferences and privileges of whatsoever nature conferred upon the stockholders, directors or any other persons whomsoever by and pursuant to the Certificate of Incorporation are granted subject to this reservation.

C. Notwithstanding any other provisions of the Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of capital stock of the Corporation required by law or by the Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least 66²/₃% of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote in the election of directors, voting together as a single class, shall be required to alter, amend or repeal (whether by merger, consolidation or otherwise), or adopt any provision inconsistent with, Articles V, VI, VII and VIII.

The Corporation has caused this Tenth Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation on this ____ day of _____, 2021.

ACV AUCTIONS INC.

By: _____

George Chamoun
Chief Executive Officer

AMENDED AND RESTATED
BYLAWS
OF
ACV AUCTIONS INC.
(A DELAWARE CORPORATION)

[Date]

AMENDED AND RESTATED BYLAWS

OF

ACV AUCTIONS INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be as set forth in the Amended and Restated Certificate of Incorporation of the corporation, as the same may be amended or restated from time to time (the *Certificate of Incorporation*).

Section 2. Other Offices. The corporation may also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors of the corporation (the *Board of Directors*), and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, *Corporate Seal-Delaware*. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, if any, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the General Corporation Law of the State of Delaware (*“DGCL”*) and Section 14 below.

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors and proposals of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors or a duly authorized

committee thereof; or (iii) by any stockholder of the corporation who was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed or such nomination or nominations are made, only if such beneficial owner was the beneficial owner of shares of the corporation) at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "*1934 Act*")) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law, the Certificate of Incorporation and the Bylaws of the corporation, as the same may be amended or restated from time to time (the "*Bylaws*"), and as shall have been properly brought before the meeting in accordance with the procedures below.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class or series and number of shares of each class or series of capital stock of the corporation that are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) all other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved and whether or not proxies are being or will be solicited), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the corporation's proxy statement and associated proxy card as a nominee of the stockholder and to serving as a director if elected); and (B) all of the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation (as such term is used in any applicable stock exchange listing requirements or applicable law) or on any committee or sub-committee of the Board of Directors under any applicable stock exchange listing requirements or applicable law, or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14a-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, 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, the language of the proposed amendment), the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the

corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the immediately preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 5(b)(iii), in the event that (A) the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or, if later than the 90th day prior to such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation or (B) the corporation did not have an annual meeting in the preceding year, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iv) The written notice required by Sections 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "**Proponent**" and collectively, the "**Proponents**"): (A) the name and address of each Proponent, including, if applicable, such name and address as they appear on the corporation's books and records; (B) the class, series and number of shares of each class or series of the capital stock of the corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the 1934 Act) by each Proponent (provided, that for purposes of this Section 5(b)(iv), such Proponent shall in all events be deemed to beneficially own all shares of any class or series of capital stock of the corporation as to which such Proponent has a right to acquire beneficial ownership at any time in the future); (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal (and/or the voting of shares of any class or series of capital stock of the corporation) between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation at the time of giving notice, will be entitled to vote at the meeting, and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous 12-month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(c) A stockholder providing the written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the determination of stockholders entitled to notice of the meeting and (ii) the date that is five Business Days

(as defined below) prior to the meeting and, in the event of any adjournment or postponement thereof, five Business Days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five Business Days after the public announcement of the record date for the determination of stockholders entitled to notice of the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two Business Days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two Business Days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) to be elected to the Board of Directors at the next annual meeting is increased and there is no public announcement by the corporation naming all of the nominees for the Expiring Class or specifying the size of the increased Expiring Class at least 100 days before the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 and that complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation. For purposes of this section, an "*Expiring Class*" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) A person shall not be eligible for election or re-election as a director at an annual meeting, unless the person is nominated in accordance with either clause (ii) or (iii) of Section 5(a) and in accordance with the procedures set forth in Section 5(b), Section 5(c), and Section 5(d), as applicable. Only such business shall be conducted at any annual meeting of the stockholders of the corporation as shall have been brought before the meeting in accordance with clauses (i), (ii), or (iii) of Section 5(a) and in accordance with the procedures set forth in Section 5(b) and Section 5(c), as applicable. Except as otherwise required by applicable law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in the Bylaws and, if any proposed nomination or business is not in compliance with the Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, or that such business shall not be transacted, notwithstanding that proxies in respect of such nomination or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in the Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in the Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii). Nothing in the Bylaws shall be deemed to affect any rights of holders of any class or series of preferred stock to nominate and elect directors pursuant to and to the extent provided in any applicable provision of the Certificate of Incorporation.

(g) For purposes of Sections 5 and 6,

“1933 Act”);

(i) “*affiliates*” and “*associates*” shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the

(ii) “*Business Day*” means any day other than Saturday, Sunday or a day on which banks are closed in New York City, New York;

(iii) “*close of business*” means 6:00 p.m. local time at the principal executive offices of the corporation on any calendar day, whether or not the day is a Business Day;

(iv) “*Derivative Transaction*” means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation;

(B) that otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation;

(C) the effect or intent of which is to mitigate loss, manage risk or benefit from changes in value or price with respect to any securities of the corporation; or

(D) that provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, directly or indirectly, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation or similar right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member; and

(v) “*public announcement*” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act or by such other means reasonably designed to inform the public or security holders in general of such information, including, without limitation, posting on the corporation’s investor relations website.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or a duly authorized committee thereof or (ii) by any stockholder of the corporation who is a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination or nominations are made, only if such beneficial owner was the beneficial owner of shares of the corporation) at the time of giving notice provided for in this paragraph, who is entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Sections 5(b)(i) and 5(b)(iv). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Sections 5(b)(i) and 5(b)(iv) shall be received by the Secretary at the principal executive offices of the corporation not earlier than 120 days prior to such special meeting and not later than the close of business on the later of the 90th day prior to such meeting or the tenth day following the day on which the corporation first makes a public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

A person shall not be eligible for election or re-election as a director at the special meeting unless the person is nominated either in accordance with clause (i) or clause (ii) of this Section 6(c). Except as otherwise required by applicable law, the chairperson of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the Bylaws and, if any proposed nomination or business is not in compliance with the Bylaws, or if the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nomination may have been solicited or received.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in the Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in the Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c).

Section 7. Notice of Meetings. Except as otherwise provided by applicable law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Such notice shall specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, the record date for determining stockholders entitled to vote at the meeting, if such record date is different from the record date for determining stockholders entitled to notice of the meeting, and the means of remote communications, if any, by which stockholders and

proxyholders may be deemed to be present in person and vote at any such meeting. Such notice may be given by personal delivery, mail, or with the consent of the stockholder entitled to receive notice, by facsimile or electronic transmission. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If sent via electronic transmission, notice is given when directed to such stockholder's electronic mail address appearing in the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders (to the extent required) may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder 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. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum and Vote Required. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by the Bylaws, the presence, in person, by remote communication, if applicable, or by proxy, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote at the meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat and entitled to vote thereon, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or the Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and voting affirmatively or negatively (excluding abstentions and broker non-votes) on such matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or the Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute or by the Certificate of Incorporation or the Bylaws or any applicable stock exchange rules, a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or the Bylaws or any applicable stock exchange rules, the affirmative vote of the holders of a majority (plurality, in the case of the election of directors) of the voting power of the shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting and voting affirmatively or negatively (excluding abstention and broker non-votes) on such matter shall be the act of such class or classes or series.

Section 9. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote thereon. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed present in person and may vote at such meeting

are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders or adjournment thereof, except as otherwise provided by applicable law, only persons in whose names shares stand on the stock records of the corporation on the record date shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three years from its date of creation unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot.

Section 11. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; (c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in Section 217(b) of the DGCL. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List of Stockholders. The corporation shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number and class of shares registered in the name of each stockholder; provided, however, if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the list shall reflect all of the stockholders entitled to vote as of the tenth day before the meeting date. Such list shall be open to the examination of any stockholder, for any purpose germane 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 principal place of business of the corporation. 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. The list shall be open to examination of any stockholder during the time of the meeting as provided by applicable law.

Section 13. Action without Meeting.

No action shall be taken by the stockholders of the corporation except at an annual or special meeting of stockholders duly called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent.

Section 14. Remote Communication. For the purposes of the Bylaws, if authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Section 15. Organization.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed, is absent or refuses to act, the Chief Executive Officer, or if no Chief Executive Officer is then serving or the Chief Executive Officer is absent or refuses to act, the President, or, if the President is absent or refuses to act, a chairperson of the meeting designated by the Board of Directors, or, if the Board of Directors does not designate such chairperson, a chairperson of the meeting chosen by a majority of the voting power of the stockholders entitled to vote, present in person or by proxy, shall act as chairperson of the meeting of stockholders. The Chairperson of the Board of Directors may appoint the Chief Executive Officer as chairperson of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary or other officer or other person directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting 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 and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters that are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 16. Number and Term of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in the Bylaws.

Section 17. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by the Certificate of Incorporation or the DGCL.

Section 18. Classes of Directors. The directors shall be divided into classes as and to the extent provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 19. Vacancies. Vacancies on the Board of Directors shall be filled as provided in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 20. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Board of Directors or the Secretary. Such resignation shall take effect at the time of delivery of the notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board of Directors, effective at 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 for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal.

Section 21. Removal. Subject to the rights of holders of any series of preferred stock to elect additional directors under specified circumstances, the Board of Directors or any individual director may be removed only in the manner specified in the Certificate of Incorporation, except as otherwise required by applicable law.

Section 22. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware that has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware as designated and called by the Chairperson of the Board of Directors, the Chief Executive Officer or the Board of Directors.

(c) **Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Notice of Special Meetings.** Notice of the time and place, if any, of all special meetings of the Board of Directors shall be transmitted orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, or by electronic mail or other electronic means, during normal business hours, at least 24 hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, postage prepaid, at least three days before the date of the meeting.

(e) **Waiver of Notice.** Notice of any meeting of the Board of Directors may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the 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. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 46 for which a quorum shall be one-third of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation, a quorum of the Board of Directors shall consist of a majority of the total number of directors then serving on the Board of Directors or, if greater, one-third of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation. At any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by applicable law, the Certificate of Incorporation or the Bylaws.

Section 24. Action without Meeting. Unless otherwise restricted by the Certificate of Incorporation or the Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission. Such consent or consents shall be filed with the minutes of proceedings of the Board of Directors 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.

(a) Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, or a committee thereof to which the Board of Directors has delegated such responsibility and authority, including, if so approved, by resolution of the Board of Directors or a committee thereof to which the Board of Directors has delegated such responsibility and authority, a fixed sum and reimbursement of expenses incurred, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors, as well as reimbursement for other reasonable expenses incurred with respect to duties as a member of the Board of Directors or any committee thereof. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by applicable law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors 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 in reference to (i) approving or adopting, or recommending 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 (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by applicable law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in the Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of preferred stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any 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 of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places, if any, as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at such place, if any, that has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the

time and place, if any, of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place, if any, of special meetings of the Board of Directors. Notice of any meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such 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. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Duties of Chairperson of the Board of Directors and Lead Independent Director.

(a) The Chairperson of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform such other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(b) The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("**Lead Independent Director**"). The Lead Independent Director will perform such other duties as may be established or delegated by the Board of Directors.

Section 27. Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem appropriate or necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by applicable law, the Certificate of Incorporation or the Bylaws. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors or by a committee thereof to which the Board of Directors has delegated such responsibility.

Section 29. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors or by a committee thereof to which the Board of Directors has delegated such responsibility or, if so authorized by the Board of Directors, by the Chief Executive Officer or another officer of the corporation.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and, if a director, at all meetings of the Board of Directors, unless a Chairperson of the Board of Directors or Lead Independent Director has been appointed and is present. The Chief Executive Officer shall be the chief executive officer of the corporation and, subject to the supervision, direction and control of the Board of Directors, shall have the general powers and duties of supervision, direction, management and control of the business and officers of the corporation as are customarily associated with the position of Chief Executive Officer. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in the Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and, if a director, at all meetings of the Board of Directors, unless a Chairperson of the Board of Directors, Lead Independent Director, or Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and, subject to the supervision, direction and control of the Board of Directors, shall have the general powers and duties of supervision, direction, management and control of the business and officers of the corporation as are customarily associated with the position of President. The President shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board of Directors (or the Chief Executive Officer, if the Chief Executive Officer and President are not the same person and the Board of Directors has delegated the designation of the President's duties to the Chief Executive Officer) shall designate from time to time.

(d) Duties of Vice Presidents. A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant (unless the duties of the President are being filled by the Chief Executive Officer). A Vice President shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary and Assistant Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts, votes and proceedings thereof in the minute books of the corporation. The Secretary shall give notice in conformity with the Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in the Bylaws and other duties customarily associated with the office and shall also perform such other duties and have such other powers, as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties customarily associated with the office.

and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer, or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in the Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer.

(g) Duties of Treasurer and Assistant Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation, shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer or the President. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties customarily associated with the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Treasurer or other officer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

Section 30. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer, the President or the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the Board of Directors, or by any committee thereof or any superior officer upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute, sign or endorse on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by applicable law or the Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall from time to time authorize so to do.

Unless otherwise specifically determined by the Board of Directors or otherwise required by applicable law, the execution, signing or endorsement of any corporate instrument or document may be effected manually, by facsimile or (to the extent permitted by applicable law and subject to such policies and procedures as the corporation may have in effect from time to time) by electronic signature.

Unless authorized or ratified by the Board of Directors 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.

Section 34. Voting of Securities Owned by the Corporation. All stock and other securities of or interests in other corporations or entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 35. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by any two authorized officers of the corporation, certifying the number, and the class or series, of shares owned by such holder in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 36. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates 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. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 37. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) 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.

Section 38. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors 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 of Directors, and which record date shall, subject to applicable law, not be more than 60 nor less than ten days before the date of such meeting. If the Board of Directors so fixes a record date for determining the stockholders entitled to notice of any meeting of stockholders, such date shall also be the record date for determining the stockholders entitled to vote at such meeting, unless the Board of Directors determines, at the time it fixes the record date for determining the stockholders entitled to notice of such meeting, that a later date on or before the date of the meeting shall be the record date for determining the stockholders entitled to vote at such meeting. If no record date is fixed by the Board of Directors, 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 immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the day immediately 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 of Directors may fix a new record date for the adjourned meeting in accordance with the provisions of this Section 39(a).

(b) 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 stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no 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 of Directors adopts the resolution relating thereto.

Section 39. Registered Stockholders. The corporation 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 shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 40. Additional Powers of the Board. In addition to, and without limiting, the powers set forth in the Bylaws, the Board of Directors shall have power and authority to make all such rules and regulations as it shall deem expedient concerning the issue, transfer, and registration of certificates for shares of stock of the corporation, including the use of uncertificated shares of stock, subject to the provisions of the DGCL, other applicable law, the Certificate of Incorporation and the Bylaws. The Board of Directors may appoint and remove transfer agents and registrars of transfers, and may require all stock certificates to bear the signature of any such transfer agent and/or any such registrar of transfers.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 41. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 42. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 43. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, determines proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose or purposes as the Board of Directors shall determine to be conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 44. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 45. Indemnification of Directors, Executive Officers, Employees and Other Agents.

(a) **Directors and Executive Officers.** The corporation shall indemnify to the full extent permitted under and in any manner permitted under the DGCL or any other applicable law, any person who is made or threatened to be made a party to or is otherwise involved (as a witness or otherwise) in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter, a "**Proceeding**"), by reason of the fact that such person is or was a director or executive officer (for the purposes of this Article XI, "executive officers" shall be those persons designated by the corporation as (a) executive officers for purposes of the disclosures required in the corporation's proxy and periodic reports or (b) officers for purposes of Section 16 of the 1934 Act) of the corporation, or while serving as a director or executive officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan (collectively, "**Another Enterprise**"), against expenses (including attorneys' fees), judgments, fines (including ERISA excise taxes or penalties) and amounts paid in settlement actually and reasonably incurred by him or her in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further*, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by applicable law, (ii) the proceeding was authorized by the Board of Directors, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d) of this Section 46.

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify (including the power to advance expenses in a manner consistent with subsection (c) of this Section 46) its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding, by reason of the fact that such person is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of Another Enterprise, prior to the final disposition of the Proceeding, promptly following request therefor, all expenses (including attorneys'

fees) incurred by any director or executive officer in connection with such Proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "*undertaking*"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "*final adjudication*") that such indemnitee is not entitled to be indemnified for such expenses under this Section 46 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this Section 46, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any Proceeding, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the Proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Section 46 shall be deemed to be contractual rights, shall vest when the person becomes a director or executive officer of the corporation, shall continue as vested contract rights even if such person ceases to be a director or executive officer of the corporation, and shall be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Section 46 to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request therefor. To the fullest extent permitted by applicable law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any Proceeding, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 46 or otherwise shall be on the corporation.

(e) **Non-Exclusivity of Rights.** The rights conferred on any person by this **Section 46** shall not be exclusive of any other right that such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) **Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase and maintain insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 46.

(h) **Amendments.** Any repeal or modification of this Section 46 shall only be prospective and shall not affect the rights under this Section 46 as in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any Proceeding against any agent of the corporation.

(i) **Saving Clause.** If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Article XI that shall not have been invalidated, or by any other applicable law. If this Article XI shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) **Certain Definitions and Construction of Terms.** For the purposes of Article XI of the Bylaws, the following definitions and rules of construction shall apply:

(i) The term “**Proceeding**” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “**expenses**” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any Proceeding.

(iii) The term the “**corporation**” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 46 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “*director*,” “*executive officer*,” “*officer*,” “*employee*,” or “*agent*” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “*Another Enterprise*” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation that imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Section 46.

ARTICLE XII

NOTICES

Section 46. Notices.

(a) **Notice to Stockholders.** Notice to stockholders of stockholder meetings shall be given as provided in Section 7. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by applicable law, written notice to stockholders for purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by electronic mail or other electronic means.

(b) **Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in the Bylaws (including by any of the means specified in Section 22(d)), or by overnight delivery service. Any notice sent by overnight delivery service or U.S. mail shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) **Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) **Notice to Person with Whom Communication is Unlawful.** Whenever notice is required to be given, under applicable law or any provision of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that

shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the 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. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. Subject to the limitations set forth in Section 46(h) or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by applicable law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 48. Loans to Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in the Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANS#

ACV
 PO BOX 56006, Louisville, KY 40235-5066
 MR. A. SAMPLE
 DESIGNATION (if ANY)
 ADD 1
 ADD 2
 ADD 3
 ADD 4

CUSIP IDENTIFIER
 Holder ID XXXXXX000X
 Insurance Value 1,000,000.00
 Number of Shares 123456
 DTC
 Certificate Numbers
 1234567890 1234567890 1
 1234567890 1234567890 2
 1234567890 1234567890 3
 1234567890 1234567890 4
 1234567890 1234567890 5
 1234567890 1234567890 6
 Total 1
 NumNo. Denum. Total
 12345678 1234567890 123456
 1 1 1
 2 2 2
 3 3 3
 4 4 4
 5 5 5
 6 6 6
 Total Transaction 7

Class A Common Stock
 PAR VALUE \$0.001

ACV
ACV AUCTIONS INC.
 INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

Class A Common Stock

Certificate Number
ZQ00000000

Shares

SEE REVERSE FOR CERTAIN DEFINITIONS
 CUSIP 00091G 10 4

THIS CERTIFIES THAT
 MR. SAMPLE & MRS. SAMPLE &
 MR. SAMPLE & MRS. SAMPLE

is the owner of
 ***ZERO HUNDRED THOUSAND
 ZERO HUNDRED AND ZERO***

THIS CERTIFICATE IS TRANSFERABLE IN CITIES DESIGNATED BY THE TRANSFER AGENT, AVAILABLE ONLINE AT www.computershare.com

FULLY-PAID AND NON-ASSESSABLE SHARES OF CLASS A COMMON STOCK OF

ACV Auctions Inc. (hereinafter called the "Company"), transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

DATED DD-MMM-YYYY
 COUNTERSIGNED AND REGISTERED:
COMPUTERSHARE TRUST COMPANY, N.A.
 TRANSFER AGENT AND REGISTRAR.

FACSIMILE SIGNATURE TO COME
 Chief Executive Officer

FACSIMILE SIGNATURE TO COME
 Secretary

SEAL
 ACV AUCTIONS INC.
 INCORPORATED IN DELAWARE
 13092014

By _____ AUTHORIZED SIGNATURE

1234567

ACV AUCTIONS INC.

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT MIN ACT Custodian
	(Cust)	(Minor)
TEN ENT - as tenants by the entireties		under Uniform Gifts to Minors Act
JT TEN - as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT Custodian (until age)
	(Cust)	(Share)
	(Minor)under Uniform Transfers to Minors Act
		(State)

Additional abbreviations may also be used though not in the above list.

For value received, _____ hereby sell, assign and transfer unto _____ **PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE:

_____ Shares
 of the Class A Common Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Attorney
 to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated: _____ 20____

Signature: _____

Signature: _____
 Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed Medallion Guarantee Stamp
 THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM PURSUANT TO S.E.C. RULE 15c-15.

SECURITY INSTRUCTIONS
 THIS IS WATERMARKED PAPER. DO NOT ACCEPT WITHOUT NOTING WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.



The IRS requires that the named transfer agent ("we") report the cost basis of certain shares or units acquired after January 1, 2011. If your shares or units are covered by the legislation, and you requested to sell or transfer the shares or units using a specific cost basis calculation method, then we have processed as you requested. If you did not specify a cost basis calculation method, then we have defaulted to the first in, first out (FIFO) method. Please consult your tax advisor if you need additional information about cost basis.
 If you do not keep in contact with the issuer or do not have any activity in your account for the time period specified by state law, your property may become subject to state unclaimed property laws and transferred to the appropriate state.

1534221



Nicole Brookshire
T: +1 617-937-2357
nbrookshire@cooley.com

March 15, 2021

ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203

Ladies and Gentlemen:

We have acted as counsel to ACV Auctions Inc., a Delaware corporation (the "**Company**"), in connection with the filing by the Company of a Registration Statement (No. 333-253617) on Form S-1 (the "**Registration Statement**") with the Securities and Exchange Commission, including a related prospectus filed with the Registration Statement (the "**Prospectus**"), covering an underwritten public offering of up to 19,032,500 shares of the Company's Class A common stock, par value \$0.001 per share (the "**Shares**"), which consists of (i) 16,550,000 Shares to be sold by the Company (the "**Company Shares**") and (ii) up to 2,482,500 Shares that may be sold by the selling stockholders identified in the Registration Statement (the "**Stockholder Shares**") upon the exercise of an option to purchase additional Shares granted to the underwriters.

In connection with this opinion, we have (i) examined and relied upon (a) the Registration Statement and the Prospectus, (b) the Company's Ninth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, each as currently in effect, (c) the forms of the Company's Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, filed as Exhibits 3.2 and 3.4 to the Registration Statement, respectively, each of which is to be in effect prior to the closing of the offering contemplated by the Registration Statement and (d) originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below and (ii) assumed that (a) the Shares will be sold at a price established by the Board of Directors of the Company or a duly authorized committee thereof and (b) the Amended and Restated Certificate of Incorporation referred to in clause (i)(c) is filed with the Delaware Secretary of State before issuance of the Shares.

We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies, the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery of all documents by all persons other than by the Company where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

Our opinion is expressed only with respect to the General Corporation Law of the State of Delaware. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that (i) the Company Shares, when sold and issued against payment therefor as described in the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable and (ii) the Stockholder Shares have been validly issued and are fully paid and non-assessable, except with respect to Stockholder Shares that are to be sold by certain selling stockholders upon the conversion of outstanding preferred stock of the Company in accordance with the terms of such preferred stock, which will be validly issued, fully paid and non-assessable upon such conversion.

Cooley LLP 500 Boylston Street, Boston, MA 02116-3736
t: (617) 937-2300 f: (617) 937-2400 cooley.com



ACV Auctions Inc.
March 15, 2021
Page Two

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus included in the Registration Statement and to the filing of this opinion as an exhibit to the Registration Statement.

Sincerely,

Cooley LLP

By: /s/ Nicole Brookshire
Nicole Brookshire

Cooley LLP 500 Boylston Street, Boston, MA 02116-3736
t: (617) 937-2300 f: (617) 937-2400 cooley.com

ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN
(As amended and restated effective as of November 14, 2020)

WHEREAS, the Company previously amended the Plan on each of February 27, 2017, January 17, 2018 and December 6, 2018 to increase the number of shares of Stock covered by the Plan and the Company now desires to further amend and restate the Plan as set forth herein as of the date hereof.

Section 1. Purpose. The purpose of the amended and restated ACV Auctions Inc. 2015 Long-Term Incentive Plan (the "Plan") is to assist the Company in attracting, motivating and retaining selected individuals to serve as employees, directors, officers and Consultants by providing incentives to such individuals through the ownership and performance of the Company's common stock.

Section 2. Definitions

(a) "Affiliate" means, with respect to a Person, a Person that directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person.

(b) "Award" means an Option, Restricted Stock, Unrestricted Stock or Restricted Stock Unit granted under the Plan.

(c) "Award Agreement" means the document or agreement evidencing the grant of an Award by the Company.

(d) "Board" means the board of directors of the Company.

(e) "Cause" means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant's Award Agreement or by a written contract of employment or service, that a Participant has: (i) committed a material act of dishonesty or fraud relating to the Company or any of the Company's subsidiaries or Affiliates; (ii) misappropriated, embezzled, or stolen funds or property (A) of the Company or the Company's subsidiaries or Affiliates or (B) of customers of the Company or the Company's subsidiaries or Affiliates; (iii) committed, been indicted, convicted or pled guilty or nolo contendere to any felony under state or federal law; (iv) materially failed to perform his employment duties or to comply with reasonable directions of the Board for a period of thirty (30) days following receipt of notice of such failure to perform or comply; (v) been guilty of or engaged in willful misconduct or gross negligence in the performance of Participant's duties; or (vi) materially breached any representations, warranties, covenants or conditions in any employment, non-competition, confidentiality or other agreement to which the Company or any subsidiary and such Participant is a party.

(f) "Change in Control" means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant's Award Agreement or written contract of employment or service, the occurrence of any of the following events:

(i) any Exchange Act Person becomes the owner, directly or indirectly, of securities of the Company representing more than 50 percent of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person from the Company in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of ownership held by any Exchange Act Person (the "Subject Person") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the shareholders of the Company immediately prior thereto do not own, directly or indirectly, either (A) outstanding voting securities representing more than 50 percent of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than 50 percent of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions relative to each other as their ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the complete dissolution or liquidation of the Company;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Affiliates, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Affiliates to an entity, more than 50 percent of the combined voting power of the voting securities of which are owned by shareholders of the Company in substantially the same proportions relative to each other as their ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, immediately following the Effective Date, are members of the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the members of the Board within any 24-month period; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of the Plan, be considered as a member of the Incumbent Board.

(g) “Code” means the Internal Revenue Code of 1986, as amended. Any reference to the Code shall be deemed to include a reference to any regulations promulgated thereunder.

(h) “Committee” means the committee appointed by the Board from among its members to administer the Plan. If a separate Committee has not been specifically established, the Board shall constitute the Committee, and all references hereunder to the Committee shall refer to the Board. In addition, the Board shall have the right to exercise, in whole or in part, the authority of the Committee hereunder with respect to certain persons or classes of persons as Participants, in which case as to those persons and as to such authority taken or retained by the Board, references to the Committee herein shall refer to the Board. If and when the shares of Stock become registered under the Exchange Act, the Board shall appoint a Committee of not less than two members, each member of which shall be an “outside director” within the meaning of Section 162(m) of the Code and a “non-employee director” as defined in Rule 16b-3 promulgated under the Exchange Act, as well as comply with the applicable requirements of the exchange upon which the Stock is traded.

(i) “Company” means ACV Auctions Inc., a Delaware corporation.

(j) “Consultant” means any natural person who is engaged by the Company or any Affiliate to render bona fide consulting or advisory services.

(k) “Control” means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, or the power to appoint directors of the Company, whether through the ownership of voting securities, by contract or otherwise (the terms “Controlled by” and “under common Control with” shall have correlative meanings).

(l) “Date of Grant” means the date on which the Committee adopts a resolution, or takes other appropriate action, expressly granting an Award to a Participant that specifies the key terms and conditions of the Award or, if a later date is set forth in such resolution, then such date as is set forth in such resolution.

(m) “Director” means a non-employee member of the Board.

(n) “Disability” means, with respect to a Participant, the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(o) “Effective Date” of this amended and restated Plan means the date that the Plan is approved by the Board.

(p) “Eligible Person” means any employee or Director of the Company or an Affiliate, or a Consultant who provides services to the Company or an Affiliate, whom the Committee determines to be an Eligible Person.

(q) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(r) "Exchange Act Person" means any natural person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Affiliate of the Company, (ii) any employee benefit plan of the Company or any Affiliate of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Affiliate of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an entity owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company; or (v) any natural person, entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the owner, directly or indirectly, of securities of the Company representing more than 50 percent of the combined voting power of the Company's then outstanding securities.

(s) "Fair Market Value" of Stock, means, as of any date: (i) the closing price of the Stock as reported on the principal nationally recognized stock exchange on which the type of Stock is traded on such date, or if no prices are reported with respect to such Stock on such date, the closing price of the Stock on the last preceding date on which there were reported prices of such Stock or (ii) if Stock of that type is not listed or admitted to unlisted trading privileges on a nationally recognized stock exchange, the Fair Market Value will be determined in good faith by the Board acting in its discretion based upon the reasonable application of a reasonable valuation method taking into account the facts and circumstances existing on the valuation date, which determination will be conclusive.

(t) "Good Reason" means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant's Award Agreement or by a written contract of employment or service, the occurrence of one or more of the following without the Participant's express written consent, which circumstances are not remedied by the Company within thirty (30) days of its receipt of a written notice from the Participant describing the applicable circumstances (such period, the "Cure Period") (which notice must be provided by the Participant within ninety (90) days of the Participant's knowledge of the applicable circumstances), and Participant's resignation from all positions held with the Company must be effective not later than ninety (90) days after the expiration of the Cure Period:

(i) any material, adverse change in the Participant's duties, responsibilities, authority, title, status or reporting structure;

(ii) a material reduction in the Participant's base salary or target bonus opportunity; or

(iii) a geographical relocation of the Participant's principal office location that increases the Participant's one-way commute by more than 50 miles as compared to such Participant's then-current principal office location immediately prior to such relocation; *provided that* if the Participant works remotely during any period in which such Participant's regular principal office location is a Company office that is closed, then neither Participant's relocation to remote work or back to the office from remote work will be considered a relocation of such Participant's principal office location for purposes of this definition].

(u) "Incentive Stock Option" means a stock option granted under Section 5 that is intended to meet the requirements of Section 422 of the Code.

(v) "Non-Qualified Stock Option" means a stock option granted under Section 5 that is not intended to be an Incentive Stock Option.

(w) "Option" means an Incentive Stock Option or a Non-Qualified Stock Option.

(x) "Participant" means an Eligible Person who receives an Award under the Plan.

(y) "Person" means any individual, partnership, firm, trust, corporation, limited liability company or other similar entity. When two or more Persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of Common Stock, such partnership, limited partnership, syndicate or group shall be deemed a "Person"

(z) "Restricted Stock" means shares of Stock granted under Section 6 with the restriction that the Participant may not sell, transfer, pledge or assign such shares and with such other restrictions as the Committee, in its sole discretion, may impose (including any restriction on the right to vote such shares and the right to receive any dividends).

(aa) "Restricted Stock Unit" means an unfunded and unsecured promise to deliver Stock, cash or other securities or other property granted under Section 7 with such restrictions as the Committee, in its sole discretion, may impose.

(bb) "Stock" means the common stock of the Company, par value \$0.001 per share.

(cc) "Substitute Awards" means Awards granted by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, in each case by a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines.

(dd) "Ten Percent Stockholder" means an individual who owns (or is deemed to own pursuant to Section 424(d) of the Code) more than ten percent of the total combined voting power of all classes of stock of the Company or an Affiliate.

(ee) "Unrestricted Stock" means shares of Stock, other than Restricted Stock, granted under Section 6 subject to such terms and condition as the Committee, in its sole discretion, may impose.

Section 3. Available Shares

(a) Aggregate Shares Available. Subject to adjustment as provided in Section 13(b), a total of 26,834,352 shares of Stock shall be authorized for issuance under the Plan. Shares of stock to be issued under the Plan may be either authorized but unissued shares, or shares that have been reacquired by the Company.

(b) Accounting for Awards.

(i) For purposes of Section 3(a), if an Award entitles the holder thereof to receive or purchase shares of Stock, the number of shares covered by such Award or to which such Award relates shall be counted on the Date of Grant of such Award against the aggregate number of shares of Stock available for granting Awards under the Plan.

(ii) For purposes of Section 3(a), if any shares of Stock subject to an Award are forfeited, expire or otherwise terminate without issuance of such shares, or any Award is settled for cash or otherwise does not result in the issuance of all or a portion of the shares of Stock subject to such Award, such shares shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for issuance under the Plan.

(iii) For purposes of Section 3(a), in the event that (1) any Award granted hereunder is exercised through the tendering of shares of Stock (either actually or by attestation) or by the withholding of shares of Stock by the Company, or (2) withholding tax liabilities arising from such Award are satisfied by the tendering of shares of Stock (either actually or by attestation) or by the withholding of shares of Stock by the Company, then the shares so tendered or withheld shall be available for issuance under the Plan.

Section 4. Eligibility and Administration

(a) Eligibility. Any Eligible Person shall be eligible to be designated a Participant. In determining which Eligible Persons shall receive an Award and the terms of any Award, the Committee may take into account the nature of the services rendered by the respective Eligible Persons, their present and potential contributions to the success of the Company or such other factors as the Committee, in its discretion, shall deem relevant. Notwithstanding the foregoing, an Incentive Stock Option may only be granted to an employee and an Incentive Stock Option may not be granted to an employee of an Affiliate unless such Affiliate is also a "subsidiary corporation" of the Company within the meaning of Section 424(f) of the Code.

(b) Administration. The Plan shall be administered by the Committee. The Committee shall have full power and authority, subject to the provisions of the Plan to: (i) select the Eligible Persons to receive Awards; (ii) determine the type or types of Awards to be granted to each Participant; (iii) determine the number of shares of Stock to be covered by each Award; (iv) determine the terms and conditions, not inconsistent with the provisions of the Plan, of any Award; (v) determine whether, to what extent and under what circumstances Awards may be settled in cash, shares of Stock or other property; (vi) determine whether, to what extent and under what circumstances any Award shall be canceled or suspended; (vii) interpret and administer the Plan and any Award Agreement; (viii) correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent that the Committee shall deem desirable to carry it into effect; (ix) establish such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (x) make any

other determination and take any other action that the Committee deems necessary or desirable for administration of the Plan. Decisions of the Committee shall be final, conclusive and binding on all persons or entities, including the Company, any Participant, and any Affiliate. Notwithstanding the foregoing, any action or determination by the Committee specifically affecting or relating to an Award to a Director shall require the prior approval of the Board.

Section 5. Options

(a) Grant. Each Option shall be subject to the terms and conditions of this Section and to such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall deem desirable and as are set forth in the applicable Award Agreement. The receipt of an Option pursuant to the Plan shall impose no obligation on the recipient to exercise such Option.

(b) Exercise Price. Other than in connection with Substitute Awards, and except as otherwise provided by Section 5(e)(ii), the exercise price per share of each Option shall not be less than 100 percent of the Fair Market Value of one share of Stock on the Date of Grant of such Option.

(c) Term. The term of each Option shall be fixed by the Committee in its sole discretion; provided that, except as otherwise provided by Section 5(e)(iii), no Option shall be exercisable after the expiration of ten years from the date the Option is granted.

(d) Exercise.

(i) Vested Options granted under the Plan shall be exercised by the Participant (or by the Participant's executors, administrators, guardian or legal representative, as may be provided in an Award Agreement) as to all or part of the vested shares of Stock covered thereby, by giving notice of exercise to the Company or its designated agent, specifying the number of shares of Stock to be purchased. The notice of exercise shall be in such form, made in such manner, and in compliance with such other requirements consistent with the provisions of the Plan as the Committee may prescribe from time to time.

(ii) Unless otherwise provided in an Award Agreement, full payment of an Option's exercise price shall be made at the time of exercise and shall be made: (A) in cash or cash equivalents (including certified check or bank check or wire transfer of immediately available funds), (B) with the consent of the Committee, by tendering previously acquired shares of Stock (either actually or by attestation, valued at their then Fair Market Value), (C) with the consent of the Committee, by withholding shares of Stock otherwise issuable in connection with the exercise of the Option, (D) through any other method specified in an Award Agreement, or (E) any combination of any of the foregoing. The notice of exercise, accompanied by such payment, shall be delivered to the Company at its principal business office or such other office as the Committee may from time to time direct, and shall be in such form, containing such further provisions consistent with the provisions of the Plan, as the Committee may from time to time prescribe. In no event may any Option be exercised for a fraction of a share. No adjustment shall be made for cash dividends or other rights for which the record date is prior to the date of such issuance.

(e) Incentive Stock Options. The Committee may grant Incentive Stock Options to any employee of the Company or any Affiliate (provided such Affiliate is also a “subsidiary corporation” of the Company within the meaning of Section 424(f) of the Code), subject to the requirements of Section 422 of the Code. Solely for purposes of determining whether shares of Stock are available for the grant of Incentive Stock Options under the Plan, the maximum aggregate number of shares of Stock that may be issued pursuant to “incentive stock options” granted under the Plan shall be 26,834,352 shares, subject to adjustments provided in Section 13(b).

(i) Limitation on Exercisable Value. The aggregate Fair Market Value (determined at the time the Incentive Stock Option is granted) of the shares of Stock with respect to which Incentive Stock Options are exercisable for the first time by any Participant during any calendar year under the Plan and under any other option plan of the Company shall not exceed \$100,000. Any Option granted in excess of this limitation shall be treated as a Nonqualified Stock Option.

(ii) Limitation on Exercise Price. In the case of a Ten Percent Stockholder of the Company, the exercise price of an Incentive Stock Option shall not be less than 110 percent of the Fair Market Value of a share on the date the Incentive Stock Option is granted.

(iii) Limitation on Term. In the case of a Ten Percent Stockholder of the Company, an Incentive Stock Option shall not be exercisable after the expiration of five years from the date the Incentive Stock Option is granted.

(iv) Disqualifying Dispositions. Any Participant who shall make a “disposition” (as defined in Section 424 of the Code) of all or any portion of shares of Stock acquired upon exercise of an Incentive Stock Option within two years from the Date of Grant of such Incentive Stock Option or within one year after the issuance of the shares of Stock acquired upon exercise of such Incentive Stock Option (a “Disqualifying Disposition”) shall be required to immediately advise the Company in writing as to the occurrence of the sale and the price realized upon the sale of such shares of Stock.

(f) Market-Standoff. Following the effective date of an initial public offering or any secondary offering by the Company, the Board may, in its sole discretion, subject the Participant for up to a 180 day period to certain restrictions with respect to the sale, grant, transfer or disposition of the Options and any Stock acquired on exercise thereof to the same extent and in the same manner as such provisions apply to holders of Stock.

Section 6. Awards of Restricted Stock and Unrestricted Stock

(a) Grant. Awards of Restricted Stock may be issued to Eligible Persons either alone or in addition to other Awards granted under the Plan. The Committee has absolute discretion to determine whether any consideration (other than services) is to be received by the Company or any Affiliate as a condition precedent to the issuance of Restricted Stock.

(b) Vesting and Restrictions on Transfer. Shares of Stock issued pursuant to any Award of Restricted Stock may (but need not) be made subject to vesting conditions based upon the satisfaction of such service requirements, conditions, restrictions or performance criteria as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. The Company may also grant or offer for sale to an Eligible Person Unrestricted Stock in such amounts and subject to such terms and conditions as the Committee shall determine.

(c) Rights of Holders of Restricted Stock. Unless otherwise provided in the Award Agreement, beginning on the Date of Grant of an Award of Restricted Stock, the Participant shall become a shareholder of the Company with respect to all shares of Stock subject to the Award and shall have all of the rights of a shareholder, including the right to vote such shares of Stock and the right to receive distributions made with respect to such shares. Except as otherwise provided in an Award Agreement, any shares of Stock or other property distributed as a dividend or otherwise with respect to any Award of Restricted Stock as to which the restrictions have not yet lapsed shall be subject to the same restrictions as the underlying Restricted Stock, and such shares of Stock or other property shall be paid to the Participant within 30 days of the vesting (or if earlier, the lapse of the substantial risk of forfeiture) of the underlying Restricted Stock.

(d) Issuance and Delivery of Shares. The shares of Stock underlying any Award of Restricted Stock granted under the Plan shall be issued at the time such Awards are granted and may be evidenced in such manner as the Committee may deem appropriate, including book-entry registration (including without limitation through eShares or a similar platform to the extent used by the Company) or, issuance of a stock certificate or certificates, which certificate or certificates shall be held by the Company by or on behalf of the Company. Such certificate or certificates shall be registered in the name of the Participant and shall bear an appropriate legend referring to the restrictions applicable to such Restricted Stock. If and when shares of Stock underlying an Award are no longer subject to restrictions, the Company (or eShares or a similar platform, if used by the Company) will, upon the Participant's request, and subject to the payment of any applicable fees required by eShares or a similar platform, provide a stock certificate or certificates with respect to such shares of Stock without restrictive legends.

Section 7. Restricted Stock Units.

(a) Subject to the other terms of the Plan, the Committee may grant Restricted Stock Units to Eligible Persons and may impose conditions on such units as it may deem appropriate. Each grant of a Restricted Stock Unit shall be evidenced by an Award Agreement in the form that is approved by the Committee and that is not inconsistent with the terms and conditions of the Plan.

(b) Subject to vesting any and other conditions imposed by the Committee in the Award Agreement, each grant of a Restricted Stock Unit shall entitle the Participant to whom it is granted a distribution from the Company in an amount equal to the Fair Market Value (at the time of the distribution) of one share of Stock. Distributions may be made in cash, shares of Stock, a combination of cash and shares of Stock, as determined by the Committee and contained in the Award Agreement. All other terms governing Restricted Stock Units, such as vesting conditions, time and form of payment and termination and forfeiture of Restricted Stock Units shall be set forth in the Award Agreement.

(c) To the extent provided in an Award Agreement, the holder of Restricted Stock Units may be entitled to be credited with dividend equivalent payments (upon the payment by the Company of dividends on shares of Stock) either in cash or, at the sole and absolute discretion of the Committee, in shares of Stock having a Fair Market Value equal to the amount of such dividends (and interest may, at the sole and absolute discretion of the Committee, be credited on the amount of cash dividend equivalents at a rate and subject to such terms as provided by the Committee), which accumulated dividend equivalent amounts shall be payable to the Participant upon the vesting of the Restricted Stock Units to which such dividend equivalent amounts relate, and to the extent such Restricted Stock Units are forfeited, the related dividend equivalent amounts shall also be forfeited.

Section 8. Standard Forms of Award Agreements

(a) Award Agreements. The terms of an Award granted under the Plan shall be set forth in a written Award Agreement which shall contain provisions determined by the Committee and not inconsistent with the Plan. No Award or purported Award shall be a binding obligation of the Company unless evidenced by a fully executed Award Agreement.

(b) Authority to Vary Terms. The terms of Awards need not be the same with respect to each type of Award or each Participant. The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

Section 9. Termination of Employment or Services The Committee shall determine and set forth in each Award Agreement whether any Awards granted in such Award Agreement will continue to be eligible to vest or be exercisable, and the terms of such vesting or exercise, on and after the date that a Participant ceases to be employed by, or to provide services to, the Company or any Affiliate (including as a Director), whether by reason of death, Disability, voluntary or involuntary termination of employment or services, or otherwise. The date of termination of a Participant's employment or services will be determined by the Committee, which determination will be final. The Committee, in its sole discretion, may cause an Award Agreement to provide for the accelerated vesting of Awards in the event of the Participant's death, Disability or termination of employment or services.

Section 10. Change in Control.

(a) Effect of Change in Control on Awards. Subject to the requirements and limitations of Section 409A of the Code, if applicable, the Committee may provide for any one or more of the following:

(i) *Accelerated Vesting.* The Committee may, in its discretion, provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability, vesting and/or settlement in connection with such Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Participant's employment or service prior to, upon, or following such Change in Control, to such extent as the Committee shall determine.

(ii) *Assumption, Continuation or Substitution.* In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "Acquiror"), may, without the consent of any Participant, either assume or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Change in Control or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee, in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Change in Control, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Change in Control was entitled; provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Change in Control. Notwithstanding the foregoing, in the event of a Change in Control the Board may, in its sole discretion, subject each Participant to substantially the same escrow, holdback, indemnification, earn-out and similar obligations, contingencies and encumbrances contained in the definitive agreement relating to the Change in Control as other stockholders of the Company may be subject (including, without limitation, the requirement to contribute a proportionate number of shares of Stock issued as a result of the exercise or vesting of an Award, or any cash or property that may be received upon exercise or exchange of an Award, to an escrow fund, or otherwise have a proportionate amount of such shares of Stock, cash or other property encumbered by the indemnification, escrow and similar provisions of such definitive agreement); provided that such obligations, contingencies or encumbrances do not cause an Award to fail to comply with Section 409A of the Code. By accepting an Award, a Participant agrees to execute such documents and instruments as the Board may reasonably require for the Participant to be bound by such obligations.

(iii) *Cash-Out of Awards.* The Committee may, in its discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Award or a portion thereof outstanding immediately prior to the Change in Control and not previously exercised shall be canceled in exchange for a payment with respect to each vested share of Stock or vested Restricted Stock Unit (and each unvested share of Stock or vested Restricted Stock Unit, if so determined by the

Committee) subject to such canceled Award in: (A) cash, (B) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (C) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control, reduced by the exercise or purchase price per share under such Award to the extent applicable. Notwithstanding the foregoing, in the event of a Change in Control the Board may, in its sole discretion, subject each Participant to substantially the same escrow, holdback, indemnification, earn-out and similar obligations, contingencies and encumbrances contained in the definitive agreement relating to the Change in Control as other stockholders of the Company may be subject (including, without limitation, the requirement to contribute a proportionate number of shares of Stock issued as a result of the exercise or vesting of an Award, or any cash or property that may be received upon exercise or exchange of an Award, to an escrow fund, or otherwise have a proportionate amount of such shares of Stock, cash or other property encumbered by the indemnification, escrow and similar provisions of such definitive agreement); provided that such obligations, contingencies or encumbrances do not cause an Award to fail to comply with Section 409A of the Code. By accepting an Award, a Participant agrees to execute such documents and instruments as the Board may reasonably require for the Participant to be bound by such obligations.

(b) Suspension of Option Exercises. The Board, in its sole discretion, may suspend the exercise of Options for a limited period of time preceding the Change in Control of the Company (the "Suspension Period") if such suspension is administratively necessary to facilitate the consummation of the Change in Control. The length of the Suspension Period shall be determined by the Board and shall not exceed 90 days.

(c) Federal Excise Tax Under Section 4999 of the Code.

(i) *Excess Parachute Payment*. In the event that any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an "excess parachute payment" under Section 280G of the Code, the Participant may elect, in his or her sole discretion, to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization; provided, however, that no such election shall be made if such election would subject the Participant to taxation under Section 409A of the Code.

(ii) *Determination by Independent Accountants*. To aid the Participant in making any election called for under Section 10(c)(i), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an "excess parachute payment" to the Participant as described in Section 10(c)(i), the Company shall request a determination in writing by independent public accountants selected by the Company (the "Accountants"). As soon as practicable thereafter, the Accountants shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Accountants may rely on

reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determination. The Company shall bear all fees and expenses the Accountants may reasonably charge in connection with their services contemplated by this Section 10(c)(ii).

Section 11. Tax Withholding.

(a) In General. The Company shall have the right to make all payments or distributions pursuant to the Plan to a Participant net of any applicable federal, state and local taxes required to be paid or withheld as a result of: (i) the grant of any Award, (ii) the exercise of an Award, (iii) the vesting and/or delivery of shares of Stock or cash or (iv) any other event occurring pursuant to the Plan. The Company or any Affiliate shall have the right to withhold from wages or other amounts otherwise payable to such Participant such withholding taxes as may be required by law, or to otherwise require the Participant to pay such withholding taxes. If the Participant shall fail to make such tax payments as are required, the Company or its Affiliates shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to such Participant or to take such other action as may be necessary to satisfy such withholding obligations.

(b) Withholding in Shares. The Committee shall be authorized, but not required, to establish procedures for Participants to satisfy such obligation for the payment of such withholding taxes described in Section 11(a) by (i) tendering previously acquired shares of Stock (either actually or by attestation, valued at their then Fair Market Value), (ii) by directing the Company to retain shares of Stock (up to the Participant's minimum required tax withholding rate or such other rate that will not trigger a negative accounting impact) otherwise deliverable in connection with the Award or (iii) by such other method as may be set forth in the Award Agreement.

Section 12. Amendment and Termination of the Plan. The Board may, from time to time, alter, amend, suspend or terminate the Plan as it shall deem advisable, subject to any requirement for shareholder approval imposed by applicable law. The Board may not, without the approval of the Company's shareholders, amend the Plan to: (a) increase the number of shares of Stock available under the Plan (except for adjustments pursuant to Section 13(b)); (b) expand the types of awards available under the Plan; (c) materially expand the class of persons eligible to participate in the Plan; (d) amend any provision of Section 5(b); or (e) take any other action that requires the approval of the Company's shareholders. In addition, no amendments to, or termination of, the Plan shall in any way impair the rights of a Participant under any Award previously granted without such Participant's consent.

Section 13. Miscellaneous

(a) Forfeiture Events and Repayment. To the extent applicable, any amount paid under the Plan shall be subject to recoupment in accordance with The Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company, or as is otherwise required by applicable law or stock exchange listing condition. The Committee may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, termination of employment or service for Cause or any act by a Participant, whether before or after termination of employment or service, that would constitute Cause for termination of employment or service.

(b) Adjustments. In the event of any merger, reorganization, consolidation, recapitalization, dividend or distribution (whether in cash, shares or other property, other than a regular cash dividend), stock split, reverse stock split, spin-off or similar transaction or other change in corporate structure affecting the shares of Stock or the value thereof, such adjustments and other substitutions shall be made to the Plan and to Awards as the Committee, in its sole discretion, deems equitable or appropriate taking into consideration the accounting and tax consequences, including such adjustments in the aggregate number, class and kind of securities that may be delivered under the Plan, the maximum number of shares of Stock that may be issued as Incentive Stock Options and the number, class, kind and exercise price of securities subject to outstanding Awards granted under the Plan (including, if the Committee deems appropriate, the substitution of similar options to purchase the shares of, or other awards denominated in the shares of, another company) as the Committee may determine to be appropriate in its sole discretion; provided, however, that the number of shares of Stock subject to any Award shall always be a whole number.

(c) No Right to Awards or to Continued Employment or Service. Nothing in the Plan nor the grant of an Award hereunder shall confer upon any Eligible Person the right to continue in the employment or service of the Company or any Affiliate or affect any right that the Company or any Affiliate may have to terminate the employment or service of (or to demote or to exclude from future Awards under the Plan) any such Participant at any time for any reason. Except as specifically provided by the Committee, the Company shall not be liable for the loss of existing or potential profit from an Award granted in the event of termination of an employment or other relationship. No Participant shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants under the Plan. Without limiting the generality of the foregoing, the Committee shall be entitled to make non-uniform and selective determinations, amendments and adjustments, and to enter into non-uniform and selective Award Agreements.

(d) Transferability of Awards. No Award and no shares of Stock subject to Awards that have not been issued may be sold, assigned, transferred, pledged or otherwise encumbered, other than by will or the laws of descent and distribution, and such Award may be exercised during the life of the Participant only by the Participant or the Participant's guardian or legal representative.

(e) Substitute Awards. Notwithstanding any other provision of the Plan, the terms of Substitute Awards may vary from the terms set forth in the Plan to the extent the Committee deems appropriate to conform, in whole or in part, to the provisions of the awards in substitution for which they are granted.

(f) Cancellation of Award. Notwithstanding anything to the contrary contained herein, an Award Agreement may provide that the Award shall be canceled if the Participant, without the consent of the Company, while employed by the Company or any Affiliate or after termination of such employment or service, establishes a relationship with a competitor of the Company or any Affiliate or engages in activity that is in conflict with or adverse to the interest of the Company or any Affiliate, as determined by the Committee in its sole discretion. The Committee may provide in an Award Agreement that if within the time period specified in the Agreement the Participant establishes a relationship with a competitor or engages in an activity referred to in the preceding sentence, the Participant will forfeit any gain realized on the exercise of the Award and must repay such gain to the Company.

(g) Restrictions. All certificates for shares of Stock delivered under the Plan pursuant to any Award shall be subject to such restrictions as the Committee may deem advisable under any applicable federal or state securities law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(h) Nature of Payments. All Awards granted under the Plan are in consideration of services performed or to be performed for the Company or any Affiliate, division or business unit of the Company. Any income or gain realized pursuant to an Award granted under the Plan shall constitute a special incentive payment to the Participant and shall not be taken into account, to the extent permissible under applicable law, as compensation for purposes of any of the employee benefit plans of the Company or any Affiliate except as may be determined by the Committee or by the Board or board of directors of the applicable Affiliate or as may be required by the terms of any employee benefit plans of the Company or any Affiliate.

(i) Other Plans. Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to shareholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases.

(j) Severability. If any provision of the Plan shall be held unlawful or otherwise invalid or unenforceable in whole or in part by a court of competent jurisdiction, such provision shall (i) be deemed limited to the extent that such court of competent jurisdiction deems it lawful, valid and/or enforceable and as so limited shall remain in full force and effect, and (ii) not affect any other provision of the Plan or part thereof, each of which shall remain in full force and effect. If the making of any payment or the provision of any other benefit required under the Plan shall be held unlawful or otherwise invalid or unenforceable by a court of competent jurisdiction, such unlawfulness, invalidity or unenforceability shall not prevent any other payment or benefit from being made or provided under the Plan, and if the making of any payment in full or the provision of any other benefit required under the Plan in full would be unlawful or otherwise invalid or unenforceable, then such unlawfulness, invalidity or unenforceability shall not prevent such payment or benefit from being made or provided in part, to the extent that it would not be unlawful, invalid or unenforceable, and the maximum payment or benefit that would not be unlawful, invalid or unenforceable shall be made or provided under the Plan.

(k) Unfunded Plan. The adoption of the Plan and any reservation of shares of Stock or cash amounts by the Company to discharge its obligations hereunder shall not be deemed to create a trust or other funded arrangement. Except upon the issuance of Stock pursuant to an Award, any rights of a Participant under the Plan shall be those of a general unsecured creditor of the Company, and neither a Participant nor the Participant's permitted transferees or estate shall have any other interest in any assets of the Company by virtue of the Plan. Notwithstanding the foregoing, the Company shall have the right to implement or set aside funds in a grantor trust, subject to the claims of the Company's creditors or otherwise, to discharge its obligations under the Plan.

(l) Governing Law. The Plan and all determinations made and actions taken thereunder, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware, without reference to principles of conflict of laws, and construed accordingly.

(m) Effective Date & Termination of the Plan. Awards may be granted under the Plan at any time and from time to time on or prior to the ten-year anniversary of the Effective Date of the Plan, on which date the Plan will expire except as to Awards then outstanding under the Plan; provided, that such outstanding Awards shall remain in effect until they have been exercised or terminated or have expired; provided further, that no Option shall be exercised (or, in the case of an Award of Restricted Stock, Unrestricted Stock or Restricted Stock Unit, shall be granted) unless and until the Plan has been approved by the shareholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

(n) Section 409A. The Plan and the grant of Awards under the Plan are intended to either be exempt from, or to comply with, the requirements of Section 409A of the Code, and shall be administered and interpreted in a manner that is consistent with such intention.

(o) Captions. The captions in the Plan are for convenience of reference only, and are not intended to narrow, limit or affect the substance or interpretation of the provisions contained herein.

* * * * *

CALIFORNIA SUPPLEMENT

Pursuant to Section 12 of the Plan, the Board has adopted this supplement for purposes of satisfying the requirements of Section 25102(o) of the California Law:

Any Awards granted under the Plan to a Participant who is a resident of the State of California on the date of grant (a "California Participant") shall be subject to the following additional limitations, terms and conditions:

1. Additional Limitations on Options.

(a) Maximum Duration of Options. No Options granted to California Participants shall have a term in excess of 10 years measured from the Option grant date.

(b) Minimum Exercise Period Following Termination. Unless a California Participant's employment is terminated for cause (as defined by applicable law, the terms of any contract of employment between the Company and such Participant, or in the instrument evidencing the grant of such Participant's Option), in the event of termination of employment of such Participant, such Participant shall have the right to exercise an Option, to the extent that he or she was otherwise entitled to exercise such Option on the date employment terminated, until the earlier of (i) at least six months from the date of termination, if termination was caused by such Participant's death or "permanent and total disability" (within the meaning of Section 22(e)(3) of the Code), (ii) at least 30 days from the date of termination, if termination was caused other than by such Participant's death or "permanent and total disability" (within the meaning of Section 22(e)(3) of the Code), and (iii) the Option expiration date.

(c) Adjustment to shares of Stock. In the event of any stock split, reverse stock split, stock dividend, recapitalization, combination, reclassification or other distribution of the issuer's equity securities without the receipt of consideration by the issuer, proportionate adjustments shall be made as appropriate to (i) the number of shares of Stock purchasable under an Option and (ii) the exercise price of any Option.

(d) Transferability of Right to Purchase. Subject to such further restrictions as may be provided in the Plan, Options are not transferable except by will, by the laws of descent and distribution, to a revocable trust, or as permitted by Rule 701 of the Securities Act of 1933, as amended.

(e) Final Date for Grants. Subject to such further restrictions as may be set forth in the Plan, Options must be granted within ten (10) years from the date the Plan is adopted by the Board, or the date the Plan is approved by the stockholders of the Company, whichever is earlier.

**ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN
NOTICE OF EXERCISE**

The undersigned Participant hereby elects to exercise the Option pursuant to the ACV Auctions Inc. 2015 Long-Term Incentive Plan, as amended (the "Plan") with the Date of Grant set forth below to purchase the number of shares of common stock, par value \$0.001 per share (the "Stock"), of ACV Auctions Inc. (the "Company") set forth below for the Total Exercise Price set forth below.

Option Information:

Date of Grant: _____	Type of Option: Non-Qualified Stock Option
Exercise Price Per Share: \$ _____	Total Number of Option Shares: _____

Exercise Information:

Total Exercise Price: \$ _____
Number of Shares of Stock as to which the Option is Exercised: _____
Name in which Stock Certificates are to be Issued: _____

eShares Payment:

<input type="checkbox"/> Payment of the Total Exercise Price and Tax Withholding through eShares using a linked account

Other Payment Methods:

<input type="checkbox"/> Payment of the Total Exercise Price and Tax Withholding through one of the alternative methods specified below. These payment methods require that this Notice of Exercise be printed and submitted by the Participant to the Company at: ACV Auctions Inc. Attention: Chief Financial Officer 640 Ellicott Street Buffalo, New York 14203 Payment of Exercise Price: <input type="checkbox"/> A check for \$ _____, made payable to the order of "ACV Auctions Inc." <input type="checkbox"/> Delivery to the Company of owned and unencumbered shares of Stock (contact the Company to determine the number of shares) <input type="checkbox"/> Reduction in the number of shares of Stock otherwise deliverable upon exercise of the Option

Payment of Tax Withholding:

A check for \$ _____, made payable to the order of "ACV Auctions Inc."

Stockholders Agreements

The exercise of the Option is conditioned upon the Participant having signed the Stockholder Agreements of the Company or such other similar agreements as the Company may reasonably request. If the Participant has not already signed such agreement(s), the Participant should contact the Company at the address provided above to obtain a copy for execution.

Participant

Signature

Name (print): _____

Date: _____

**ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN
STOCK OPTION AWARD AGREEMENT**

This Stock Option Award Agreement (this "Agreement") is made effective as of the Date of Grant specified below, by and between ACV Auctions Inc., a Delaware corporation (the "Company"), and the Participant.

Participant: *As set forth in eShares.*
Date of Grant: *As set forth in eShares.*
Number of Option Shares: *As set forth in eShares.*
Exercise Price Per Share: *As set forth in eShares.*
Option Expiration Date: *As set forth in eShares.*
Type of Option: *As set forth in eShares.*
Vested Shares: The Number of Option Shares that become Vested Shares as of any date is determined pursuant to Appendix A attached to this Agreement.

The purpose of this Agreement is to establish a written agreement evidencing the Option granted pursuant to the ACV Auctions Inc. 2015 Long-Term Incentive Plan (the "Plan"). All of the terms and conditions of the Plan are fully incorporated herein by reference. Unless the context clearly indicates otherwise, capitalized terms used but not defined herein will have the meaning given to such terms in the Plan.

Section 1. Grant of Option.

(a) Grant. Pursuant to Section 5 of the Plan, the Company hereby grants to the Participant an option (the "Option") to purchase the total number of shares of Stock of the Company equal to the Number of Option Shares set forth above, at the Exercise Price Per Share set forth above and on the terms and conditions and subject to the restrictions set forth in this Agreement and the Plan.

(b) Consideration. The grant of the Option is made in consideration of the services to be rendered by the Participant to the Company.

Section 2. Exercise of the Option.

(a) Right to Exercise. Except as otherwise provided herein, prior to the termination of the Option (as provided in Section 7), the Option shall be exercisable in an amount not to exceed the number of Vested Shares less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the Number of Option Shares, as adjusted pursuant to Section 12(b) of the Plan.

(b) Method of Exercise. The Option, to the extent vested and exercisable, may be exercised in whole or in part, provided that the Option may not be exercised for less than one share of Stock in any single transaction. The Option shall be exercised by written notice given by the Participant to the Company on the form provided by the Company for such purpose specifying the number of shares of Stock that the Participant elects to purchase and the exercise price being paid, accompanied by full payment of such exercise price.

(c) Payment of Exercise Price. Payment of the exercise price for the number of shares of Stock for which the Option is being exercised may be made in:

(i) in cash or cash equivalents (including certified check or bank check or wire transfer of immediately available funds);

(ii) by delivery to the Company of other shares of Stock, duly endorsed for transfer to the Company, with a Fair Market Value on the date of delivery equal to the exercise price (or portion thereof) due for the number of shares being acquired, or by means of attestation whereby the Participant identifies for delivery specific shares that have a Fair Market Value on the date of attestation equal to the exercise price (or portion thereof) and receives a number of shares equal to the difference between the number of shares thereby purchased and the number of identified attestation shares;

(iii) by reduction in the number of shares otherwise deliverable upon exercise of the Option with a Fair Market Value equal to the aggregate exercise price at the time of exercise; or

(iv) any combination of any of the foregoing.

(d) Issuance of Shares of Stock. Upon determining that compliance with the Plan and this Agreement has occurred, including compliance with Section 3, Section 4, Section 5 and Section 6, the Company shall issue certificates for the shares of Stock purchased; if the Participant has elected to pay the exercise price (or applicable tax withholding pursuant to Section 3) using shares of Stock to be received from his or her exercise of the Option, the Company shall issue certificates for the shares of Stock purchased, less the number of shares of Stock used in payment of the exercise price (and applicable tax withholding, if applicable). Under no circumstances will fractional shares of Stock be issued; if the Participant elects to pay the exercise price using shares of Stock already owned by him or her, or shares of Stock to be received from his or her exercise of the Option and such payment involves a fraction of a share, the remaining fraction of such share shall be redeemed by the Company and the Company shall pay the Participant the Fair Market Value of such fractional shares of Stock in lieu of issuing such fractional share.

Section 3. Tax Withholding.

(a) Prior to the issuance of shares of Stock upon the exercise of the Option, the Participant shall be required to pay to the Company, and the Company shall have the right to deduct from any compensation paid to the Participant pursuant to the Plan, the amount of any required withholding taxes in respect of the exercise of the Option and to take all such other action as the Committee deems necessary to satisfy all obligations for the payment of such withholding taxes. The Committee may permit the Participant to satisfy any federal, state or local tax withholding obligation by any of the following means, or by a combination of such means:

(i) tendering a cash payment;

(ii) authorizing the Company to withhold shares of Stock from the shares of Stock otherwise issuable to the Participant as a result of the exercise of the Option; provided, however, that no shares of Stock are withheld with a value exceeding the higher of the minimum amount of tax required to be withheld by law or such other amount that will not trigger a negative accounting impact; or

(iii) delivering to the Company previously owned and unencumbered shares of Common Stock.

(b) Notwithstanding any action the Company takes with respect to any or all income tax, social insurance, payroll tax, or othertax-related withholding (the “Tax-Related Items”), the ultimate liability for all Tax-Related Items is and remains the Participant’s responsibility and the Company: (i) makes no representation or undertakings regarding the treatment of any Tax-Related Items in connection with the grant or exercise of the Option or the subsequent sale of any shares of Stock; and (ii) does not commit to structure the Option to reduce or eliminate the Participant’s liability for Tax-Related Items.

Section 4. Stockholders Agreements. The exercise of the Option shall be conditioned upon the Participant executing a joinder agreement (in a form acceptable to the Company) to that certain Series Seed Preferred Stock Investment Agreement among the Company and the Purchaser and Key Holder parties thereto, dated as of April 3, 2015 (the “Investment Agreement”), pursuant to which the Participant shall agree that any shares of Stock acquired by the Participant upon exercise of the Option shall be subject to Section 5 of the Investment Agreement (Restrictions on Transfer; Drag Along), Section 7 of the Investment Agreement (Election of Board of Directors; Other Board Matters), and the related definitions set forth on Exhibit A to the Investment Agreement, or, if such agreement is no longer in effect at such time, a stockholders agreement of the Company in effect at such time or such other similar agreements as the Company may reasonably request (the “Stockholders Agreements”), if the Participant is not already a party thereto at the time of exercise. The Participant acknowledges and agrees that if a stockholders agreement of the Company is in effect at the time the Participant exercises the Option, any shares of Stock subject to this Option shall be Restricted Stock under such stockholders agreement. The Participant also acknowledges and agrees that any shares of Stock acquired by the Participant upon exercise of the Option shall automatically be subject to any restrictions on transfer contained in the First Amended and Restated Bylaws of the Company, as may be amended after the date hereof.

Section 5. Restrictions on Issuance of Shares. If at any time the Company determines that listing, registration or qualification of the shares of Stock covered by the Option upon any securities exchange or under any state or federal law, or the approval of any governmental agency, is necessary or advisable as a condition to the exercise of the Option, the Option may not be exercised in whole or in part unless and until such listing, registration, qualification or approval shall have been effected or obtained free of any conditions not acceptable to the Company. Shares will be issued in accordance with the procedures set forth by eShares, or such other similar platform as the Company may use from time to time.

Section 6. Securities Law Matters.

(a) As a precondition to the Company's execution of this Agreement and the grant of the Option hereunder, the Participant represents to the Company that the Option is being, and (unless a Registration Statement with respect thereto shall then be effective under the Securities Act of 1933, as amended (the "Act")) any shares of Stock acquired by the Participant upon exercise of the Option shall be, acquired by the Participant solely for investment and not with a view to, or for sale in connection with, any distribution thereof, nor with any present intention of selling, transferring or disposing of the same.

(b) The Participant acknowledges and agrees that the Option may not be offered for sale, sold, pledged, hypothecated or otherwise transferred or disposed of in any manner inconsistent with this Agreement or the Plan, and that any shares of Stock acquired upon exercise of the Option may not be offered for sale, sold or otherwise transferred or disposed of unless: (i) a Registration Statement with respect thereto shall then be effective under the Act, and the Participant shall have provided proof satisfactory to counsel for the Company that he or she has complied with all applicable state securities laws; or (ii) the Company shall have received an opinion of counsel in form and substance satisfactory to counsel for the Company that the proposed offer for sale, sale or transfer of the shares of Stock is exempt from the registration requirements of the Act and may otherwise be effected in compliance with any other applicable law, including all applicable state securities laws.

(c) The Participant understands that neither the Option nor any shares of Stock underlying the Option have been registered under the Act by reason of a specific exemption under the provisions of the Act which depends on his or her intention to hold the Option and the shares of Stock for investment purposes. The Participant understands that the shares of Stock must be held in a manner consistent with the rules and regulations of the Securities and Exchange Commission unless they are subsequently registered under the Act or an exemption from registration is available, and that the Company is under no obligation to register the shares of Stock or to effect compliance with any exemption from such registration requirements. The Participant understands that because the shares of Stock have not been registered under the Act and cannot be resold unless they are subsequently registered under the Act or an exemption from registration is available, he or she must bear the economic risk of his or her investment in the shares of Stock for an indefinite period of time.

(d) The Participant confirms that the Company is relying upon the representations contained in this Section 6 in connection with the issuance of the Option and, upon due exercise, any shares of Stock underlying the Option. The Participant undertakes to notify the Company immediately of any change in any representation, warranty or other information set forth in this Section 6, and agrees that such representations and warranties and agreements, undertakings and acknowledgements contained herein shall survive the exercise of the Option. In consideration of such issuance, the Participant hereby indemnifies and holds harmless the Company, and the officers, directors, employees and agents thereof, from and against any and all liability, losses, damages, expenses and attorneys' fees which they may hereafter incur, suffer or be required to pay by reason of the falsity of, or the Participant's failure to comply with, any representation or agreement contained in this Section 6.

Section 7. Termination of the Option. The Option shall terminate and may no longer be exercised after the first to occur of: (a) the close of business on the Option Expiration Date; (b) the close of business on the last date for exercising the Option following termination of the Participant's employment or service as described in Section 8; or (c) a Change in Control, to the extent provided in Section 9.

Section 8. Effect of Termination of Employment or Service

(a) *Exercisability.* The Option shall terminate immediately upon the Participant's termination of employment or service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested only during the applicable time period as determined below and thereafter shall terminate.

(i) *Disability.* If the Participant's employment or service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's employment or service is terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of one year after the date on which the Participant's employment or service is terminated, but in any event no later than the Option Expiration Date.

(ii) *Death.* If the Participant's employment or service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's employment or service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of one year after the date on which the Participant's employment or service terminated, but in any event no later than the Option Expiration Date.

(iii) *Termination for Cause.* If the Participant's employment or service is terminated for Cause or if, following the Participant's termination of employment or service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of employment or act.

(iv) *Other Termination of Employment or Service.* If the Participant voluntarily terminates employment or service for any reason or the Participant's employment or service terminates for any reason except Disability, death or termination for Cause, the Option, to the extent unexercised and exercisable for Vested Shares by the Participant on the date on which the Participant's employment or service terminated, may be exercised by the Participant at any time prior to the expiration of three months after the date on which the Participant's employment or service terminated, but in any event no later than the Option Expiration Date.

Section 9. Effect of Change in Control. In the event of a Change in Control, Section 9 of the Plan will govern the treatment of the Option.

Section 10. Miscellaneous.

(a) Legends. A legend may be placed on any certificate(s) or other document(s) delivered to the Participant indicating the restrictions on transferability of the shares of Stock issued upon exercise of the Option pursuant to the applicable Stockholders Agreements or any other restrictions that the Committee may deem advisable under the rules, regulations and other requirements of the Securities and Exchange Commission, any applicable federal or state securities laws or any stock exchange on which the shares of Stock are then listed or quoted.

(b) Transferability. The Option and the rights and privileges conferred thereby may not be transferred, assigned, pledged or hypothecated in any manner (whether by operation of law or otherwise) other than by will or applicable laws of decent and distribution. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of the Option or any right or privilege conferred thereby, contrary to the provisions of the Plan or this Agreement, or upon the sale or levy or attachment or similar process upon the rights and privileges conferred thereby, the Option shall immediately terminate and become null and void.

(c) Rights as Stockholder. The Participant shall have no rights as a stockholder with respect to the shares of Stock purchased pursuant to the exercise of the Option until the date of the issuance of a certificate of stock representing such shares of Stock.

(d) Adjustments. If any change is made to the outstanding Stock or the capital structure of the Company, if required, the shares of Stock underlying the Option shall be adjusted in any manner as contemplated by Section 12(b) of the Plan.

(e) No Right to Continued Employment or Service. The Participant's right, if any, to continue to serve the Company or any Affiliate as an employee or otherwise will not be enlarged or otherwise affected by the Plan or this Agreement. This Agreement does not restrict the right of the Company or any Affiliate to terminate the Participant's employment or service at any time, with or without Cause.

(f) Amendment. The Committee has the right to amend, alter, suspend, discontinue or cancel the Option, prospectively or retroactively; provided, that, no such amendment shall adversely affect the Participant's rights under this Agreement without the Participant's consent.

(g) Cancellation of Award. Notwithstanding Section 10(f) of this Agreement, if the Participant in any way violates the terms of any confidentiality, non-competition, or non-solicitation agreement, or other similar agreements entered into between the Company and the Participant, then the Committee in its sole discretion may cancel the Option.

(h) Notices. All notices and other communications required or permitted under this Agreement shall be written and shall be either delivered personally or sent by registered or certified first-class mail, postage prepaid and return receipt requested, or by telex or telecopier, addressed as follows:

(i) if to the Company, to the Company's principal corporate office; and (ii) if to the Participant or his or her successor, to the address last furnished by such person to the Company. Each such notice and other communication delivered personally shall be deemed to have been given when delivered. Each such notice and other communication

delivered by mail shall be deemed to have been given when it is deposited in the United States mail in the manner specified herein, and each such notice and other communication delivered by telex or telecopier shall be deemed to have been given when it is so transmitted and the appropriate answer-back is received. A party may change its address for the purpose hereof by giving notice in accordance with the provisions of this Section 10(h).

(i) Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement will be binding upon the Participant and the Participant's beneficiaries, executors, administrators and the person(s) to whom the Option may be transferred by will or the laws of descent or distribution.

(j) Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Company at any time, in its discretion. The grant of the Option in this Agreement does not create any contractual right or other right to receive any Options or other Awards in the future. Future Awards, if any, will be at the sole discretion of the Company. Any amendment, modification, or termination of the Plan shall not constitute a change or impairment of the terms and conditions of the Participant's employment with the Company.

(k) No Impact on Other Benefits. The value of the Participant's Option is not part of his or her normal or expected compensation for purposes of calculating any severance, retirement, welfare, insurance or similar employee benefit.

(l) Interpretation. This Agreement is subject to and controlled by the Plan. Any inconsistency between this Agreement and the Plan shall be resolved in favor of the Plan. Any dispute regarding the interpretation of this Agreement shall be submitted by the Participant or the Company to the Committee for review. The resolution of such dispute by the Committee shall be final and binding on the Participant and the Company. This Agreement is the final, complete and exclusive expression of the understanding between the parties and supersedes any prior or contemporaneous agreement or representation, oral or written, between them. In the event that any provision of this Agreement shall be held to be illegal or unenforceable, such provision shall be severed from this Agreement and the entire Agreement shall not fail on account thereof, but shall otherwise remain in full force and effect. As used herein, the masculine pronoun shall include the feminine and the neuter, as appropriate to the context. Unless the context otherwise requires, references herein to a "Section" means a Section of this Agreement. Section headings contained herein are for convenience only and shall not alter any of the parties' respective rights or obligations hereunder.

(m) Governing Law. This Agreement, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware, without reference to principles of conflict of laws, and construed accordingly.

(n) Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same instrument. Facsimile signatures shall have the effect of actual signatures for purposes of this Agreement.

(o) Acceptance. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions thereof, and accepts the Option subject to all of the terms and conditions of the Plan and this Agreement. The Participant acknowledges that there may be adverse tax consequences upon exercise of the Option or disposition of the underlying shares and that the Participant should consult a tax advisor prior to such exercise or disposition.

(signature page immediately follows)

IN WITNESS WHEREOF, this Agreement has been executed effective as of the date first set forth above.

ACV AUCTIONS, INC.

By: _____
Name:
Title:

Participant

Name (print):

Appendix A
Vesting Schedule

Provided that the Participant provides continuous services to the Company or any Affiliate through each such date, and, subject to earlier termination under Section 7 of this Agreement, the Number of Option Shares that become Vested Shares (disregarding any resulting fractional share) as of any date is determined as set forth in eShares, or such other similar platform as the Company may use from time to time.

ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN
(As amended and restated effective as of November 14, 2020)

RESTRICTED STOCK UNIT GRANT NOTICE

ACV Auctions Inc. (the “**Company**”), pursuant to its 2015 Long-Term Incentive Plan, as amended and restated effective as of November 14, 2020 (the “**Plan**”), hereby grants to Participant an award of Restricted Stock Units (“**RSUs**”). This grant of RSUs is subject to the terms and conditions set forth herein and in the Restricted Stock Unit Award Agreement (the “**RSU Award Agreement**”) and the Plan. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.

PARTICIPANT: _____
DATE OF GRANT: _____
NUMBER OF RSUs: _____
VESTING COMMENCEMENT DATE: _____
VESTING SCHEDULE: _____

Two vesting requirements must be satisfied on or before the Forfeiture Date (as defined below) in order for the RSUs to vest – a time and service-based requirement as described under the heading “Time-Based Component” below (the “**Time-Based Component**”) and the occurrence of a Liquidity Event as described under the heading Performance-Based Component” below (the “**Performance-Based Component**”).

The RSUs will not vest (in whole or in part) unless both the Time-Based Component and the Performance-Based Component requirements are satisfied. If both vesting requirements are satisfied, the vesting date (“**Vesting Date**”) of an RSU will be the first date upon which both of those requirements were satisfied with respect to that particular RSU.

Time-Based Component: *[use for monthly vesting]* [The Time-Based Component will be satisfied as to 25% of the RSUs on the one-year anniversary of the Vesting Commencement Date and 1/36 of the remaining RSUs will be satisfied on each monthly anniversary of the Vesting Commencement Date thereafter (such that the Time-Based Component shall be satisfied as to 100% of the RSUs on the four-year anniversary of the Vesting Commencement Date), provided that Participant remains an employee, Director or Consultant of the Company or any of its Affiliates (“**Service Provider**”) through each applicable date.]

[use for quarterly vesting] [The Time-Based Component will be satisfied as to 25% of the RSUs on the first Quarterly Date on or following the one-year anniversary of the Vesting Commencement Date and 1/12 of the remaining RSUs will be satisfied on each Quarterly Date thereafter (such that the Time-Based Component shall be satisfied as to 100% of the RSUs on the four-year anniversary of the first Quarterly Date on or following the Vesting Commencement Date), provided that Participant remains an employee, Director or Consultant of the Company or any of its Affiliates (“**Service Provider**”) through each applicable date. “**Quarterly Date**” means January 15, April 15, July 15 and October 15.]

[Notwithstanding the foregoing, the Time-Based Component will be satisfied upon Participant's termination by the Company without Cause or Participant's resignation for Good Reason (in either case, an "**Involuntary Termination**") within three (3) months prior to, or twelve (12) months following, the consummation of a Change in Control.] *[use when double-trigger time-based acceleration is being provided]*

Performance-Based Component: The Performance-Based Component will be satisfied upon the occurrence of a Liquidity Event on or prior to the Forfeiture Date and provided that Participant remains a Service Provider through the date of the Liquidity Event. "**Liquidity Event**" means the earlier of (i) a Change in Control, provided that such Change in Control qualifies as a "change in control event" within the meaning of Treasury Regulation 1.409A-3(i)(5), or any successor thereto (the "**Change in Control Event**"), or (ii) the effective date of a registration statement of the Company filed under the U.S. Securities Act of 1933, as amended, for the first sale or resale of the Company's Common Stock pursuant to a registration statement on Form S-1 (or any successor thereto) with the United States Securities and Exchange Commission (the "**IPO**").

Forfeiture Date: The Forfeiture Date will be the first to occur of: (i) the seven (7)-year anniversary of the Date of Grant; (ii) in the event that Participant ceases to be a Service Provider due to a termination for Cause or a determination is made that Participant engaged in conduct that would be grounds for a termination for Cause (whether or not Participant's service relationship is terminated for Cause or Participant resigns prior to such determination), the date Participant's service is terminated; or (iii) the occurrence of a forfeiture under Section F of the RSU Award Agreement.

By Participant's signature and the signature of the Company's representative below, Participant and the Company agree that the RSUs are granted under and governed by the terms and conditions of this Grant Notice, the RSU Award Agreement, and the Plan, which are attached hereto. Participant has reviewed the Plan, this Grant Notice and the RSU Award Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of the Plan, this Grant Notice and the RSU Award Agreement. In the event of any conflict with this Grant Notice, the Plan and the RSU Award Agreement shall control. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions relating to the Plan, this Grant Notice and the RSU Award Agreement.

This Grant Notice may be executed and delivered electronically whether via the Company's intranet or the Internet site of a third party or via email or any other means of electronic delivery specified by the Company. This Grant Notice may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. By executing this Grant Notice and accepting an Award, the undersigned acknowledges receipt of the RSU Award Agreement and Plan.

PARTICIPANT

By: _____
Name: _____
Print Name: _____
Date: _____

ACV AUCTIONS INC.

By: _____
Name: _____
Title: _____
Date: _____

Attachments:

1. Restricted Stock Unit Award Agreement
2. 2015 Long-Term Incentive Plan, as amended and restated effective as of [Date].

ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN
(As amended and restated effective as of November 14, 2020)

RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the terms of the Restricted Stock Unit Grant Notice (the “**Grant Notice**”) and this Restricted Stock Unit Award Agreement (this “**Agreement**”), ACV Auctions Inc., a Delaware corporation (the “**Company**”), has granted to Participant (as defined in the Grant Notice) Restricted Stock Units (“**RSUs**”) under its 2015 Long-Term Incentive Plan, as amended and restated effective as of November 14, 2020 (the “**Plan**”), as indicated in the Grant Notice. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. Participant agrees to be bound by the terms and conditions of the Plan, which control in case of any conflict with this Agreement.

A. VESTING. Subject to the limitations contained herein and therein, the RSUs will vest as provided in the Grant Notice.

B. TERMINATION. In the event Participant ceases to be a Service Provider for any or no reason, all RSUs that remain unvested (i.e., have not met the Time-Based Component and the Performance-Based Component) as of such termination will immediately terminate upon such termination; [provided that, if such Participant ceases to be a Service Provider as a result of an Involuntary Termination, the unvested RSUs will remain outstanding to the extent necessary to give effect to the potential vesting acceleration set forth in the Grant Notice][*use bracketed provision when double-trigger time-based acceleration is being provided*]. Further, if the Performance-Based Component is not satisfied on or before the Forfeiture Date, all RSUs (regardless of whether or not, or the extent to which, the Time-Based Component had been satisfied as to such RSUs) will automatically terminate upon such date. Upon a termination of one or more RSUs pursuant to this Section B, Participant will have no further rights with respect to such RSUs. Notwithstanding anything herein or in the Plan to the contrary, Participant shall not be entitled to any Settlement (as defined below) with respect to the RSUs following a termination of employment or engagement, as applicable, unless Participant executes (and does not revoke) a general release, in a form to be prepared by the Company, of any and all claims against the Company and its affiliates, directors and officers (the “**Release**”) within sixty (60) days following such date of termination of employment, or engagement, as applicable, or such earlier date by which Settlement would be required to be made in order to constitute a “short term deferral” for purposes of Code Section 409A of the Code (“**Section 409A**”).

C. SETTLEMENT. Subject to satisfaction of the Withholding Obligation set forth in Section I below, for each vested RSU, the Company will issue or deliver to Participant one (1) share of Stock, cash or a combination of both, as determined by the Company, in its sole discretion (“**Settlement**”) on the applicable Vesting Date for such Vested RSU or, if such Vesting Date is not a business day, on the next following business day, on the following schedule (each such date below, a “**Settlement Date**”):

- if the Vesting Date occurs as a result of an IPO, the vested RSUs shall be settled on the earlier to occur of (1) the date that is six months following the Vesting Date; (2) March 15th of the year following the calendar year in which the Vesting Date occurred; and (3) such earlier date determined by the Board or Committee;

- if the Vesting Date occurs as a result of a Change in Control Event, the vested RSUs shall be settled no later than 30 days following the Vesting Date;
- if the Vesting Date occurs under the Time-Based Component following satisfaction of the Performance-Based Component, the vested RSUs shall be settled on the Vesting Date or on a later date determined by the Board or Committee, as applicable, that is not later than December 31 of the calendar year in which the Vesting Date occurred, or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), not later than March 15th of the year following the calendar year in which the Vesting Date occurred.

Notwithstanding the foregoing provisions of Section C, with respect to Vesting Dates that occur following the IPO:

If the Vesting Date does not occur (1) during an “open window period” applicable to the Participant, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when the Participant is otherwise permitted to sell shares of Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a “**10b5-1 Arrangement**”)), *and*

(i) either (1) no Withholding Obligation applies, or (2) the Company decides, prior to the Vesting Date, (A) not to satisfy the Withholding Obligation by withholding shares of Stock from the shares of Stock otherwise due, on the Vesting Date, to Participant under the RSU, and (B) not to permit the Participant to enter into a “same day sale” commitment with a broker-dealer pursuant to Section I of this Agreement (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit the Participant to pay the Withholding Obligation in cash,

(ii) then the shares of Stock that would otherwise be settled to the Participant on the Vesting Date will not be settled on such Vesting Date and will instead be settled on the first business day when the Participant is not prohibited from selling shares of Stock in the open public market, but in no event later than (a) December 31 of the calendar year in which the Vesting Date occurs, or (b) if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than March 15th of the year immediately following the calendar year in which the Vesting Date occurred.

Each RSU that is settled in shares of Stock shall be settled on a one-to-one basis. Upon the issuance of shares of Stock, Participant shall thereafter have all the rights of a stockholder of the Company with respect to such Stock, subject to Section H below, if applicable.

D. STOCKHOLDERS AGREEMENTS. If any of the vested RSUs are settled in shares of Stock, Participant shall, if requested by the Company, be required to execute and deliver one or more stockholders agreements (pursuant to which, among other features, Participant's shares would be subject to a drag-along right with a proxy to vote the shares of Stock in favor of a transaction) in such form as the Board or Committee shall require.

E. STOCKHOLDER RIGHTS; DIVIDEND EQUIVALENTS. Participant shall not have any rights of a stockholder with respect to the shares of Stock underlying the RSUs (including, without limitation, any voting rights or any right to dividends paid with respect to the shares of Stock underlying the RSUs), unless and until Participant actually receives settlement of the shares of Stock of the Company underlying the RSUs. Dividend equivalents shall not be credited to Participant during the term of the RSUs.

F. COVENANTS AGREEMENT; VIOLATION OF POLICY. Notwithstanding anything herein or elsewhere to the contrary, any and all outstanding RSUs are subject to forfeiture in the event Participant (i) breaches any agreement between Participant and the Company with respect to non-competition, non-solicitation, assignment of inventions and contributions and/or non-disclosure obligations of Participant or (ii) materially violates any agreement between Participant and the Company or its Affiliates or any Company policy previously provided or made available to Participant, including, without limitation, any policy related to workplace conduct and behavior, sexual harassment or discrimination.

G. COMPLIANCE WITH LAWS. Notwithstanding anything in this Agreement to the contrary, no shares of Stock shall be issued unless such issuance complies with the requirements relating to the administration of stock option plans and other applicable equity plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Stock is listed or quoted, and the applicable laws of any foreign country or jurisdiction where stock grants or other applicable equity grants are made under the Plan.

H. LOCK-UP AGREEMENT. In addition to any other limitation on transfer or other restrictions applicable to shares of Stock issued in settlement of the RSUs, the lock-up agreement contained in this Section shall apply to the Stock and other securities of the Company however and whenever acquired upon conversion of or in exchange for the Stock (other than those included in the IPO registration). The Participant hereby agrees that the Participant will not, without the prior written consent of the Company and the managing underwriter of the IPO, during the period commencing on the date of the final prospectus relating to the IPO and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days), or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on: (1) the publication or other distribution of research reports; and (2) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2241, or any successor provisions or amendments thereto), (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Stock held immediately prior to the effectiveness of the registration statement for the IPO; or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Stock, whether any such transaction described in clause (a) or (b) above is to be settled by delivery

of Stock or other securities, in cash or otherwise. The foregoing provisions of this Section shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Participant if all officers, directors and holders of more than one percent (1%) of the Company's outstanding Stock (after giving effect to the conversion into Stock of all outstanding Preferred Stock) enter into similar agreements. The underwriters in connection with the IPO are intended third-party beneficiaries of this Section and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. The Participant further agrees to execute such agreements as may be reasonably requested by the underwriters in the IPO that are consistent with this Section or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the shares of Stock of the Participant (and transferees and assignees thereof) until the end of such restricted period.

I. WITHHOLDING. As a condition to the issuance of Shares pursuant to the RSUs, Participant agrees to make arrangements satisfactory to the Company for the payment of the Withholding Obligation (as defined below) that arises upon grant, vesting and/or settlement of the RSUs (or any portion thereof) and at any other time as reasonably requested by the Company in accordance with applicable tax laws. In furtherance of the foregoing, Participant hereby authorizes any required withholding from the Shares issuable to Participant and/or otherwise agrees to make adequate provision, including in cash, for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company (or any Affiliate, if applicable) that arise in connection with Participant's RSU Award (the "**Withholding Obligation**").

By accepting this RSU Award, Participant acknowledges and agrees that the Company or any Affiliate of the Company may, in its sole discretion, satisfy all or any portion of the Withholding Obligation relating to Participant's RSUs by any of the following means or by a combination of such means, and Participant's acceptance of this RSU Award constitutes Participant's consent to any such actions: (i) causing Participant to pay any portion of the Withholding Obligation in cash, check or wire of immediately available funds; (ii) withholding from any compensation otherwise payable to Participant by the Company (or Affiliate, if applicable); (iii) withholding shares of Stock from the shares of Stock issued or otherwise issuable to Participant in connection with the RSU Award with a Fair Market Value as of the applicable date of determination equal to the amount of such Withholding Obligation; provided, however, that the number of such shares of Stock so withheld will not exceed the amount necessary to satisfy the Withholding Obligation using up to (but not in excess of) the applicable minimum statutory or other withholding rates; and provided, further, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the compensation committee thereof, as applicable; (iv) permitting or requiring Participant to enter into a "same day sale" or "sell to cover" arrangement, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "**FINRA Dealer**"), pursuant to this authorization and without further consent, whereby Participant irrevocably elects to sell a portion of the shares of Stock to be delivered in connection with Participant's RSUs to satisfy the Withholding Obligation and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Withholding Obligation directly to the Company and/or its Affiliates; or (v) any other method of withholding determined by the Company and permitted by applicable law. Unless the Withholding Obligation is satisfied or deemed to be not applicable in the sole discretion of the Board or Committee, the Company will have no obligation to deliver to Participant any shares of Stock or any other consideration pursuant to the RSUs to which the Withholding Obligation relates.

In the event the Withholding Obligation arises prior to the delivery to Participant of shares of Stock or it is determined after the delivery of shares of Stock to Participant that the amount of the Withholding Obligation was greater than the amount withheld by the Company, Participant agrees to indemnify and hold the Company (or any applicable Affiliate) harmless from any failure by the Company to withhold the proper amount.

J. SECTION 409A. This award of RSUs is intended to constitute a “short term deferral” for purposes of Section 409A to the greatest extent possible, and otherwise is intended to comply with Section 409A, and the RSUs will be administered and interpreted in accordance with that intent. Each issuance of shares of Stock or payment of cash following a Vesting Date shall be considered a separate payment. The Company makes no representation or warranty that the RSUs are compliant with, or exempt from, Section 409A and shall have no liability to Participant or any other person if any amounts provided under this Agreement are determined to constitute deferred compensation subject to Section 409A but do not satisfy an exemption from, or the conditions of, Section 409A. Without limiting the foregoing and notwithstanding anything contained herein to the contrary, to the extent required in order to avoid accelerated taxation and/or tax penalties under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided pursuant to this Agreement during the six-month period immediately following Participant’s separation from service shall instead be paid on the first business day after the date that is six months following Participant’s separation from service (or, if earlier, Participant’s date of death).

K. NON-TRANSFERABILITY. No RSUs, or any rights relating thereto, may be transferred, pledged, assigned, otherwise encumbered or disposed of by Participant, other than by will or by the laws of descent and distribution, and any such purported transfer, pledge, assignment, other encumbrance or disposition shall be null and void. The terms of the Plan and this Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of Participant.

L. OTHER PLANS. No amounts of income received by Participant pursuant to this Agreement shall be considered compensation for purposes of any pension or retirement plan, insurance plan or any other employee benefit plan of the Company or its subsidiaries, unless otherwise provided in such plan.

M. NO GUARANTEE OF CONTINUED SERVICE. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT AND THE PLAN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED EMPLOYMENT OR SERVICE AND SHALL NOT INTERFERE WITH PARTICIPANT’S RIGHT OR THE COMPANY’S RIGHT TO TERMINATE THE EMPLOYMENT OR SERVICE RELATIONSHIP AT ANY TIME, WITH OR WITHOUT CAUSE.

N. ENTIRE AGREEMENT; GOVERNING LAW AND VENUE. The Plan, this Agreement and the Grant Notice, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. This Agreement and all matters arising directly or indirectly herefrom shall be construed under the laws of the State of Delaware, without regard to conflict of laws principles.

O. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Company and Participant and their respective permitted successors, assigns, heirs, beneficiaries and representatives. This Agreement is personal to Participant and may not be assigned by Participant without the prior consent of the Company. Any attempted assignment in violation of this Section shall be null and void.

P. AMENDMENT. This Agreement may be amended or modified only by a written instrument executed by both the Company and Participant. Notwithstanding the foregoing, this Agreement may be amended solely by the Board or Committee by a writing which specifically states that it is amending this Agreement, so long as a copy of such amendment is delivered to Participant, and *provided that*, except as otherwise expressly provided in the Plan, no such amendment may adversely affect Participant's rights hereunder without Participant's written consent. Without limiting the foregoing, the Committee reserves the right to change, by written notice to Participant, the provisions of this Agreement in any way it may deem necessary or advisable to carry out the purpose of the grant as a result of any change in applicable laws or regulations or any future law, regulation, ruling, or judicial decision, provided that any such change will be applicable only to rights relating to that portion of the RSU Award which is then subject to restrictions as provided herein.

Q. REPRESENTATIONS AND WARRANTIES OF PARTICIPANT. Participant represents and warrants to the Company that: (i) Participant has the absolute and unrestricted capacity, right, power and authority to enter into and to perform Participant's obligations under this Agreement; and (ii) this Agreement constitutes the legal, valid and binding obligation of Participant, enforceable against Participant in accordance with its terms, except as limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

R. HEADINGS. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement.

S. SEVERABILITY. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

**AMENDMENT TO
ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN**
(As amended and restated effective as of November 14, 2020)

THIS AMENDMENT TO ACV AUCTIONS INC. 2015 LONG-TERM INCENTIVE PLAN, AS AMENDED AND RESTATED (this “Amendment”) is made as of February 4, 2021, by ACV AUCTIONS INC., a Delaware corporation (“Company”).

Recitals:

A. The Company authorized and approved that certain ACV Auctions Inc. 2015 Long-Term Incentive Plan, as amended and restated effective as of November 14, 2020 (the “Plan”).

B. The Company desires to amend the Plan in order to increase the number of shares of the common stock of the Company, par value \$0.001 per share, available for issuance under the Plan from 26,834,352 to 27,584,352

Agreement:

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the foregoing recitals, which are incorporated herein, and intending to be legally bound hereby, the parties agree as follows:

1. Defined Terms. Each capitalized term used in this Amendment shall have the same meaning ascribed to such term in the Plan, unless otherwise defined in this Amendment.

2. Amendments to the Plan.

a. Section 3(a) of the Plan is hereby amended by deleting the reference to “26,834,352” contained therein and in its stead inserting a reference to “27,584,352”.

b. Section 5(e) of the Plan is hereby amended by deleting the reference to “26,834,352” contained therein and in its stead inserting a reference to “27,584,352”.

3. Conflict. If any conflict exists between the terms or provisions of the Plan and the terms or provisions of this Amendment, the terms and provisions of this Amendment shall govern and control.

4. Effect of Amendment. The terms and provisions of this Amendment shall modify and supersede all inconsistent terms and provisions of the Plan. As amended by this Amendment, the Plan shall remain in full force and effect and is ratified by the parties hereto. This Amendment contains the entire agreement of the parties with respect to the matters set forth herein, all preliminary negotiations with respect thereto are merged into and superseded by this Amendment and all references to the Plan shall mean the Plan as amended by this Amendment.

5. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the participants in the Plan and their respective successors, assigns, and nominees permitted under the Plan.

6. Governing Law. This Amendment and all determinations made and actions taken hereunder, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware, without reference to principles of conflict of laws, and construed accordingly.

7. Electronic Signature. This Amendment may be executed by means of facsimile or email in .pdf or similar format, which shall be deemed an original signature.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first set forth above.

ACV AUCTIONS INC.

By: /s/ George Chamoun
Name: George Chamoun
Title: Chief Executive Officer

[Amendment to Incentive Plan]

**AMENDMENT NO. 2 TO
ACV AUCTIONS INC.
2015 LONG-TERM INCENTIVE PLAN**
(As amended and restated effective as of November 14, 2020)

THIS AMENDMENT NO. 2 TO ACV AUCTIONS INC. 2015 LONG-TERM INCENTIVE PLAN, AS AMENDED AND RESTATED (this "Amendment") is made as of March 11, 2021, by ACV AUCTIONS INC., a Delaware corporation ("Company").

Recitals:

A. The Company authorized and approved that certain ACV Auctions Inc. 2015 Long-Term Incentive Plan, as amended and restated effective as of November 14, 2020 (the "Plan").

B. The Company desires to amend the Plan in order to increase the number of shares of the common stock of the Company, par value \$0.001 per share, available for issuance under the Plan from 27,584,352 to 31,584,352

Agreement:

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the foregoing recitals, which are incorporated herein, and intending to be legally bound hereby, the parties agree as follows:

1. Defined Terms. Each capitalized term used in this Amendment shall have the same meaning ascribed to such term in the Plan, unless otherwise defined in this Amendment.

2. Amendments to the Plan.

a. Section 3(a) of the Plan is hereby amended by deleting the reference to "27,584,352" contained therein and in its stead inserting a reference to "31,584,352".

b. Section 5(e) of the Plan is hereby amended by deleting the reference to "27,584,352" contained therein and in its stead inserting a reference to "31,584,352".

3. Conflict. If any conflict exists between the terms or provisions of the Plan and the terms or provisions of this Amendment, the terms and provisions of this Amendment shall govern and control.

4. Effect of Amendment. The terms and provisions of this Amendment shall modify and supersede all inconsistent terms and provisions of the Plan. As amended by this Amendment, the Plan shall remain in full force and effect and is ratified by the parties hereto. This Amendment contains the entire agreement of the parties with respect to the matters set forth herein, all preliminary negotiations with respect thereto are merged into and superseded by this Amendment and all references to the Plan shall mean the Plan as amended by this Amendment.

5. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the participants in the Plan and their respective successors, assigns, and nominees permitted under the Plan.

6. Governing Law. This Amendment and all determinations made and actions taken hereunder, to the extent not otherwise governed by the Code or the laws of the United States, shall be governed by the laws of the State of Delaware, without reference to principles of conflict of laws, and construed accordingly.

7. Electronic Signature. This Amendment may be executed by means of facsimile or email in .pdf or similar format, which shall be deemed an original signature.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first set forth above.

ACV AUCTIONS INC.

By: /s/ George Chamoun
Name: George Chamoun
Title: Chief Executive Officer

[Amendment to Incentive Plan]

ACV AUCTIONS INC.
2021 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: MARCH 11, 2021
APPROVED BY THE STOCKHOLDERS: MARCH 11, 2021
IPO DATE: , 2021

TABLE OF CONTENTS

	Page
1. GENERAL	1
2. SHARES SUBJECT TO THE PLAN	1
3. ELIGIBILITY AND LIMITATIONS	2
4. OPTIONS AND STOCK APPRECIATION RIGHTS	3
5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS	7
6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS	9
7. ADMINISTRATION	11
8. TAX WITHHOLDING	14
9. MISCELLANEOUS	15
10. COVENANTS OF THE COMPANY	18
11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A	18
12. SEVERABILITY	22
13. TERMINATION OF THE PLAN	22
14. DEFINITIONS	23

1. GENERAL.

(a) Successor to and Continuation of Prior Plan. The Plan is the successor to and continuation of the Prior Plan. As of the Effective Date, (i) no additional awards may be granted under the Prior Plan; (ii) the Prior Plan's Available Reserve plus any Returning Shares will become available for issuance pursuant to Awards granted under this Plan as described in Section 2(a) below; and (iii) all outstanding awards granted under the Prior Plan will remain subject to the terms of the Prior Plan (except to the extent such outstanding awards result in Returning Shares that become available for issuance pursuant to Awards granted under this Plan). All Awards granted under this Plan will be subject to the terms of this Plan.

(b) Plan Purpose. The Company, by means of the Plan, seeks to secure and retain the services of Employees, Directors and Consultants, to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) SARs; (iv) Restricted Stock Awards; (v) RSU Awards; (vi) Performance Awards; and (vii) Other Awards.

(d) Adoption Date; Effective Date. The Plan will come into existence on the Adoption Date, but no Award may be granted prior to the Effective Date.

2. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to adjustment in accordance with Section 2(c) and any adjustments as necessary to implement any Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed 26,168,771 shares, which number is the sum of: (i) 13,600,000 new shares, plus (ii) the Prior Plan's Available Reserve; plus, (iii) the number of Returning Shares, if any, as such shares become available from time to time.

In addition, subject to any adjustments as necessary to implement any Capitalization Adjustments, such aggregate number of shares of Common Stock will automatically increase on January 1 of each year for a period of ten years commencing on January 1, 2022 and ending on (and including) January 1, 2031, in an amount equal to 5% of the total number of shares of Capital Stock outstanding on December 31 of the preceding year; provided, however that the Board may act prior to January 1st of a given year to provide that the increase for such year will be a lesser number of shares of Common Stock.

(b) Aggregate Incentive Stock Option Limit. Notwithstanding anything to the contrary in Section 2(a) and subject to any adjustments as necessary to implement any Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is 79,000,000 shares.

(c) Share Reserve Operation.

(i) Limit Applies to Common Stock Issued Pursuant to Awards. For clarity, the Share Reserve is a limit on the number of shares of Common Stock that may be issued pursuant to Awards and does not limit the granting of Awards, except that the Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy its obligations to issue shares pursuant to such Awards. Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, Nasdaq Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, NYSE American Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(ii) Actions that Do Not Constitute Issuance of Common Stock and Do Not Reduce Share Reserve. The following actions do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares subject to the Share Reserve and available for issuance under the Plan: (1) the expiration or termination of any portion of an Award without the shares covered by such portion of the Award having been issued; (2) the settlement of any portion of an Award in cash (*i.e.*, the Participant receives cash rather than Common Stock); (3) the withholding of shares that would otherwise be issued by the Company to satisfy the exercise, strike or purchase price of an Award; or (4) the withholding of shares that would otherwise be issued by the Company to satisfy a tax withholding obligation in connection with an Award.

(iii) Reversion of Previously Issued Shares of Common Stock to Share Reserve. The following shares of Common Stock previously issued pursuant to an Award and accordingly initially deducted from the Share Reserve will be added back to the Share Reserve and again become available for issuance under the Plan: (1) any shares that are forfeited back to or repurchased by the Company because of a failure to meet a contingency or condition required for the vesting of such shares; (2) any shares that are reacquired by the Company to satisfy the exercise, strike or purchase price of an Award; and (3) any shares that are reacquired by the Company to satisfy a tax withholding obligation in connection with an Award.

3. ELIGIBILITY AND LIMITATIONS.

(a) Eligible Award Recipients. Subject to the terms of the Plan, Employees, Directors and Consultants are eligible to receive Awards.

(b) Specific Award Limitations.

(i) Limitations on Incentive Stock Option Recipients. Incentive Stock Options may be granted only to Employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code).

(ii) Incentive Stock Option \$100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such

other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(iii) Limitations on Incentive Stock Options Granted to Ten Percent Stockholders. A Ten Percent Stockholder may not be granted an Incentive Stock Option unless (i) the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant of such Option and (ii) the Option is not exercisable after the expiration of five years from the date of grant of such Option.

(iv) Limitations on Nonstatutory Stock Options and SARs. Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company (as such term is defined in Rule 405) unless the stock underlying such Awards is treated as “service recipient stock” under Section 409A because the Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Awards otherwise comply with the distribution requirements of Section 409A.

(c) Aggregate Incentive Stock Option Limit. The aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is the number of shares specified in Section 2(b).

(d) Non-Employee Director Compensation Limit. The aggregate value of all compensation granted or paid, as applicable, to any individual for service as a Non-Employee Director with respect to any period commencing on the date of the Company’s Annual Meeting of Stockholders for a particular year and ending on the day immediately prior to the date of the Company’s Annual Meeting of Stockholders for the next subsequent year (the “**Annual Period**”), including Awards granted and cash fees paid by the Company to such Non-Employee Director, will not exceed (i) \$650,000 in total value or (ii) \$1,000,000 in total value in the event such Non-Employee Director is first appointed or elected to the Board during such Annual Period, in each case calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes. The limitations in this Section 3(d) shall apply commencing with the Annual Period that begins on the Company’s first Annual Meeting of Stockholders following the Effective Date.

4. OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option and SAR will have such terms and conditions as determined by the Board. Each Option will be designated in writing as an Incentive Stock Option or Nonstatutory Stock Option at the time of grant; provided, however, that if an Option is not so designated, then such Option will be a Nonstatutory Stock Option, and the shares purchased upon exercise of each type of Option will be separately accounted for. Each SAR will be denominated in shares of Common Stock equivalents. The terms and conditions of separate Options and SARs need not be identical; provided, however, that each Option Agreement and SAR Agreement will conform (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(a) Term. Subject to Section 3(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of grant of such Award or such shorter period specified in the Award Agreement.

(b) Exercise or Strike Price. Subject to Section 3(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will not be less than 100% of the Fair Market Value on the date of grant of such Award. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value on the date of grant of such Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code.

(c) Exercise Procedure and Payment of Exercise Price for Options. In order to exercise an Option, the Participant must provide notice of exercise to the Plan Administrator in accordance with the procedures specified in the Option Agreement or otherwise provided by the Company. The Board has the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The exercise price of an Option may be paid, to the extent permitted by Applicable Law and as determined by the Board, by one or more of the following methods of payment to the extent set forth in the Option Agreement:

(i) by cash or check, bank draft or money order payable to the Company;

(ii) pursuant to a “cashless exercise” program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock that are already owned by the Participant free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) at the time of exercise the Common Stock is publicly traded, (2) any remaining balance of the exercise price not satisfied by such delivery is paid by the Participant in cash or other permitted form of payment, (3) such delivery would not violate any Applicable Law or agreement restricting the redemption of the Common Stock, (4) any certificated shares are endorsed or accompanied by an executed assignment separate from certificate, and (5) such shares have been held by the Participant for any minimum period necessary to avoid adverse accounting treatment as a result of such delivery;

(iv) if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) such shares used to pay the exercise price will not be exercisable thereafter and (2) any remaining balance of the exercise price not satisfied by such net exercise is paid by the Participant in cash or other permitted form of payment; or

(v) in any other form of consideration that may be acceptable to the Board and permissible under Applicable Law.

(d) Exercise Procedure and Payment of Appreciation Distribution for SARs. In order to exercise any SAR, the Participant must provide notice of exercise to the Plan Administrator in accordance with the SAR Agreement. The appreciation distribution payable to a Participant upon the exercise of a SAR will not be greater than an amount equal to the excess of (i) the aggregate Fair Market Value on the date of exercise of a number of shares of Common Stock equal to the number of Common Stock equivalents that are vested and being exercised under such SAR, over (ii) the strike price of such SAR. Such appreciation distribution may be paid to the Participant in the form of Common Stock or cash (or any combination of Common Stock and cash) or in any other form of payment, as determined by the Board and specified in the SAR Agreement.

(e) Transferability. Options and SARs may not be transferred to third party financial institutions for value. The Board may impose such additional limitations on the transferability of an Option or SAR as it determines. In the absence of any such determination by the Board, the following restrictions on the transferability of Options and SARs will apply, provided that except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration and *provided, further*, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer:

(i) Restrictions on Transfer. An Option or SAR will not be transferable, except by will or by the laws of descent and distribution, and will be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may permit transfer of an Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request, including to a trust if the Participant is considered to be the sole beneficial owner of such trust (as determined under Section 671 of the Code and applicable state law) while such Option or SAR is held in such trust, provided that the Participant and the trustee enter into a transfer and other agreements required by the Company.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to a domestic relations order.

(f) Vesting. The Board may impose such restrictions on or conditions to the vesting and/or exercisability of an Option or SAR as determined by the Board. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Options and SARs will cease upon termination of the Participant's Continuous Service.

(g) Termination of Continuous Service for Cause. Except as explicitly otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service is terminated for Cause, the Participant's Options and SARs will terminate and be forfeited immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising any portion (including any vested portion) of such Awards on and after the date of such termination of Continuous Service and the Participant will have no further right, title or interest in such forfeited Award, the shares of Common Stock subject to the forfeited Award, or any consideration in respect of the forfeited Award.

(h) Post-Termination Exercise Period Following Termination of Continuous Service for Reasons Other than Cause. Subject to Section 4(i), if a Participant's Continuous Service terminates for any reason other than for Cause, the Participant may exercise his or her Option or SAR to the extent vested, but only within the following period of time or, if applicable, such other period of time provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)):

(i) three months following the date of such termination if such termination is a termination without Cause (other than any termination due to the Participant's Disability or death);

(ii) 12 months following the date of such termination if such termination is due to the Participant's Disability;

(iii) 18 months following the date of such termination if such termination is due to the Participant's death; or

(iv) 18 months following the date of the Participant's death if such death occurs following the date of such termination but during the period such Award is otherwise exercisable (as provided in (i) or (ii) above).

Following the date of such termination, to the extent the Participant does not exercise such Award within the applicable Post-Termination Exercise Period (or, if earlier, prior to the expiration of the maximum term of such Award), such unexercised portion of the Award will terminate, and the Participant will have no further right, title or interest in the terminated Award, the shares of Common Stock subject to the terminated Award, or any consideration in respect of the terminated Award.

(i) Restrictions on Exercise; Extension of Exercisability. A Participant may not exercise an Option or SAR at any time that the issuance of shares of Common Stock upon such exercise would violate Applicable Law. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates for any reason other than for Cause and, at any time during the last thirty days of the applicable Post-Termination Exercise Period: (i) the exercise of the Participant's Option or SAR would be prohibited solely because the issuance of shares of Common Stock upon such exercise would violate Applicable Law, or (ii) the immediate sale of any shares of Common

Stock issued upon such exercise would violate the Company's Trading Policy, then the applicable Post-Termination Exercise Period will be extended to the last day of the calendar month that commences following the date the Award would otherwise expire, with an additional extension of the exercise period to the last day of the next calendar month to apply if any of the foregoing restrictions apply at any time during such extended exercise period, generally without limitation as to the maximum permitted number of extensions; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)).

(j) Non-Exempt Employees. No Option or SAR, whether or not vested, granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a Corporate Transaction in which such Award is not assumed, continued or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement or, in the absence of any such definition, in accordance with the Company's then current employment policies and guidelines). This Section 4(j) is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

(k) Whole Shares. Options and SARs may be exercised only with respect to whole shares of Common Stock or their equivalents.

5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS.

(a) Restricted Stock Awards and RSU Awards. Each Restricted Stock Award and RSU Award will have such terms and conditions as determined by the Board; provided, however, that each Restricted Stock Award Agreement and RSU Award Agreement will conform (through incorporation of the provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

(i) Form of Award.

(1) RSAs: To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock subject to a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until such shares become vested or any other restrictions lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. Unless otherwise determined by the Board, a Participant will have voting and other rights as a stockholder of the Company with respect to any shares subject to a Restricted Stock Award.

(2) RSUs: A RSU Award represents a Participant's right to be issued on a future date the number of shares of Common Stock that is equal to the number of restricted stock units subject to the RSU Award. As a holder of a RSU Award, a Participant is an unsecured creditor of the Company with respect to the Company's unfunded obligation, if any, to issue shares of Common Stock in settlement of such Award and nothing contained in the Plan or any RSU Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between a Participant and the Company or an Affiliate or any other person. A Participant will not have voting or any other rights as a stockholder of the Company with respect to any RSU Award (unless and until shares are actually issued in settlement of a vested RSU Award).

(ii) Consideration.

(1) RSA: A Restricted Stock Award may be granted in consideration for (A) cash or check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of consideration (including future services) as the Board may determine and permissible under Applicable Law.

(2) RSU: Unless otherwise determined by the Board at the time of grant, a RSU Award will be granted in consideration for the Participant's services to the Company or an Affiliate, such that the Participant will not be required to make any payment to the Company (other than such services) with respect to the grant or vesting of the RSU Award, or the issuance of any shares of Common Stock pursuant to the RSU Award. If, at the time of grant, the Board determines that any consideration must be paid by the Participant (in a form other than the Participant's services to the Company or an Affiliate) upon the issuance of any shares of Common Stock in settlement of the RSU Award, such consideration may be paid in any form of consideration as the Board may determine and permissible under Applicable Law.

(iii) Vesting. The Board may impose such restrictions on or conditions to the vesting of a Restricted Stock Award or RSU Award as determined by the Board. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Restricted Stock Awards and RSU Awards will cease upon termination of the Participant's Continuous Service.

(iv) Termination of Continuous Service. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, if a Participant's Continuous Service terminates for any reason, (i) the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant under his or her Restricted Stock Award that have not vested as of the date of such termination as set forth in the Restricted Stock Award Agreement and (ii) any portion of his or her RSU Award that has not vested will be forfeited upon such termination and the Participant will have no further right, title or interest in the RSU Award, the shares of Common Stock issuable pursuant to the RSU Award, or any consideration in respect of the RSU Award.

(v) Dividends and Dividend Equivalents. Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to a Restricted Stock Award or RSU Award, as determined by the Board and specified in the Award Agreement).

(vi) **Settlement of RSU Awards.** A RSU Award may be settled by the issuance of shares of Common Stock or cash (or any combination thereof) or in any other form of payment, as determined by the Board and specified in the RSU Award Agreement. At the time of grant, the Board may determine to impose such restrictions or conditions that delay such delivery to a date following the vesting of the RSU Award.

(b) **Performance Awards.** With respect to any Performance Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, the other terms and conditions of such Award, and the measure of whether and to what degree such Performance Goals have been attained will be determined by the Board.

(c) **Other Awards.** Other forms of Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value at the time of grant) may be granted either alone or in addition to Awards provided for under Section 4 and the preceding provisions of this Section 5. Subject to the provisions of the Plan, the Board will have sole and complete discretion to determine the persons to whom and the time or times at which such Other Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Awards and all other terms and conditions of such Other Awards.

6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) **Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of shares of Common Stock subject to the Plan and the maximum number of shares by which the Share Reserve may annually increase pursuant to Section 2(a); (ii) the class(es) and maximum number of shares that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 2(a); and (iii) the class(es) and number of securities and exercise price, strike price or purchase price of Common Stock subject to outstanding Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, no fractional shares or rights for fractional shares of Common Stock shall be created in order to implement any Capitalization Adjustment. The Board shall determine an appropriate equivalent benefit, if any, for any fractional shares or rights to fractional shares that might be created by the adjustments referred to in the preceding provisions of this Section.

(b) **Dissolution or Liquidation.** Except as otherwise provided in the Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service, provided, however, that the Board may determine to cause some or all Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions will apply to Awards in the event of a Corporate Transaction except as set forth in Section 11, and unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of an Award.

(i) Awards May Be Assumed. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Awards outstanding under the Plan or may substitute similar awards for Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of an Award or substitute a similar award for only a portion of an Award, or may choose to assume or continue the Awards held by some, but not all Participants. The terms of any assumption, continuation or substitution will be set by the Board.

(ii) Awards Held by Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "**Current Participants**"), the vesting of such Awards (and, with respect to Options and Stock Appreciation Rights, the time when such Awards may be exercised) will be accelerated in full to a date prior to the effective time of such Corporate Transaction (contingent upon the effectiveness of the Corporate Transaction) as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Awards will terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Awards will lapse (contingent upon the effectiveness of the Corporate Transaction). With respect to the vesting of Performance Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and that have multiple vesting levels depending on the level of performance, unless otherwise provided in the Award Agreement, the vesting of such Performance Awards will accelerate at 100% of the target level upon the occurrence of the Corporate Transaction. With respect to the vesting of Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and are settled in the form of a cash payment, such cash payment will be made no later than 30 days following the occurrence of the Corporate Transaction.

(iii) Awards Held by Persons other than Current Participants. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Awards will terminate if not exercised (if applicable) prior to the occurrence of the Corporate Transaction; provided, however, that any reacquisition or repurchase rights held by the Company with respect to such Awards will not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) Payment for Awards in Lieu of Exercise. Notwithstanding the foregoing, in the event an Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Award may not exercise such Award but will receive a payment, in such form as may be determined by the Board, equal in value, at the effective time, to the excess, if any, of (1) the value of the property the Participant would have received upon the exercise of the Award (including, at the discretion of the Board, any unvested portion of such Award), over (2) any exercise price payable by such holder in connection with such exercise.

(d) Appointment of Stockholder Representative. As a condition to the receipt of an Award under this Plan, a Participant will be deemed to have agreed that the Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant's behalf with respect to any escrow, indemnities and any contingent consideration.

(e) No Restriction on Right to Undertake Transactions. The grant of any Award under the Plan and the issuance of shares pursuant to any Award does not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, rights or options to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

7. ADMINISTRATION.

(a) Administration by Board. The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in subsection (c) below.

(b) Powers of Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (1) which of the persons eligible under the Plan will be granted Awards; (2) when and how each Award will be granted; (3) what type or combination of types of Award will be granted; (4) the provisions of each Award granted (which need not be identical), including the time or times when a person will be permitted to receive an issuance of Common Stock or other payment pursuant to an Award; (5) the number of shares of Common Stock or cash equivalent with respect to which an Award will be granted to each such person; (6) the Fair Market Value applicable to an Award; and (7) the terms of any Performance Award that is not valued in whole or in part by reference to, or otherwise based on, the Common Stock, including the amount of cash payment or other property that may be earned and the timing of payment.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it deems necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

(v) To prohibit the exercise of any Option, SAR or other exercisable Award during a period of up to 30 days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Corporate Transaction, for reasons of administrative convenience.

(vi) To suspend or terminate the Plan at any time. Suspension or termination of the Plan will not Materially Impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vii) To amend the Plan in any respect the Board deems necessary or advisable; provided, however that stockholder approval will be required for any amendment to the extent required by Applicable Law. Except as provided above, rights under any Award granted before amendment of the Plan will not be Materially Impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(viii) To submit any amendment to the Plan for stockholder approval.

(ix) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however*, that, a Participant's rights under any Award will not be Materially Impaired by any such amendment unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit and facilitate participation in the Plan by, or take advantage of specific tax treatment for Awards granted to, Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement to ensure or facilitate compliance with the laws of the relevant foreign jurisdiction).

(xii) To effect, at any time and from time to time, subject to the consent of any Participant whose Award is Materially Impaired by such action, (1) the reduction of the exercise price (or strike price) of any outstanding Option or SAR; (2) the cancellation of any outstanding Option or SAR and the grant in substitution therefor of (A) a new Option, SAR, Restricted Stock Award, RSU Award or Other Award, under the Plan or another equity plan of the Company, covering the same or a different number of shares of Common Stock, (B) cash and/or (C) other valuable consideration (as determined by the Board); or (3) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) **General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to another Committee or a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Each Committee may retain the authority to concurrently administer the Plan with Committee or subcommittee to which it has delegated its authority hereunder and may, at any time, reconstitute such Committee some or all of the powers previously delegated. The Board may retain the authority to concurrently administer the Plan with any Committee and may, at any time, reconstitute in the Board some or all of the powers previously delegated.

(ii) **Rule 16b-3 Compliance.** To the extent an Award is intended to qualify for the exemption from Section 16(b) of the Exchange Act that is available under Rule 16b-3 of the Exchange Act, the Award will be granted by the Board or a Committee that consists solely of two or more Non-Employee Directors, as determined under Rule 16b-3(b)(3) of the Exchange Act and thereafter any action establishing or modifying the terms of the Award will be approved by the Board or a Committee meeting such requirements to the extent necessary for such exemption to remain available.

(d) **Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board or any Committee in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

(e) Delegation to an Officer. The Board or any Committee may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by Applicable Law, other types of Awards) and, to the extent permitted by Applicable Law, the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; provided, however, that the resolutions or charter adopted by the Board or any Committee evidencing such delegation will specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the applicable form of Award Agreement most recently approved for use by the Board or the Committee, unless otherwise provided in the resolutions approving the delegation authority. Notwithstanding anything to the contrary herein, neither the Board nor any Committee may delegate to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) the authority to determine the Fair Market Value.

8. TAX WITHHOLDING

(a) Withholding Authorization. As a condition to acceptance of any Award under the Plan, a Participant authorizes withholding from payroll and any other amounts payable to such Participant, and otherwise agrees to make adequate provision for (including), any sums required to satisfy any U.S. federal, state, local and/or foreign tax or social insurance contribution withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise, vesting or settlement of such Award, as applicable. Accordingly, a Participant may not be able to exercise an Award even though the Award is vested, and the Company shall have no obligation to issue shares of Common Stock subject to an Award, unless and until such obligations are satisfied.

(b) Satisfaction of Withholding Obligation. To the extent permitted by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any U.S. federal, state, local and/or foreign tax or social insurance withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; (v) by allowing a Participant to effectuate a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board; or (vi) by such other method as may be set forth in the Award Agreement.

(c) No Obligation to Notify or Minimize Taxes; No Liability to Claims. Except as required by Applicable Law the Company has no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award and will not be liable to any holder of an Award for any adverse tax consequences to such holder in connection with an Award. As a condition to accepting an Award under the Plan, each Participant (i) agrees to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from such Award or other Company compensation and (ii) acknowledges that such Participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of

the Award and has either done so or knowingly and voluntarily declined to do so. Additionally, each Participant acknowledges any Option or SAR granted under the Plan is exempt from Section 409A only if the exercise or strike price is at least equal to the "fair market value" of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Award. Additionally, as a condition to accepting an Option or SAR granted under the Plan, each Participant agrees not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise price or strike price is less than the "fair market value" of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.

(d) Withholding Indemnification. As a condition to accepting an Award under the Plan, in the event that the amount of the Company's and/or its Affiliate's withholding obligation in connection with such Award was greater than the amount actually withheld by the Company and/or its Affiliates, each Participant agrees to indemnify and hold the Company and/or its Affiliates harmless from any failure by the Company and/or its Affiliates to withhold the proper amount.

9. MISCELLANEOUS.

(a) Source of Shares. The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

(b) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

(c) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action approving the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(d) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until (i) such Participant has satisfied all requirements for exercise of the Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Award is reflected in the records of the Company.

(e) No Employment or Other Service Rights. Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or affect the right of the Company or an Affiliate to terminate at will and without regard to any future vesting opportunity that a Participant may have with respect to any Award (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state or foreign jurisdiction in which the Company or the Affiliate is incorporated, as the case may be. Further, nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award will constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or service or confer any right or benefit under the Award or the Plan unless such right or benefit has specifically accrued under the terms of the Award Agreement and/or Plan.

(f) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board may determine, to the extent permitted by Applicable Law, to (i) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(g) Execution of Additional Documents. As a condition to accepting an Award under the Plan, the Participant agrees to execute any additional documents or instruments necessary or desirable, as determined in the Plan Administrator's sole discretion, to carry out the purposes or intent of the Award, or facilitate compliance with securities and/or other regulatory requirements, in each case at the Plan Administrator's request.

(h) Electronic Delivery and Participation. Any reference herein or in an Award Agreement to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access). By accepting any Award the Participant consents to receive documents by electronic delivery and to participate in the Plan through any on-line electronic system established and maintained by the Plan Administrator or another third party selected by the Plan Administrator. The form of delivery of any Common Stock (e.g., a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

(i) Clawback/Recovery. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Law and any clawback policy that the Company

otherwise adopts, to the extent applicable and permissible under Applicable Law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a Participant's right to voluntarily terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan of or agreement with the Company.

(j) Securities Law Compliance. A Participant will not be issued any shares in respect of an Award unless either (i) the shares are registered under the Securities Act; or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Each Award also must comply with other Applicable Law governing the Award, and a Participant will not receive such shares if the Company determines that such receipt would not be in material compliance with Applicable Law.

(k) Transfer or Assignment of Awards; Issued Shares. Except as expressly provided in the Plan or the form of Award Agreement, Awards granted under the Plan may not be transferred or assigned by the Participant. After the vested shares subject to an Award have been issued, or in the case of Restricted Stock and similar awards, after the issued shares have vested, the holder of such shares is free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein, the terms of the Trading Policy and Applicable Law.

(l) Effect on Other Employee Benefit Plans. The value of any Award granted under the Plan, as determined upon grant, vesting or settlement, shall not be included as compensation, earnings, salaries, or other similar terms used when calculating any Participant's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

(m) Deferrals. To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may also establish programs and procedures for deferral elections to be made by Participants. Deferrals by will be made in accordance with the requirements of Section 409A.

(n) Section 409A. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A, and, to the extent not so exempt, in compliance with the requirements of Section 409A. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are

publicly traded, and if a Participant holding an Award that constitutes “deferred compensation” under Section 409A is a “specified employee” for purposes of Section 409A, no distribution or payment of any amount that is due because of a “separation from service” (as defined in Section 409A without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant’s “separation from service” or, if earlier, the date of the Participant’s death, unless such distribution or payment can be made in a manner that complies with Section 409A, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(o) CHOICE OF LAW. This Plan and any controversy arising out of or relating to this Plan shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to conflict of law principles that would result in any application of any law other than the law of the State of Delaware.

10. COVENANTS OF THE COMPANY.

(a) Compliance with Law. The Company will seek to obtain from each regulatory commission or agency, as may be deemed to be necessary, having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Awards; provided, however, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Awards unless and until such authority is obtained. A Participant is not eligible for the grant of an Award or the subsequent issuance of Common Stock pursuant to the Award if such grant or issuance would be in violation of any Applicable Law.

11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A.

(a) Application. Unless the provisions of this Section of the Plan are expressly superseded by the provisions in the form of Award Agreement, the provisions of this Section shall apply and shall supersede anything to the contrary set forth in the Award Agreement for a Non-Exempt Award.

(b) Non-Exempt Awards Subject to Non-Exempt Severance Arrangements. To the extent a Non-Exempt Award is subject to Section 409A due to application of a Non-Exempt Severance Arrangement, the following provisions of this subsection (b) apply.

(i) If the Non-Exempt Award vests in the ordinary course during the Participant’s Continuous Service in accordance with the vesting schedule set forth in the Award Agreement, and does not accelerate vesting under the terms of a Non-Exempt Severance Arrangement, in no event will the shares be issued in respect of such Non-Exempt Award any later than the later of: (i) December 31st of the calendar year that includes the applicable vesting date, or (ii) the 60th day that follows the applicable vesting date.

(ii) If vesting of the Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with the Participant's Separation from Service, and such vesting acceleration provisions were in effect as of the date of grant of the Non-Exempt Award and, therefore, are part of the terms of such Non-Exempt Award as of the date of grant, then the shares will be earlier issued in settlement of such Non-Exempt Award upon the Participant's Separation from Service in accordance with the terms of the Non-Exempt Severance Arrangement, but in no event later than the 60th day that follows the date of the Participant's Separation from Service. However, if at the time the shares would otherwise be issued the Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of such Participant's Separation from Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iii) If vesting of a Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with a Participant's Separation from Service, and such vesting acceleration provisions were not in effect as of the date of grant of the Non-Exempt Award and, therefore, are not a part of the terms of such Non-Exempt Award on the date of grant, then such acceleration of vesting of the Non-Exempt Award shall not accelerate the issuance date of the shares, but the shares shall instead be issued on the same schedule as set forth in the Grant Notice as if they had vested in the ordinary course during the Participant's Continuous Service, notwithstanding the vesting acceleration of the Non-Exempt Award. Such issuance schedule is intended to satisfy the requirements of payment on a specified date or pursuant to a fixed schedule, as provided under Treasury Regulations Section 1.409A-3(a)(4).

(c) **Treatment of Non-Exempt Awards Upon a Corporate Transaction for Employees and Consultants.** The provisions of this subsection (c) shall apply and shall supersede anything to the contrary set forth in the Plan with respect to the permitted treatment of any Non-Exempt Award in connection with a Corporate Transaction if the Participant was either an Employee or Consultant upon the applicable date of grant of the Non-Exempt Award.

(i) **Vested Non-Exempt Awards.** The following provisions shall apply to any Vested Non-Exempt Award in connection with a Corporate Transaction:

(1) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Vested Non-Exempt Award. Upon the Section 409A Change in Control the settlement of the Vested Non-Exempt Award will automatically be accelerated and the shares will be immediately issued in respect of the Vested Non-Exempt Award. Alternatively, the Company may instead provide that the Participant will receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control.

(2) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute each Vested Non-Exempt Award. The shares to be issued in respect of the Vested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of the Fair Market Value of the shares made on the date of the Corporate Transaction.

(ii) **Unvested Non-Exempt Awards.** The following provisions shall apply to any Unvested Non-Exempt Award unless otherwise determined by the Board pursuant to subsection (e) of this Section.

(1) In the event of a Corporate Transaction, the Acquiring Entity shall assume, continue or substitute any Unvested Non-Exempt Award. Unless otherwise determined by the Board, any Unvested Non-Exempt Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of any Unvested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value of the shares made on the date of the Corporate Transaction.

(2) If the Acquiring Entity will not assume, substitute or continue any Unvested Non-Exempt Award in connection with a Corporate Transaction, then such Award shall automatically terminate and be forfeited upon the Corporate Transaction with no consideration payable to any Participant in respect of such forfeited Unvested Non-Exempt Award. Notwithstanding the foregoing, to the extent permitted and in compliance with the requirements of Section 409A, the Board may in its discretion determine to elect to accelerate the vesting and settlement of the Unvested Non-Exempt Award upon the Corporate Transaction, or instead substitute a cash payment equal to the Fair Market Value of such shares that would otherwise be issued to the Participant, as further provided in subsection (e)(ii) below. In the absence of such discretionary election by the Board, any Unvested Non-Exempt Award shall be forfeited without payment of any consideration to the affected Participants if the Acquiring Entity will not assume, substitute or continue the Unvested Non-Exempt Awards in connection with the Corporate Transaction.

(3) The foregoing treatment shall apply with respect to all Unvested Non-Exempt Awards upon any Corporate Transaction, and regardless of whether or not such Corporate Transaction is also a Section 409A Change in Control.

(d) **Treatment of Non-Exempt Awards Upon a Corporate Transaction for Non-Employee Directors.** The following provisions of this subsection (d) shall apply and shall supersede anything to the contrary that may be set forth in the Plan with respect to the permitted treatment of a Non-Exempt Director Award in connection with a Corporate Transaction.

(i) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Non-Exempt Director Award. Upon the Section 409A Change in Control the vesting and settlement of any Non-Exempt Director Award will automatically be accelerated and the shares will be immediately issued to the Participant in respect of the Non-Exempt Director Award. Alternatively, the Company may provide that the Participant will instead receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control pursuant to the preceding provision.

(ii) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute the Non-Exempt Director Award. Unless otherwise determined by the Board, the Non-Exempt Director Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of the Non-Exempt Director Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value made on the date of the Corporate Transaction.

(e) If the RSU Award is a Non-Exempt Award, then the provisions in this Section 11(e) shall apply and supersede anything to the contrary that may be set forth in the Plan or the Award Agreement with respect to the permitted treatment of such Non-Exempt Award:

(i) Any exercise by the Board of discretion to accelerate the vesting of a Non-Exempt Award shall not result in any acceleration of the scheduled issuance dates for the shares in respect of the Non-Exempt Award unless earlier issuance of the shares upon the applicable vesting dates would be in compliance with the requirements of Section 409A.

(ii) The Company explicitly reserves the right to earlier settle any Non-Exempt Award to the extent permitted and in compliance with the requirements of Section 409A, including pursuant to any of the exemptions available in Treasury Regulations Section 1.409A-3(j)(4)(ix).

(iii) To the extent the terms of any Non-Exempt Award provide that it will be settled upon a Change in Control or Corporate Transaction, to the extent it is required for compliance with the requirements of Section 409A, the Change in Control or Corporate Transaction event triggering settlement must also constitute a Section 409A Change in Control. To the extent the terms of a Non-Exempt Award provides that it will be settled upon a termination of employment or termination of Continuous Service, to the extent it is required for compliance with the requirements of Section 409A, the termination event triggering settlement must also constitute a Separation From Service. However, if at the time the shares would otherwise be issued to a Participant in connection with a "separation from service" such Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of the Participant's Separation From Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iv) The provisions in this subsection (e) for delivery of the shares in respect of the settlement of a RSU Award that is a Non-Exempt Award are intended to comply with the requirements of Section 409A so that the delivery of the shares to the Participant in respect of such Non-Exempt Award will not trigger the additional tax imposed under Section 409A, and any ambiguities herein will be so interpreted.

12. SEVERABILITY.

If all or any part of the Plan or any Award Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of the Plan or such Award Agreement not declared to be unlawful or invalid. Any Section of the Plan or any Award Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

13. TERMINATION OF THE PLAN.

The Board may suspend or terminate the Plan at any time.

No Incentive Stock Options may be granted after the tenth anniversary of the earlier of: (i) the Adoption Date, or (ii) the date the Plan is approved by the Company's stockholders.

No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

14. DEFINITIONS.

As used in the Plan, the following definitions apply to the capitalized terms indicated below:

(a) “*Acquiring Entity*” means the surviving or acquiring corporation (or its parent company) in connection with a Corporate Transaction.

(b) “*Adoption Date*” means the date the Plan is first approved by the Board or Compensation Committee.

(c) “*Affiliate*” means, at the time of determination, any “parent” or “subsidiary” of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which “parent” or “subsidiary” status is determined within the foregoing definition.

(d) “*Applicable Law*” means shall mean any applicable securities, federal, state, foreign, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of any applicable self-regulating organization such as the Nasdaq Stock Market, New York Stock Exchange, or the Financial Industry Regulatory Authority).

(e) “*Award*” means any right to receive Common Stock, cash or other property granted under the Plan (including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a RSU Award, a SAR, a Performance Award or any Other Award).

(f) “*Award Agreement*” means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award. The Award Agreement generally consists of the Grant Notice and the agreement containing the written summary of the general terms and conditions applicable to the Award and which is provided to a Participant along with the Grant Notice.

(g) “*Board*” means the Board of Directors of the Company (or its designee). Any decision or determination made by the Board shall be a decision or determination that is made in the sole discretion of the Board (or its designee), and such decision or determination shall be final and binding on all Participants.

(h) “*Capitalization Adjustment*” means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) “**Capital Stock**” means each and every class of common stock of the Company regardless of the number of votes per share.

(j) “**Cause**” has the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) such Participant’s attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (ii) such Participant’s material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iii) misappropriated, embezzled, or stolen funds or property (A) of the Company or the Company’s subsidiaries or Affiliates or (B) of customers of the Company or the Company’s subsidiaries or Affiliates; (iv) committed, been indicted, convicted or pled guilty or nolo contendere to any felony under state or federal law; (v) materially failed to perform his employment duties or to comply with reasonable directions of the Participant’s supervisor for a period of thirty (30) days following receipt of notice of such failure to perform or comply; (vi) been guilty of or engaged in gross misconduct or gross negligence in the performance of Participant’s duties; or (vii) materially breached any representations, warranties, covenants or conditions in any employment, non-competition, confidentiality or other agreement to which the Company or any subsidiary and such Participant is a party. The determination that a termination of the Participant’s Continuous Service is either for Cause or without Cause will be made by the Board with respect to Participants who are executive officers of the Company and by the Company’s Chief Executive Officer with respect to Participants who are not executive officers of the Company. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(k) “**Change in Control**” or “**Change of Control**” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events; provided, however, to the extent necessary to avoid adverse personal income tax consequences to the Participant in connection with an Award, also constitutes a Section 409A Change in Control:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the “**Subject Person**”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting

securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(iv) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(l) "**Code**" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(m) "**Committee**" means the Compensation Committee and any other committee of Directors to whom authority has been delegated by the Board or Compensation Committee in accordance with the Plan.

(n) "**Common Stock**" means the Class A common stock of the Company.

(o) “**Company**” means ACV Auctions Inc., a Delaware corporation.

(p) “**Compensation Committee**” means the Compensation Committee of the Board.

(q) “**Consultant**” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a “Consultant” for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company’s securities to such person.

(r) “**Continuous Service**” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, will not terminate a Participant’s Continuous Service; provided, however, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, such Participant’s Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of “separation from service” as defined under Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(s) “**Corporate Transaction**” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(t) “**Director**” means a member of the Board.

(u) “**determine**” or “**determined**” means as determined by the Board or the Committee (or its designee) in its sole discretion.

(v) “**Disability**” means, with respect to a Participant, such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(w) “**Effective Date**” means immediately prior to the IPO Date, provided this Plan is approved by the Company’s stockholders prior to the IPO Date.

(x) “**Employee**” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(y) “**Employer**” means the Company or the Affiliate of the Company that employs the Participant.

(z) “**Entity**” means a corporation, partnership, limited liability company or other entity.

(aa) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(bb) “**Exchange Act Person**” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities.

(cc) “**Fair Market Value**” means, as of any date, unless otherwise determined by the Board, the value of the Common Stock (as determined on a per share or aggregate basis, as applicable) determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) If there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, or if otherwise determined by the Board, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(dd) “**Governmental Body**” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any Tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the Nasdaq Stock Market, New York Stock Exchange, and the Financial Industry Regulatory Authority).

(ee) “**Grant Notice**” means the notice provided to a Participant that he or she has been granted an Award under the Plan and which includes the name of the Participant, the type of Award, the date of grant of the Award, number of shares of Common Stock subject to the Award or potential cash payment right, (if any), the vesting schedule for the Award (if any) and other key terms applicable to the Award.

(ff) “**Incentive Stock Option**” means an option granted pursuant to Section 4 of the Plan that is intended to be, and qualifies as, an “incentive stock option” within the meaning of Section 422 of the Code.

(gg) “**IPO Date**” means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(hh) “**Materially Impair**” means any amendment to the terms of the Award that materially adversely affects the Participant’s rights under the Award. A Participant’s rights under an Award will not be deemed to have been Materially Impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant’s rights. For example, the following types of amendments to the terms of an Award do not Materially Impair the Participant’s rights under the Award: (i) imposition of

reasonable restrictions on the minimum number of shares subject to an Option that may be exercised; (ii) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iii) to change the terms of an Incentive Stock Option in a manner that disqualifies, impairs or otherwise affects the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iv) to clarify the manner of exemption from, or to bring the Award into compliance with or qualify it for an exemption from, Section 409A; or (v) to comply with other Applicable Laws.

(ii) “**Non-Employee Director**” means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (“**Regulation S-K**”)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

(jj) “**Non-Exempt Award**” means any Award that is subject to, and not exempt from, Section 409A, including as the result of (i) a deferral of the issuance of the shares subject to the Award which is elected by the Participant or imposed by the Company, (ii) the terms of any Non-Exempt Severance Agreement.

(kk) “**Non-Exempt Director Award**” means a Non-Exempt Award granted to a Participant who was a Director but not an Employee on the applicable grant date.

(ll) “**Non-Exempt Severance Arrangement**” means a severance arrangement or other agreement between the Participant and the Company that provides for acceleration of vesting of an Award and issuance of the shares in respect of such Award upon the Participant’s termination of employment or separation from service (as such term is defined in Section 409A(a)(2)(A)(i) of the Code (and without regard to any alternative definition thereunder) (“**Separation from Service**”) and such severance benefit does not satisfy the requirements for an exemption from application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(4), 1.409A-1(b)(9) or otherwise.

(mm) “**Nonstatutory Stock Option**” means any option granted pursuant to Section 4 of the Plan that does not qualify as an Incentive Stock Option.

(nn) “**Officer**” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(oo) “**Option**” means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(pp) “**Option Agreement**” means a written agreement between the Company and the Optionholder evidencing the terms and conditions of the Option grant. The Option Agreement includes the Grant Notice for the Option and the agreement containing the written summary of the general terms and conditions applicable to the Option and which is provided to a Participant along with the Grant Notice. Each Option Agreement will be subject to the terms and conditions of the Plan.

(qq) "**Optionholder**" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(rr) "**Other Award**" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 5(c).

(ss) "**Other Award Agreement**" means a written agreement between the Company and a holder of an Other Award evidencing the terms and conditions of an Other Award grant. Each Other Award Agreement will be subject to the terms and conditions of the Plan.

(tt) "**Own,**" "**Owned,**" "**Owner,**" "**Ownership**" means that a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(uu) "**Participant**" means an Employee, Director or Consultant to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(vv) "**Performance Award**" means an Award that may vest or may be exercised or a cash award that may vest or become earned and paid contingent upon the attainment during a Performance Period of certain Performance Goals and which is granted under the terms and conditions of Section 5(b) pursuant to such terms as are approved by the Board. In addition, to the extent permitted by Applicable Law and set forth in the applicable Award Agreement, the Board may determine that cash or other property may be used in payment of Performance Awards. Performance Awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the Common Stock.

(ww) "**Performance Criteria**" means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: earnings (including earnings per share and net earnings); earnings before interest, taxes and depreciation; earnings before interest, taxes, depreciation and amortization; total stockholder return; return on equity or average stockholder's equity; return on assets, investment, or capital employed; stock price; margin (including gross margin); income (before or after taxes); operating income; operating income after taxes; pre-tax profit; operating cash flow; sales or revenue targets; increases in revenue or product revenue; expenses and cost reduction goals; improvement in or attainment of working capital levels; economic value added (or an equivalent metric); market share; cash flow; cash flow per share; share price performance; debt reduction; customer satisfaction; stockholders' equity; capital expenditures; debt levels; operating profit or net operating profit; workforce diversity; growth of net income or operating income; billings; financing; regulatory milestones; stockholder liquidity; corporate governance and compliance; intellectual property; personnel matters; progress of internal research; progress of partnered programs; partner satisfaction; budget management;

partner or collaborator achievements; internal controls, including those related to the Sarbanes-Oxley Act of 2002; investor relations, analysts and communication; implementation or completion of projects or processes; employee retention; number of users, including unique users; strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property); establishing relationships with respect to the marketing, distribution and sale of the Company's products; supply chain achievements; co-development, co-marketing, profit sharing, joint venture or other similar arrangements; individual performance goals; corporate development and planning goals; and other measures of performance selected by the Board or Committee.

(xx) "**Performance Goals**" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of Common Stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Award Agreement or the written terms of a Performance Cash Award.

(yy) "**Performance Period**" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to vesting or exercise of an Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(zz) "**Plan**" means this ACV Auctions Inc. 2021 Equity Incentive Plan, as amended from time to time.

(aaa) "**Plan Administrator**" means the person, persons, and/or third-party administrator designated by the Company to administer the day to day operations of the Plan and the Company's other equity incentive programs.

(bbb) "**Post-Termination Exercise Period**" means the period following termination of a Participant's Continuous Service within which an Option or SAR is exercisable, as specified in Section 4(h).

(ccc) "**Prior Plan's Available Reserve**" means the number of shares available for the grant of new awards under the Prior Plan as of the Effective Date.

(ddd) "**Prior Plan**" means the ACV Auctions Inc. 2015 Long-Term Incentive Plan, as it has been amended (or amended and restated) from time to time as applicable.

(eee) "**Prospectus**" means the document containing the Plan information specified in Section 10(a) of the Securities Act.

(fff) "**Restricted Stock Award**" or "**RSA**" means an Award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(ggg) "**Restricted Stock Award Agreement**" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. The Restricted Stock Award Agreement includes the Grant Notice for the Restricted Stock Award and the agreement containing the written summary of the general terms and conditions applicable to the Restricted Stock Award and which is provided to a Participant along with the Grant Notice. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(hhh) "**Returning Shares**" means shares subject to outstanding stock awards granted under the Prior Plan and that following the Effective Date: (A) are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (B) are not issued because such stock award or any portion thereof is settled in cash; (C) are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares; (D) are withheld or reacquired to satisfy the exercise, strike or purchase price; or (E) are withheld or reacquired to satisfy a tax withholding obligation. Returning Shares of Class B common stock that become available for grant under this Plan shall convert on a one for one basis into shares of Common Stock.

(iii) "**RSU Award**" or "**RSU**" means an Award of restricted stock units representing the right to receive an issuance of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(jjj) "**RSU Award Agreement**" means a written agreement between the Company and a holder of a RSU Award evidencing the terms and conditions of a RSU Award. The RSU Award Agreement includes the Grant Notice for the RSU Award and the agreement containing the written summary of the general terms and conditions applicable to the RSU Award and which is provided to a Participant along with the Grant Notice. Each RSU Award Agreement will be subject to the terms and conditions of the Plan.

(kkk) “**Rule 16b-3**” means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(lll) “**Rule 405**” means Rule 405 promulgated under the Securities Act.

(mmm) “**Section 409A**” means Section 409A of the Code and the regulations and other guidance thereunder.

(nnn) “**Section 409A Change in Control**” means a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company’s assets, as provided in Section 409A(a)(2)(A)(v) of the Code and Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

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

(ppp) “**Share Reserve**” means the number of shares available for issuance under the Plan as set forth in Section 2(a).

(qqq) “**Stock Appreciation Right**” or “**SAR**” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 4.

(rrr) “**SAR Agreement**” means a written agreement between the Company and a holder of a SAR evidencing the terms and conditions of a SAR grant. The SAR Agreement includes the Grant Notice for the SAR and the agreement containing the written summary of the general terms and conditions applicable to the SAR and which is provided to a Participant along with the Grant Notice. Each SAR Agreement will be subject to the terms and conditions of the Plan.

(sss) “**Subsidiary**” means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(ttt) “**Ten Percent Stockholder**” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

(uuu) “**Trading Policy**” means the Company’s policy permitting certain individuals to sell Company shares only during certain “window” periods and/or otherwise restricts the ability of certain individuals to transfer or encumber Company shares, as in effect from time to time.

(vvv) “*Unvested Non-Exempt Award*” means the portion of any Non-Exempt Award that had not vested in accordance with its terms upon or prior to the date of any Corporate Transaction.

(www) “*Vested Non-Exempt Award*” means the portion of any Non-Exempt Award that had vested in accordance with its terms upon or prior to the date of a Corporate Transaction.

**ACV AUCTIONS INC.
RSU AWARD GRANT NOTICE
(2021 EQUITY INCENTIVE PLAN)**

ACV Auctions Inc. (the “*Company*”) has awarded to you (the “*Participant*”) the number of restricted stock units specified and on the terms set forth below in consideration of your services (the “*RSU Award*”). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company’s 2021 Equity Incentive Plan (the “*Plan*”) and the Award Agreement (the “*Agreement*”), which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement.

Participant: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Restricted Stock Units: _____

Vesting Schedule: Subject to the Participant’s Continuous Service through each applicable vesting date, the RSU Award will vest as follows:
[_____].

Issuance Schedule: One share of Common Stock will be issued for each restricted stock unit which vests at the time set forth in Section 6 of the Agreement.

Participant Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the “*Grant Notice*”), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the “*RSU Award Agreement*”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the Prospectus. In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

ACV AUCTIONS INC.

PARTICIPANT:

By: _____
Signature

Signature

Title: _____

Date: _____

Date: _____

ATTACHMENTS: RSU Award Agreement, 2021 Equity Incentive Plan

ACV AUCTIONS INC.
2021 EQUITY INCENTIVE PLAN

AWARD AGREEMENT (RSU AWARD)

As reflected by your Restricted Stock Unit Grant Notice (“*Grant Notice*”) ACV Auctions Inc. (the “*Company*”) has granted you a RSU Award under its 2021 Equity Incentive Plan (the “*Plan*”) for the number of restricted stock units as indicated in your Grant Notice (the “*RSU Award*”). The terms of your RSU Award as specified in this Award Agreement for your RSU Award (the “*Agreement*”) and the Grant Notice constitute your “*RSU Award Agreement*”. Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

1. GOVERNING PLAN DOCUMENT. Your RSU Award is subject to all the provisions of the Plan, including but not limited to the provisions in:

a. Section 6 of the Plan regarding the impact of a Capitalization Adjustment, dissolution, liquidation, or Corporate Transaction on your RSU Award;

b. Section 9(e) of the Plan regarding the Company’s retained rights to terminate your Continuous Service notwithstanding the grant of the RSU Award; and

c. Section 8(c) of the Plan regarding the tax consequences of your RSU Award.

Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

2. GRANT OF THE RSU AWARD. This RSU Award represents your right to be issued on a future date the number of shares of the Company’s Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice as modified to reflect any Capitalization Adjustment and subject to your satisfaction of the vesting conditions set forth therein (the “*Restricted Stock Units*”). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 4 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

3. VESTING. Your Restricted Stock Units will vest, if at all, in accordance with the vesting schedule provided in the Grant Notice, subject to the provisions contained herein and the terms of the Plan. Vesting will cease upon the termination of your Continuous Service. [*Optional Double-Trigger Provision*: Notwithstanding the foregoing, if a Change in Control occurs and

during the period beginning immediately prior to and ending twelve (12) months after the effective time of such Change in Control your Continuous Service terminates due to a termination by the Company (not including death or Disability) without Cause or due to your voluntary resignation for Good Reason, then, as of the date of termination of your Continuous Service, the vesting of your Restricted Stock Units will be accelerated in full.

a. “**Good Reason**” means the occurrence of any of the following events, conditions or actions taken by the Company (or successor to the Company, if applicable) without Cause and without your written consent: (i) a material reduction of your annual base salary; *provided, however*, that Good Reason shall not be deemed to have occurred in the event of a reduction in your annual base salary that is pursuant to a salary reduction program affecting substantially all of the similarly situated employees of the Company and that does not adversely affect you to a greater extent than other similarly situated employees; (ii) a material diminution in your authority, duties or responsibilities; (iii) a relocation of your principal place of employment with the Company (or successor to the Company, if applicable) to a place that increases your one-way commute by more than fifty (50) miles as compared to your then-current principal place of employment immediately prior to such relocation (excluding regular travel in the ordinary course of business); provided that (a) if your principal place of employment is your personal residence, this clause (iii) shall not apply and (b) if you work remotely during any period in which your regular principal office location is a Company office that is closed, then neither your relocation to remote work or back to the office from remote work will be considered a relocation of your principal office location for purposes of this definition; or (iv) a material breach by the Company of any provision of the Agreement or your employment agreement with the Company; *provided, however*, that in each case above, in order for your resignation to be deemed to have been for Good Reason, you must first give the Board written notice of the action or omission giving rise to “Good Reason” within thirty (30) days after the first occurrence thereof; the Company must fail to reasonably cure such action or omission within thirty (30) days after receipt of such notice (the “**Cure Period**”), and your resignation from all positions you hold with the Company must be effective not later than thirty (30) days after the expiration of such Cure Period.

b. If any payment or benefit you would receive from the Company or otherwise in connection with a Change in Control or other similar transaction (a “**280G Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then any such 280G Payment (a “**Payment**”) shall be equal to the Reduced Amount. The “**Reduced Amount**” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the “**Reduction Method**”) that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the “**Pro Rata Reduction Method**”).

Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A of the Code that would not otherwise be subject to taxes pursuant to Section 409A of the Code, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A of the Code as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for you as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are “deferred compensation” within the meaning of Section 409A of the Code shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A of the Code.

Unless you and the Company agree on an alternative accounting firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the change in control transaction triggering the Payment shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the change in control transaction, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The Company shall use commercially reasonable efforts to cause the accounting firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a 280G Payment becomes reasonably likely to occur (if requested at that time by you or the Company) or such other time as requested by you or the Company.

If you receive a Payment for which the Reduced Amount was determined pursuant to clause (x) of the first paragraph of this Section 3(b) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, you shall promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) of the first paragraph of this Section 3(b) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) in the first paragraph of this Section 3(b), you shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.]

4. DIVIDENDS. You may become entitled to receive payments equal to any cash dividends and other distributions paid with respect to a corresponding number of shares of Common Stock to be issued in respect of the Restricted Stock Units covered by your RSU Award. Any such dividends or distributions shall be subject to the same forfeiture restrictions as apply to the Restricted Stock Units and shall be paid at the same time that the corresponding shares are issued in respect of your vested Restricted Stock Units, provided, however that to the extent any such dividends or distributions are paid in shares of Common Stock, then you will automatically be granted a corresponding number of additional Restricted Stock Units subject to the RSU Award (the “*Dividend Units*”), and further provided that such Dividend Units shall be subject to the same forfeiture restrictions and restrictions on transferability, and same timing requirements for issuance of shares, as apply to the Restricted Stock Units subject to the RSU Award with respect to which the Dividend Units relate.

5. WITHHOLDING OBLIGATIONS. As further provided in Section 8 of the Plan, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations, if any, which arise in connection with your RSU Award (the “**Withholding Obligation**”) in accordance with the withholding procedures established by the Company. Unless the Withholding Obligation is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the RSU Award. In the event the Withholding Obligation of the Company arises prior to the delivery to you of Common Stock or it is determined after the delivery of Common Stock to you that the amount of the Withholding Obligation was greater than the amount withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

6. DATE OF ISSUANCE.

a. The issuance of shares in respect of the Restricted Stock Units is intended to comply with Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the Withholding Obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each Restricted Stock Unit that vests on the applicable vesting date(s) (subject to any adjustment under Section 4 above, and subject to any different provisions in the Grant Notice). Each issuance date determined by this paragraph is referred to as an “**Original Issuance Date**.”

b. If the Original Issuance Date falls on a date that is not a business day, delivery shall instead occur on the next following business day. In addition, if:

1) the Original Issuance Date does not occur (1) during an “open window period” applicable to you, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a “**10b5-1 Arrangement**)), and

2) either (1) a Withholding Obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Withholding Obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a “same day sale” commitment with a broker-dealer (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Withholding Obligation in cash,

3) then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Company's Common Stock in the open public market or on such other date determined by the Company, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a "substantial risk of forfeiture" within the meaning of Treasury Regulations Section 1.409A-1(d).

c. To the extent the RSU Award is a Non-Exempt RSU Award, the provisions of Section 11 of the Plan shall apply.

7. LOCK-UP PERIOD. By accepting your RSU Award, you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the "**Lock-Up Period**"); *provided, however*, that nothing contained in this Section 7 will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 7. The underwriters of the Company's stock are intended third party beneficiaries of this Section 7 and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

8. TRANSFERABILITY. Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution.

9. CORPORATE TRANSACTION. Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

10. NO LIABILITY FOR TAXES. As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the RSU Award or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

11. SEVERABILITY. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

12. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b) (1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

13. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

ACV AUCTIONS INC.
RSU AWARD GRANT NOTICE
(2021 EQUITY INCENTIVE PLAN)

ACV Auctions Inc. (the “*Company*”) has awarded to you (the “*Participant*”) the number of restricted stock units specified and on the terms set forth below in consideration of your services (the “*RSU Award*”). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company’s 2021 Equity Incentive Plan (the “*Plan*”) and the Award Agreement (the “*Agreement*”), which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement.

Participant: _____
Date of Grant: _____
Vesting Commencement Date: _____
Number of Restricted Stock Units: _____

Vesting Schedule: Subject to the Participant’s Continuous Service through each applicable vesting date, the RSU Award will vest as follows:

[Initial Grant]
_____].
[Annual Grant]
_____].

Issuance Schedule: One share of Common Stock will be issued for each restricted stock unit which vests as set forth in Section 6 of the Agreement.

Participant Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the “*Grant Notice*”), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the “*RSU Award Agreement*”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the Prospectus. In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

ACV AUCTIONS INC.

PARTICIPANT:

By: _____
Signature

Signature

Title: _____

Date: _____

Date: _____

ATTACHMENTS: RSU Award Agreement, 2021 Equity Incentive Plan

ACV AUCTIONS INC.
2021 EQUITY INCENTIVE PLAN
AWARD AGREEMENT (RSU AWARD)

As reflected by your Restricted Stock Unit Grant Notice (“*Grant Notice*”) ACV Auctions Inc. (the “*Company*”) has granted you a RSU Award under its 2021 Equity Incentive Plan (the “*Plan*”) for the number of restricted stock units as indicated in your Grant Notice (the “*RSU Award*”). The terms of your RSU Award as specified in this Award Agreement for your RSU Award (the “*Agreement*”) and the Grant Notice constitute your “*RSU Award Agreement*”. Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

14. GOVERNING PLAN DOCUMENT. Your RSU Award is subject to all the provisions of the Plan, including but not limited to the provisions in:

- a. Section 6 of the Plan regarding the impact of a Capitalization Adjustment, dissolution, liquidation, or Corporate Transaction on your RSU Award;
- b. Section 9(e) of the Plan regarding the Company’s retained rights to terminate your Continuous Service notwithstanding the grant of the RSU Award; and
- c. Section 8(c) of the Plan regarding the tax consequences of your RSU Award.

Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

15. GRANT OF THE RSU AWARD. This RSU Award represents your right to be issued on a future date the number of shares of the Company’s Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice as modified to reflect any Capitalization Adjustment and subject to your satisfaction of the vesting conditions set forth therein (the “*Restricted Stock Units*”). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 4 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

16. VESTING.

- a. Your Restricted Stock Units will vest, if at all, in accordance with the vesting schedule provided in the Grant Notice, subject to the provisions contained herein and the terms of the Plan. Vesting will cease upon the termination of your Continuous Service. Notwithstanding the foregoing, your Restricted Stock Units will accelerate vesting in full upon a Change in Control which occurs prior to, or at the time of, termination of your Continuous Service.

b. If any payment or benefit you would receive from the Company or otherwise in connection with a Change in Control or other similar transaction (a “**280G Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then any such 280G Payment (a “**Payment**”) shall be equal to the Reduced Amount. The “**Reduced Amount**” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the “**Reduction Method**”) that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the “**Pro Rata Reduction Method**”).

Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A of the Code that would not otherwise be subject to taxes pursuant to Section 409A of the Code, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A of the Code as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for you as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are “deferred compensation” within the meaning of Section 409A of the Code shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A of the Code.

Unless you and the Company agree on an alternative accounting firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the change in control transaction triggering the Payment shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the change in control transaction, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The Company shall use commercially reasonable efforts to cause the accounting firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a 280G Payment becomes reasonably likely to occur (if requested at that time by you or the Company) or such other time as requested by you or the Company.

If you receive a Payment for which the Reduced Amount was determined pursuant to clause (x) of the first paragraph of this Section 3(b) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, you shall promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) of the first paragraph of this Section 3(b) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) in the first paragraph of this Section 3(b), you shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

17. DIVIDENDS. You may become entitled to receive payments equal to any cash dividends and other distributions paid with respect to a corresponding number of shares of Common Stock to be issued in respect of the Restricted Stock Units covered by your RSU Award. Any such dividends or distributions shall be subject to the same forfeiture restrictions as apply to the Restricted Stock Units and shall be paid at the same time that the corresponding shares are issued in respect of your vested Restricted Stock Units, provided, however that to the extent any such dividends or distributions are paid in shares of Common Stock, then you will automatically be granted a corresponding number of additional Restricted Stock Units subject to the RSU Award (the "**Dividend Units**"), and further provided that such Dividend Units shall be subject to the same forfeiture restrictions and restrictions on transferability, and same timing requirements for issuance of shares, as apply to the Restricted Stock Units subject to the RSU Award with respect to which the Dividend Units relate.

18. WITHHOLDING OBLIGATIONS. As further provided in Section 8 of the Plan, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations, if any, which arise in connection with your RSU Award (the "**Withholding Obligation**") in accordance with the withholding procedures established by the Company. Unless the Withholding Obligation is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the RSU Award. In the event the Withholding Obligation of the Company arises prior to the delivery to you of Common Stock or it is determined after the delivery of Common Stock to you that the amount of the Withholding Obligation was greater than the amount withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

19. DATE OF ISSUANCE.

a. The issuance of shares in respect of the Restricted Stock Units is intended to comply with Treasury Regulations Section 1.409A-1(b)(4) and will be construed and administered in such a manner. Subject to the satisfaction of the Withholding Obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each Restricted Stock Unit that vests on the applicable vesting date(s) (subject to any adjustment under Section 4 above, and subject to any different provisions in the Grant Notice). Each issuance date determined by this paragraph is referred to as an "**Original Issuance Date**."

b. If the Original Issuance Date falls on a date that is not a business day, delivery shall instead occur on the next following business day. In addition, if:

1) the Original Issuance Date does not occur (1) during an “open window period” applicable to you, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a “**10b5-1 Arrangement**)), and

2) either (1) a Withholding Obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Withholding Obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a “same day sale” commitment with a broker-dealer (including but not limited to a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Withholding Obligation in cash,

3) then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Company’s Common Stock in the open public market or on such other date determined by the Company, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a “substantial risk of forfeiture” within the meaning of Treasury Regulations Section 1.409A-1(d).

c. To the extent the RSU Award is a Non-Exempt RSU Award, the provisions of Section 11 of the Plan shall apply.

20. LOCK-UP PERIOD. By accepting your RSU Award, you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the “**Lock-Up Period**”); *provided, however*, that nothing contained in this Section 7 will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 7. The underwriters of the Company’s stock are intended third party beneficiaries of this Section 7 and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

21. TRANSFERABILITY. Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution.

22. CORPORATE TRANSACTION. Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

23. NO LIABILITY FOR TAXES. As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the RSU Award or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

24. SEVERABILITY. If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

25. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b) (1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

26. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.

ACV AUCTIONS INC.
STOCK OPTION GRANT NOTICE
(2021 EQUITY INCENTIVE PLAN)

ACV Auctions Inc. (the “*Company*”), pursuant to its 2021 Equity Incentive Plan (the “*Plan*”), has granted to you (“*Optionholder*”) an option to purchase the number of shares of the Common Stock set forth below (the “*Option*”). Your Option is subject to all of the terms and conditions as set forth herein and in the Plan, and the Stock Option Agreement and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Stock Option Agreement shall have the meanings set forth in the Plan or the Stock Option Agreement, as applicable.

Optionholder:	_____
Date of Grant:	_____
Vesting Commencement Date:	_____
Number of Shares of Common Stock Subject to Option:	_____
Exercise Price (Per Share):	_____
Total Exercise Price:	_____
Expiration Date:	_____

Type of Grant: [Incentive Stock Option]¹ OR [Nonstatutory Stock Option]

Exercise and

Vesting Schedule: Subject to the Optionholder’s Continuous Service through each applicable vesting date, the Option will vest as follows:

[1/4th of the shares vest and become exercisable on the one year anniversary of the Vesting Commencement Date, and the balance of the shares vest and become exercisable in a series of thirty-six (36) successive equal monthly installments thereafter][, subject to the potential vesting acceleration described in Section 2 of the Stock Option Agreement].

Optionholder Acknowledgements: By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The Option is governed by this Stock Option Grant Notice, and the provisions of the Plan and the Stock Option Agreement and the Notice of Exercise, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Stock Option Agreement (together, the “*Option Agreement*”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- [If the Option is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options granted to you) cannot be first exercisable for more than \$100,000 in value (measured by exercise price) in any calendar year. Any excess over \$100,000 is a Nonstatutory Stock Option.]
- You consent to receive this Grant Notice, the Stock Option Agreement, the Plan, the Prospectus and any other Plan-related documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

¹ If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first exercisable for more than \$100,000 in value (measured by exercise price) in any calendar year. Any excess over \$100,000 is a Nonstatutory Stock Option.

- You have read and are familiar with the provisions of the Plan, the Stock Option Agreement, the Notice of Exercise and the Prospectus. In the event of any conflict between the provisions in this Grant Notice, the Option Agreement, the Notice of Exercise, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The Option Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of other equity awards previously granted to you and any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this Option.
- Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

ACV AUCTIONS INC.

OPTIONHOLDER:

By: _____
Signature

Signature

Title: _____

Date: _____

Date: _____

ATTACHMENTS: Stock Option Agreement, 2021 Equity Incentive Plan, Notice of Exercise

ATTACHMENT I

STOCK OPTION AGREEMENT

8.

ACV AUCTIONS INC.
2021 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

As reflected by your Stock Option Grant Notice (“*Grant Notice*”), ACV Auctions Inc. (the “*Company*”) has granted you an option under its 2021 Equity Incentive Plan (the “*Plan*”) to purchase a number of shares of Common Stock at the exercise price indicated in your Grant Notice (the “*Option*”). Capitalized terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the meanings set forth in the Grant Notice or Plan, as applicable. The terms of your Option as specified in the Grant Notice and this Stock Option Agreement constitute your Option Agreement.

The general terms and conditions applicable to your Option are as follows:

27. GOVERNING PLAN DOCUMENT. Your Option is subject to all the provisions of the Plan, including but not limited to the provisions in:

- a. Section 6 regarding the impact of a Capitalization Adjustment, dissolution, liquidation, or Corporate Transaction on your Option;
- b. Section 9(e) regarding the Company’s retained rights to terminate your Continuous Service notwithstanding the grant of the Option; and
- c. Section 8(c) regarding the tax consequences of your Option.

Your Option is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the Option Agreement and the provisions of the Plan, the provisions of the Plan shall control.

28. VESTING. Your Option will vest as provided in your Grant Notice, subject to the provisions contained herein and the terms of the Plan. Vesting will cease upon the termination of your Continuous Service. [*Optional Double-Trigger Provision:* Notwithstanding the foregoing, if a Change in Control occurs and during the period beginning immediately prior to and ending twelve (12) months after the effective time of such Change in Control your Continuous Service terminates due to a termination by the Company (not including death or Disability) without Cause or due to your voluntary resignation for Good Reason, then, as of the date of termination of your Continuous Service, the vesting and exercisability of your Option will be accelerated in full.

a. “*Good Reason*” means the occurrence of any of the following events, conditions or actions taken by the Company (or successor to the Company, if applicable) without Cause and without your written consent: (i) a material reduction of your annual base salary; *provided, however,* that Good Reason shall not be deemed to have occurred in the event of a reduction in your annual base salary that is pursuant to a salary reduction program affecting substantially all of the similarly situated employees of the Company and that does not adversely

affect you to a greater extent than other similarly situated employees; (ii) a material diminution in your authority, duties or responsibilities; (iii) a relocation of your principal place of employment with the Company (or successor to the Company, if applicable) to a place that increases your one-way commute by more than fifty (50) miles as compared to your then-current principal place of employment immediately prior to such relocation (excluding regular travel in the ordinary course of business); provided that (a) if your principal place of employment is your personal residence, this clause (iii) shall not apply and (b) if you work remotely during any period in which your regular principal office location is a Company office that is closed, then neither your relocation to remote work or back to the office from remote work will be considered a relocation of your principal office location for purposes of this definition; or (iv) a material breach by the Company of any provision of this Option Agreement or your employment agreement with the Company; *provided, however*, that in each case above, in order for your resignation to be deemed to have been for Good Reason, you must first give the Board written notice of the action or omission giving rise to “Good Reason” within thirty (30) days after the first occurrence thereof; the Company must fail to reasonably cure such action or omission within thirty (30) days after receipt of such notice (the “**Cure Period**”), and your resignation from all positions you hold with the Company must be effective not later than thirty (30) days after the expiration of such Cure Period.

b. If any payment or benefit you would receive from the Company or otherwise in connection with a Change in Control or other similar transaction (a “**280G Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then any such 280G Payment (a “**Payment**”) shall be equal to the Reduced Amount. The “**Reduced Amount**” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the “**Reduction Method**”) that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the “**Pro Rata Reduction Method**”).

Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A of the Code that would not otherwise be subject to taxes pursuant to Section 409A of the Code, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A of the Code as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for you as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are “deferred compensation” within the meaning of Section 409A of the Code shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A of the Code.

Unless you and the Company agree on an alternative accounting firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the change of control transaction triggering the Payment shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the change of control transaction, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The Company shall use commercially reasonable efforts to cause the accounting firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a 280G Payment becomes reasonably likely to occur (if requested at that time by you or the Company) or such other time as requested by you or the Company.

If you receive a Payment for which the Reduced Amount was determined pursuant to clause (x) of the first paragraph of this Section 2(b) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, you shall promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) of the first paragraph of this Section 2(b) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) in the first paragraph of this Section 2(b), you shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.]

29. EXERCISE.

a. You may generally exercise the vested portion of your Option for whole shares of Common Stock at any time during its term by delivery of payment of the exercise price and applicable withholding taxes and other required documentation to the Plan Administrator in accordance with the exercise procedures established by the Plan Administrator, which may include an electronic submission. Please review Sections 4(i), 4(j) and 7(b)(v) of the Plan, which may restrict or prohibit your ability to exercise your Option during certain periods.

b. To the extent permitted by Applicable Law, you may pay your Option exercise price as follows:

- 1) cash, check, bank draft or money order;
- 2) pursuant to a "cashless exercise" program as further described in Section 4(c)(ii) of the Plan if at the time of exercise the Common Stock is publicly traded;
- 3) subject to Company and/or Committee consent at the time of exercise, by delivery of previously owned shares of Common Stock as further described in Section 4(c)(iii) of the Plan; or

4) subject to Company and/or Committee consent at the time of exercise, if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement as further described in Section 4(c)(iv) of the Plan.

c. By accepting your Option, you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the “**Lock-Up Period**”); *provided, however*, that nothing contained in this Section 3(c) will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 3(c). The underwriters of the Company’s stock are intended third party beneficiaries of this Section 3(c) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

30. TERM. You may not exercise your Option before the commencement of its term or after its term expires. The term of your Option commences on the Date of Grant and expires upon the earliest of the following:

- a. immediately upon the termination of your Continuous Service for Cause;
- b. three months after the termination of your Continuous Service for any reason other than Cause, Disability or death;
- c. 12 months after the termination of your Continuous Service due to your Disability;
- d. 18 months after your death if you die during your Continuous Service;
- e. immediately upon a Corporate Transaction if the Board has determined that the Option will terminate in connection with a Corporate Transaction,
- f. the Expiration Date indicated in your Grant Notice; or
- g. the day before the 10th anniversary of the Date of Grant.

Notwithstanding the foregoing, if you die during the period provided in Section 4(b) or 4(c) above, the term of your Option shall not expire until the earlier of (i) 18 months after your death, (ii) upon any termination of the Option in connection with a Corporate Transaction, (iii) the Expiration Date indicated in your Grant Notice, or (iv) the day before the tenth anniversary of the Date of Grant. Additionally, the Post-Termination Exercise Period of your Option may be extended as provided in Section 4(i) of the Plan.

To obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your Option and ending on the day three months before the date of your Option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. If the Company provides for the extended exercisability of your Option under certain circumstances for your benefit, your Option will not necessarily be treated as an Incentive Stock Option if you exercise your Option more than three months after the date your employment terminates.

31. WITHHOLDING OBLIGATIONS. As further provided in Section 8 of the Plan: (a) you may not exercise your Option unless the applicable tax withholding obligations are satisfied, and (b) at the time you exercise your Option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations, if any, which arise in connection with the exercise of your Option in accordance with the withholding procedures established by the Company. Accordingly, you may not be able to exercise your Option even though the Option is vested, and the Company shall have no obligation to issue shares of Common Stock subject to your Option, unless and until such obligations are satisfied. In the event that the amount of the Company's withholding obligation in connection with your Option was greater than the amount actually withheld by the Company, you agree to indemnify and hold the Company harmless from any failure by the Company to withhold the proper amount.

32. INCENTIVE STOCK OPTION DISPOSITION REQUIREMENT. If your Option is an Incentive Stock Option, you must notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your Option that occurs within two years after the date of your Option grant or within one year after such shares of Common Stock are transferred upon exercise of your Option.

33. TRANSFERABILITY. Except as otherwise provided in Section 4(e) of the Plan, your Option is not transferable, except by will or by the applicable laws of descent and distribution, and is exercisable during your life only by you.

34. CORPORATE TRANSACTION. Your Option is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

35. NO LIABILITY FOR TAXES. As a condition to accepting the Option, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the Option or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the Option and have either done so or knowingly and voluntarily declined to do so. Additionally, you acknowledge that the Option is exempt from

Section 409A only if the exercise price is at least equal to the “fair market value” of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Option. Additionally, as a condition to accepting the Option, you agree not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise is less than the “fair market value” of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.

36. SEVERABILITY. If any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid

37. OTHER DOCUMENTS. You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b) (1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company’s Trading Policy.

38. QUESTIONS. If you have questions regarding these or any other terms and conditions applicable to your Option, including a summary of the applicable federal income tax consequences please see the Prospectus.

* * * *

ATTACHMENT II

2021 EQUITY INCENTIVE PLAN

ATTACHMENT III

NOTICE OF EXERCISE

16.

ACV AUCTIONS INC.
(2021 EQUITY INCENTIVE PLAN)

NOTICE OF EXERCISE

ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203

Date of Exercise: _____

This constitutes notice to ACV Auctions Inc. (the "**Company**") that I elect to purchase the below number of shares of Common Stock of the Company (the "**Shares**") by exercising my Option for the price set forth below. Capitalized terms not explicitly defined in this Notice of Exercise but defined in the Grant Notice, Option Agreement or 2021 Equity Incentive Plan (the "**Plan**") shall have the meanings set forth in the Grant Notice, Option Agreement or Plan, as applicable. Use of certain payment methods is subject to Company and/or Committee consent and certain additional requirements set forth in the Option Agreement and the Plan.

Type of option (check one):	Incentive <input type="checkbox"/>	Nonstatutory <input type="checkbox"/>
Date of Grant:	_____	_____
Number of Shares as to which Option is exercised:	_____	_____
Certificates to be issued in name of:	_____	_____
Total exercise price:	\$ _____	_____
Cash, check, bank draft or money order delivered herewith:	\$ _____	_____
Value of _____ Shares delivered herewith:	\$ _____	_____
Regulation T Program (cashless exercise)	\$ _____	_____
Value of _____ Shares pursuant to net exercise:	\$ _____	_____

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the Plan, (ii) to satisfy the tax withholding obligations, if any, relating to the exercise of this Option as set forth in the Option Agreement, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within 15 days after the date of any disposition of any of the Shares issued upon exercise of this Option that occurs within two years after the Date of Grant or within one year after such Shares are issued upon exercise of this Option.

I further agree that I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company that I hold, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2241 or any successor or similar rules or regulation (the "**Lock-Up Period**"); *provided, however*, that nothing contained in this paragraph will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. I further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. I further agree that in order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to shares of Common Stock that I hold until the end of such period. I also agree that any transferee of any shares of Common Stock (or other securities) of the Company that I hold will be bound by this paragraph. The underwriters of the Company's stock are intended third party beneficiaries of this paragraph and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

Very truly yours,

ACV AUCTIONS INC.

2021 EMPLOYEE STOCK PURCHASE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: MARCH 11, 2021

APPROVED BY THE STOCKHOLDERS: MARCH 11, 2021

IPO DATE: , 2021

1. GENERAL; PURPOSE.

(a) The Plan provides a means by which Eligible Employees of the Company and certain designated Related Corporations may be given an opportunity to purchase shares of Common Stock. The Plan permits the Company to grant a series of Purchase Rights to Eligible Employees under an Employee Stock Purchase Plan. In addition, the Plan permits the Company to grant a series of Purchase Rights to Eligible Employees that do not meet the requirements of an Employee Stock Purchase Plan.

(b) The Plan includes two components: a 423 Component and a Non-423 Component. The Company intends (but makes no undertaking or representation to maintain) the 423 Component to qualify as an Employee Stock Purchase Plan. The provisions of the 423 Component, accordingly, will be construed in a manner that is consistent with the requirements of Section 423 of the Code. Except as otherwise provided in the Plan or determined by the Board, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

(c) The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations.

2. ADMINISTRATION.

(a) The Board or the Committee will administer the Plan. References herein to the Board shall be deemed to refer to the Committee except where context dictates otherwise.

(b) The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine how and when Purchase Rights will be granted and the provisions of each Offering (which need not be identical).

(ii) To designate from time to time (A) which Related Corporations of the Company will be eligible to participate in the Plan, (B) whether such Related Corporations will participate in the 423 Component or the Non-423 Component, and (C) to the extent that the Company makes separate Offerings under the 423 Component, in which Offering the Related Corporations in the 423 Component will participate.

(iii) To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it deems necessary or expedient to make the Plan fully effective.

(iv) To settle all controversies regarding the Plan and Purchase Rights granted under the Plan.

(v) To suspend or terminate the Plan at any time as provided in Section 12.

(vi) To amend the Plan at any time as provided in Section 12.

(vii) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company and its Related Corporations and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan with respect to the 423 Component.

(viii) To adopt such rules, procedures and sub-plans as are necessary or appropriate to permit or facilitate participation in the Plan by Employees who are foreign nationals or employed or located outside the United States. Without limiting the generality of, and consistent with, the foregoing, the Board specifically is authorized to adopt rules, procedures, and sub-plans regarding, without limitation, eligibility to participate in the Plan, the definition of eligible "earnings," handling and making of Contributions, establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of share issuances, any of which may vary according to applicable requirements, and which, if applicable to a Related Corporation designated for participation in the Non-423 Component, do not have to comply with the requirements of Section 423 of the Code.

(c) The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan and any Offering Document to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revert in the Board some or all of the powers previously delegated. Whether or not the Board has delegated administration of the Plan to a Committee, the Board will have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

(d) All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.

(a) Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, the maximum number of shares of Common Stock that may be issued under the Plan will not exceed 2,800,000 shares of Common Stock, plus the number of shares of Common Stock that are automatically added on January 1st of each year for a period of up to ten years, commencing on the first January 1 following the year in which the IPO Date occurs and ending on (and including) January 1, 2031, in an amount equal to the lesser of (i) 1% of the total number of shares of Capital Stock outstanding on December 31st of the preceding calendar year, and (ii) 4,200,000 shares of Common Stock. Notwithstanding the foregoing, the Board may act prior to the first day of any calendar year to provide that there will be no January 1st increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. For the avoidance of doubt, up to the maximum number of shares of Common Stock reserved under this Section 3(a) may be used to satisfy purchases of Common Stock under the 423 Component and any remaining portion of such maximum number of shares may be used to satisfy purchases of Common Stock under the Non-423 Component.

(b) If any Purchase Right granted under the Plan terminates without having been exercised in full, the shares of Common Stock not purchased under such Purchase Right will again become available for issuance under the Plan.

(c) The stock purchasable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

4. GRANT OF PURCHASE RIGHTS; OFFERING.

(a) The Board may from time to time grant or provide for the grant of Purchase Rights to Eligible Employees under an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering will be in such form and will contain such terms and conditions as the Board will deem appropriate, and, with respect to the 423 Component, will comply with the requirement of Section 423(b)(5) of the Code that all Employees granted Purchase Rights will have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering will include (through incorporation of the provisions of this Plan by reference in the document comprising the Offering or otherwise) the period during which the Offering will be effective, which period will not exceed 27 months beginning with the Offering Date, and the substance of the provisions contained in Sections 5 through 8, inclusive.

(b) If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in forms delivered to the Company: (i) each form will apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) will be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) will be exercised.

(c) The Board will have the discretion to structure an Offering so that if the Fair Market Value of a share of Common Stock on the first Trading Day of a new Purchase Period within that Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then (i) that Offering will terminate immediately as of that first Trading Day, and (ii) the Participants in such terminated Offering will be automatically enrolled in a new Offering beginning on the first Trading Day of such new Purchase Period.

5. ELIGIBILITY.

(a) Purchase Rights may be granted only to Employees of the Company or, as the Board may designate in accordance with Section 2(b), to Employees of a Related Corporation. Except as provided in Section 5(b) or as required by Applicable Law, an Employee will not be eligible to be granted Purchase Rights unless, on the Offering Date, the Employee has been in the employ of the Company or the Related Corporation, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event will the required period of continuous employment be equal to or greater than two years. In addition, the Board may (unless prohibited by law) provide that no Employee will be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee's customary employment with the Company or the Related Corporation is more than 20 hours per week and more than five months per calendar year or such other criteria as the Board may determine consistent with Section 423 of the Code with respect to the 423 Component. The Board may also exclude from participation in the Plan or any Offering Employees who are "highly compensated employees" (within the meaning of Section 423(b)(4)(D) of the Code) of the Company or a Related Corporation or a subset of such highly compensated employees.

(b) The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee will, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right will thereafter be deemed to be a part of that Offering. Such Purchase Right will have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

(i) the date on which such Purchase Right is granted will be the "Offering Date" of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

(ii) the period of the Offering with respect to such Purchase Right will begin on its Offering Date and end coincident with the end of such Offering; and

(iii) the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she will not receive any Purchase Right under that Offering.

(c) No Employee will be eligible for the grant of any Purchase Rights if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing five percent or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 5(c), the rules of Section 424(d) of the Code will apply in determining the stock ownership of any Employee, and stock which such Employee may purchase under all outstanding Purchase Rights and options will be treated as stock owned by such Employee.

(d) As specified by Section 423(b)(8) of the Code, an Eligible Employee may be granted Purchase Rights only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation to accrue at a rate which, when aggregated, exceeds US \$25,000 of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, will be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

(e) Officers of the Company and any designated Related Corporation, if they are otherwise Eligible Employees, will be eligible to participate in Offerings under the Plan. Notwithstanding the foregoing, the Board may (unless prohibited by law) provide in an Offering that Employees who are highly compensated Employees within the meaning of Section 423(b)(4)(D) of the Code will not be eligible to participate.

(f) Notwithstanding anything in this Section 5 to the contrary, in the case of an Offering under the Non-423 Component, an Eligible Employee (or group of Eligible Employees) may be excluded from participation in the Plan or an Offering if the Board has determined, in its sole discretion, that participation of such Eligible Employee(s) is not advisable or practical for any reason.

6. PURCHASE RIGHTS; PURCHASE PRICE.

(a) On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, will be granted a Purchase Right to purchase up to that number of shares of Common Stock purchasable either with a percentage or with a maximum dollar amount, as designated by the Board, but in either case not exceeding 15% of such Employee's earnings (as defined by the Board in each Offering) during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date will be no later than the end of the Offering.

(b) The Board will establish one or more Purchase Dates during an Offering on which Purchase Rights granted for that Offering will be exercised and shares of Common Stock will be purchased in accordance with such Offering.

(c) In connection with each Offering made under the Plan, the Board may specify (i) a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering, (ii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering and/or (iii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata (based on each Participant's accumulated Contributions) allocation of the shares of Common Stock (rounded down to the nearest whole share) available will be made in as nearly a uniform manner as will be practicable and equitable.

(d) The purchase price of shares of Common Stock acquired pursuant to Purchase Rights will be not less than the lesser of:

(i) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the Offering Date; or

(ii) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

7. PARTICIPATION; WITHDRAWAL; TERMINATION.

(a) An Eligible Employee may elect to participate in an Offering and authorize payroll deductions as the means of making Contributions by completing and delivering to the Company, within the time specified in the Offering, an enrollment form provided by the Company. The enrollment form will specify the amount of Contributions not to exceed the maximum amount specified by the Board. Each Participant's Contributions will be credited to a bookkeeping account for such Participant under the Plan and will be deposited with the general funds of the Company except where Applicable Law requires that Contributions be deposited with a third party. If permitted in the Offering, a Participant may begin such Contributions with the first payroll occurring on or after the Offering Date (or, in the case of a payroll date that occurs after the end of the prior Offering but before the Offering Date of the next new Offering, Contributions from such payroll will be included in the new Offering). If permitted in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. If required under Applicable Law or if specifically provided in the Offering, in addition to or instead of making Contributions by payroll deductions, a Participant may make Contributions through the payment by cash, check or wire transfer prior to a Purchase Date.

(b) During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company a withdrawal form provided by the Company. The Company may impose a deadline before a Purchase Date for withdrawing. Upon such withdrawal, such Participant's Purchase Right in that Offering will immediately terminate and the Company will distribute as soon as practicable to such Participant all of his or her accumulated but unused Contributions and such Participant's

Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from that Offering will have no effect upon his or her eligibility to participate in any other Offerings under the Plan, but such Participant will be required to deliver a new enrollment form to participate in subsequent Offerings.

(e) Unless otherwise required by Applicable Law, Purchase Rights granted pursuant to any Offering under the Plan will terminate immediately if the Participant either (i) is no longer an Employee for any reason or for no reason (subject to any post-employment participation period required by law) or (ii) is otherwise no longer eligible to participate. The Company will distribute as soon as practicable to such individual all of his or her accumulated but unused Contributions.

(d) Unless otherwise determined by the Board, a Participant whose employment transfers or whose employment terminates with an immediate rehire (with no break in service) by or between the Company and a Related Corporation that has been designated for participation in the Plan will not be treated as having terminated employment for purposes of participating in the Plan or an Offering; however, if a Participant transfers from an Offering under the 423 Component to an Offering under the Non-423 Component, the exercise of the Participant's Purchase Right will be qualified under the 423 Component only to the extent such exercise complies with Section 423 of the Code. If a Participant transfers from an Offering under the Non-423 Component to an Offering under the 423 Component, the exercise of the Purchase Right will remain non-qualified under the Non-423 Component. The Board may establish different and additional rules governing transfers between separate Offerings within the 423 Component and between Offerings under the 423 Component and Offerings under the Non-423 Component.

(e) During a Participant's lifetime, Purchase Rights will be exercisable only by such Participant. Purchase Rights are not transferable by a Participant, except by will, by the laws of descent and distribution, or, if permitted by the Company, by a beneficiary designation as described in Section 10.

(f) Unless otherwise specified in the Offering or as required by Applicable Law, the Company will have no obligation to pay interest on Contributions.

8. EXERCISE OF PURCHASE RIGHTS.

(a) On each Purchase Date, each Participant's accumulated Contributions will be applied to the purchase of shares of Common Stock, up to the maximum number of shares of Common Stock permitted by the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares will be issued unless specifically provided for in the Offering.

(b) Unless otherwise provided in the Offering, if any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock on the final Purchase Date of an Offering, then such remaining amount will not roll over to the next Offering and will instead be distributed in full to such Participant after the final Purchase Date of such Offering without interest (unless otherwise required by Applicable Law).

(c) No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all applicable U.S. federal and state, foreign and other securities, exchange control and other laws applicable to the Plan. If on a Purchase Date the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights will be exercised on such Purchase Date, and the Purchase Date will be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in material compliance, except that the Purchase Date will in no event be more than 27 months from the Offering Date. If, on the Purchase Date, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and

the Plan is not in material compliance with all Applicable Laws, as determined by the Company in its sole discretion, no Purchase Rights will be exercised and all accumulated but unused Contributions will be distributed to the Participants without interest (unless the payment of interest is otherwise required by Applicable Law).

9. COVENANTS OF THE COMPANY.

The Company will seek to obtain from each U.S. federal or state, foreign or other regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Purchase Rights and issue and sell shares of Common Stock thereunder unless the Company determines, in its sole discretion, that doing so would cause the Company to incur costs that are unreasonable. If, after commercially reasonable efforts, the Company is unable to obtain the authority that counsel for the Company deems necessary for the grant of Purchase Rights or the lawful issuance and sale of Common Stock under the Plan, and at a commercially reasonable cost, the Company will be relieved from any liability for failure to grant Purchase Rights and/or to issue and sell Common Stock upon exercise of such Purchase Rights.

10. DESIGNATION OF BENEFICIARY.

(a) The Company may, but is not obligated to, permit a Participant to submit a form designating a beneficiary who will receive any shares of Common Stock and/or Contributions from the Participant's account under the Plan if the Participant dies before such shares and/or Contributions are delivered to the Participant. The Company may, but is not obligated to, permit the Participant to change such designation of beneficiary. Any such designation and/or change must be on a form approved by the Company.

(b) If a Participant dies, and in the absence of a valid beneficiary designation, the Company will deliver any shares of Common Stock and/or Contributions to the executor or administrator of the estate of the Participant. If no executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or Contributions, without interest (unless the payment of interest is otherwise required by Applicable Law), to the Participant's spouse, dependents or relatives, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

11. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.

(a) In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities subject to, and the purchase price applicable to outstanding Offerings and Purchase Rights, and (iv) the class(es) and number of securities that are the subject of the purchase limits under each ongoing Offering. The Board will make these adjustments, and its determination will be final, binding and conclusive.

(b) In the event of a Corporate Transaction, then: (i) any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue outstanding Purchase Rights or may substitute similar rights (including a right to acquire the same consideration paid to the stockholders in the Corporate Transaction) for outstanding Purchase Rights, or (ii) if any surviving or acquiring corporation (or its parent company) does not assume or continue such Purchase Rights or does not substitute similar rights for such Purchase Rights, then the Participants' accumulated Contributions will be used to purchase shares of Common Stock (rounded down to the nearest whole share) within ten business days prior to the Corporate Transaction under the outstanding Purchase Rights, and the Purchase Rights will terminate immediately after such purchase.

12. AMENDMENT, TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may amend the Plan at any time in any respect the Board deems necessary or advisable. However, except as provided in Section 11(a) relating to Capitalization Adjustments, stockholder approval will be required for any amendment of the Plan for which stockholder approval is required by Applicable Law.

(b) The Board may suspend or terminate the Plan at any time. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

Any benefits, privileges, entitlements and obligations under any outstanding Purchase Rights granted before an amendment, suspension or termination of the Plan will not be materially impaired by any such amendment, suspension or termination except (i) with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to comply with any laws, listing requirements, or governmental regulations (including, without limitation, the provisions of Section 423 of the Code and the regulations and other interpretive guidance issued thereunder relating to Employee Stock Purchase Plans) including without limitation any such regulations or other guidance that may be issued or amended after the date the Plan is adopted by the Board, or (iii) as necessary to obtain or maintain favorable tax, listing, or regulatory treatment. To be clear, the Board may amend outstanding Purchase Rights without a Participant's consent if such amendment is necessary to ensure that the Purchase Right and/or the Plan complies with the requirements of Section 423 of the Code with respect to the 423 Component or with respect to other Applicable Laws. Notwithstanding anything in the Plan or any Offering Document to the contrary, the Board will be entitled to: (i) establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars; (ii) permit Contributions in excess of the amount designated by a Participant in order to adjust for mistakes in the Company's processing of properly completed Contribution elections; (iii) establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Contributions; (iv) amend any outstanding Purchase Rights or clarify any ambiguities regarding the terms of any Offering to enable the Purchase Rights to qualify under and/or comply with Section 423 of the Code with respect to the 423 Component; and (v) establish other limitations or procedures as the Board determines in its sole discretion advisable that are consistent with the Plan. The actions of the Board pursuant to this paragraph will not be considered to alter or impair any Purchase Rights granted under an Offering as they are part of the initial terms of each Offering and the Purchase Rights granted under each Offering.

13. TAX QUALIFICATION; TAX WITHHOLDING.

(a) Although the Company may endeavor to (i) qualify a Purchase Right for special tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment, the Company makes no representation to that effect and expressly disavows any covenant to maintain special or to avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan. The Company will be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants.

(b) Each Participant will make arrangements, satisfactory to the Company and any applicable Related Corporation, to enable the Company or the Related Corporation to fulfill any withholding obligation for Tax-Related Items. Without limitation to the foregoing, in the Company's sole discretion and subject to Applicable Law, such withholding obligation may be satisfied in whole or in part by (i)

withholding from the Participant's salary or any other cash payment due to the Participant from the Company or a Related Corporation; (ii) withholding from the proceeds of the sale of shares of Common Stock acquired under the Plan, either through a voluntary sale or a mandatory sale arranged by the Company; or (iii) any other method deemed acceptable by the Board.

14. EFFECTIVE DATE OF PLAN.

The Plan will become effective immediately prior to and contingent upon the IPO Date. No Purchase Rights will be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval must be within 12 months before or after the date the Plan is adopted (or if required under Section 12(a) above, materially amended) by the Board.

15. MISCELLANEOUS PROVISIONS.

(a) Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights will constitute general funds of the Company.

(b) A Participant will not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent).

(c) The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering will in any way alter the at will nature of a Participant's employment, if applicable, or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company or a Related Corporation, or on the part of the Company or a Related Corporation to continue the employment of a Participant.

(d) The provisions of the Plan will be governed by the laws of the State of Delaware without resort to that state's conflicts of laws rules.

(e) If any particular provision of the Plan is found to be invalid or otherwise unenforceable, such provision will not affect the other provisions of the Plan, but the Plan will be construed in all respects as if such invalid provision were omitted.

(f) If any provision of the Plan does not comply with Applicable Law, such provision shall be construed in such a manner as to comply with Applicable Law.

16. DEFINITIONS.

As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "**423 Component**" means the part of the Plan, which excludes the Non-423 Component, pursuant to which Purchase Rights that satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(b) "**Applicable Law**" means shall mean any applicable securities, federal, state, foreign, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of the Nasdaq Stock Market or the Financial Industry Regulatory Authority).

(c) “**Board**” means the Board of Directors of the Company.

(d) “**Capital Stock**” means each and every class of common stock of the Company, regardless of the number of votes per share.

(e) “**Capitalization Adjustment**” means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Purchase Right after the date the Plan is adopted by the Board without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(f) “**Code**” means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder

(g) “**Committee**” means a committee of one or more members of the Board to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) “**Common Stock**” means, as of the IPO Date, the Class A common stock of the Company.

(i) “**Company**” means ACV Auctions Inc., a Delaware corporation.

(j) “**Contributions**” means the payroll deductions and other additional payments specifically provided for in the Offering that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make additional payments into his or her account if specifically provided for in the Offering, and then only if the Participant has not already had the maximum permitted amount withheld during the Offering through payroll deductions.

(k) “**Corporate Transaction**” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(l) “**Director**” means a member of the Board.

(m) “**Eligible Employee**” means an Employee who meets the requirements set forth in the document(s) governing the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

(n) “**Employee**” means any person, including an Officer or Director, who is “employed” for purposes of Section 423(b)(4) of the Code by the Company or a Related Corporation. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(o) “**Employee Stock Purchase Plan**” means a plan that grants Purchase Rights intended to be options issued under an “employee stock purchase plan,” as that term is defined in Section 423(b) of the Code.

(p) “**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

(q) “**Fair Market Value**” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in such source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing sales price on the last preceding date for which such quotation exists.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith in compliance with Applicable Laws and regulations and in a manner that complies with Sections 409A of the Code

(iii) Notwithstanding the foregoing, for any Offering that commences on the IPO Date, the Fair Market Value of the shares of Common Stock on the Offering Date will be the price per share at which shares are first sold to the public in the Company’s initial public offering as specified in the final prospectus for that initial public offering.

(r) “**Governmental Body**” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal, and for the avoidance of doubt, any tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the NASDAQ Stock Market and the Financial Industry Regulatory Authority).

(s) “**IPO Date**” means the date of the underwriting agreement between the Company and the underwriters managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(t) “**Non-423 Component**” means the part of the Plan, which excludes the 423 Component, pursuant to which Purchase Rights that are not intended to satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(u) “**Offering**” means the grant to Eligible Employees of Purchase Rights, with the exercise of those Purchase Rights automatically occurring at the end of one or more Purchase Periods. The terms and conditions of an Offering will generally be set forth in the “**Offering Document**” approved by the Board for that Offering.

(v) “**Offering Date**” means a date selected by the Board for an Offering to commence.

(w) “**Officer**” means a person who is an officer of the Company or a Related Corporation within the meaning of Section 16 of the Exchange Act.

(x) “**Participant**” means an Eligible Employee who holds an outstanding Purchase Right.

(y) “**Plan**” means this ACV Auctions Inc. 2021 Employee Stock Purchase Plan, as amended from time to time, including both the 423 Component and the Non-423 Component.

(z) “**Purchase Date**” means one or more dates during an Offering selected by the Board on which Purchase Rights will be exercised and on which purchases of shares of Common Stock will be carried out in accordance with such Offering.

(aa) “**Purchase Period**” means a period of time specified within an Offering, generally beginning on the Offering Date or on the first Trading Day following a Purchase Date, and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

(bb) “**Purchase Right**” means an option to purchase shares of Common Stock granted pursuant to the Plan.

(cc) “**Related Corporation**” means any “parent corporation” or “subsidiary corporation” of the Company whether now or subsequently established, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(dd) “**Securities Act**” means the U.S. Securities Act of 1933, as amended.

(ee) “**Tax-Related Items**” means any income tax, social insurance, payroll tax, fringe benefit tax, payment on account or othertax-related items arising out of or in relation to a Participant’s participation in the Plan, including, but not limited to, the exercise of a Purchase Right and the receipt of shares of Common Stock or the sale or other disposition of shares of Common Stock acquired under the Plan.

(ff) “**Trading Day**” means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including but not limited to the NYSE, Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or any successors thereto, is open for trading.

**ACV AUCTIONS INC.
INDEMNIFICATION AGREEMENT**

This INDEMNIFICATION AGREEMENT (this “*Agreement*”) is dated as of _____, 20____ and is between ACV Auctions Inc., a Delaware corporation (the “*Company*”), and _____ (“*Indemnitee*”).

RECITALS

- A. Indemnitee’s service to the Company substantially benefits the Company.
- B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.
- C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.
- D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.
- E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company’s certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

AGREEMENT

The parties agree as follows:

1. Definitions.

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

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

(i) *Acquisition of Stock by Third Party*. Any Person (as defined below) becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities;

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

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

(iv) *Liquidation.* The approval by the Company's board of directors of a complete liquidation or the dissolution of the Company or an agreement for the sale, lease or disposition by the Company of all or substantially all of the Company's assets; or

(v) *Other Events.* Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement, *except* the completion of the Company's initial public offering shall not be considered a Change in Control.

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

(d) "**DGCL**" means the General Corporation Law of the State of Delaware.

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

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

(g) "**Expenses**" include all reasonable and actually incurred attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond or other appeal bond or their equivalent, and (ii) for purposes of Section 10(d),

Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

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

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

(j) "**Proceeding**" means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, whether formal or informal, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee's part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(k) "**to the fullest extent permitted by applicable law**" means to the fullest extent permitted by all applicable laws, including without limitation: (i) the fullest extent permitted by DGCL as of the date of this Agreement and (ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

(l) In connection with any Proceeding relating to an employee benefit plan: references to "**fines**" shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to "**servicing at the request of the Company**" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this Agreement.

2. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or

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

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

4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, in circumstances where indemnification is not available under Section 2 or 3, as the case may be, to the fullest extent permitted by law and to the extent that Indemnitee is a party to, and is successful (on the merits or otherwise) in defense of, any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection therewith. For purposes of this Section 4, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

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

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

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

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "*Sarbanes-Oxley Act*"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company's board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 10(d) or (iv) otherwise required by applicable law; provided, for the avoidance of doubt, Indemnitee shall not be deemed for purposes of this paragraph, to have initiated any Proceeding (or any part of a Proceeding) by reason of (i) having asserted any affirmative defenses in connection with a claim not initiated by Indemnitee or (ii) having made any counterclaim (whether permissive or mandatory) in connection with any claim not initiated by Indemnitee; or

(e) if prohibited by the DGCL or other applicable law.

6. Advances of Expenses. The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final disposition, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 30 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee's ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, *except*, with respect to advances of expenses made pursuant to Section 10(c), in which case Indemnitee makes the undertaking provided in Section 10(c). This Section 6 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 5(b) or 5(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.

7. Procedures for Notification and Defense of Claim.

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

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

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval

of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company's assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee's separate counsel to the extent (i) the employment of separate counsel by Indemnitee is authorized by the Company, (ii) counsel for the Company shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the Company is not financially or legally able to perform its indemnification obligations, or (iv) the Company shall not have retained, or shall not continue to retain, counsel to defend such Proceeding. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company.

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate.

(e) The Company shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) effected without the Company's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in a settlement to which the Company has given its prior written consent, such settlement shall be treated as a success on the merits in the settled action, suit or proceeding.

(f) The Company shall not settle any Proceeding (or any part thereof) in a manner that imposes any penalty or liability on Indemnitee not paid by the Company without Indemnitee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

8. Procedures upon Application for Indemnification.

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

(b) Upon written request by Indemnitee for indemnification pursuant to Section 8(a), a determination with respect to Indemnitee's entitlement thereto shall be made as follows, provided that a Change in Control shall not have occurred: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors; (ii) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors; (iii) if there are no such Disinterested Directors or, if a majority of Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee; or (iv) if so directed by the Company's board of directors, by the stockholders of the Company. If a Change in Control shall have occurred, a determination with respect to Indemnitee's entitlement to indemnification shall be made by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including

providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 8(b), the Independent Counsel shall be selected as provided in this Section 8(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 8(a) and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection that shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 8(b). Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 10(a), the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company shall pay the reasonable fees and expenses of any Independent Counsel and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

9. Presumptions and Effect of Certain Proceedings.

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

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

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Enterprise, including financial statements, (ii) information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or its board of directors or counsel selected by any committee of the board of directors or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Enterprise or its board of directors or any committee of the board of directors. The provisions of this Section 9(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

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

10. Remedies of Indemnitee.

(a) Subject to Section 10(e), in the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 6 or 10(d), (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 8 within 30 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 10(d), within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 12 months following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 10(a); *provided, however*, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 8 that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 10 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and

Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 10, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, and the burden of proof shall be by clear and convincing evidence.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement, any other agreement, the Company's certificate of incorporation or bylaws or under any directors' and officers' liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 30 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 6. Indemnitee hereby undertakes to repay such advances to the extent the Indemnitee is ultimately unsuccessful in such action or arbitration.

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

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

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

13. Primary Responsibility. The Company acknowledges that to the extent Indemnitee is serving as a director on the Company's board of directors at the request or direction of a private equity or venture capital fund or other entity and/or certain of its affiliates (collectively, the "**Secondary Indemnitors**"), Indemnitee may have certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitors. The Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company's certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 13. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under the Company's certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company's certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 13.

14. No Duplication of Payments. Subject to Section 13, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

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

16. Subrogation. Subject to Section 13, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

17. Services to the Company. Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written

employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

18. Duration. This Agreement shall continue until and terminate upon the later of (a) five years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any Proceeding commenced by Indemnitee pursuant to Section 10 relating thereto.

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

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

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

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

23. Modification and Waiver. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action

taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

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

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

(b) if to the Company, to ACV Auctions Inc., 640 Ellicott Street, #321, Buffalo, New York 14203, Attention: Chief Legal Officer, or at such other current address as the Company shall have furnished to Indemnitee.

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

25. Applicable Law and Consent to Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

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

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

(signature page follows)

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

ACV AUCTIONS INC.

By: _____

Name: _____

Title: _____

[INDEMNITEE NAME]

Address: _____

[Signature Page to Indemnification Agreement]



[]

[]

Re: Confirmatory Offer of Employment

Dear []:

This offer letter confirms the terms of your continued employment with **ACV Auctions Inc.** (the "**Company**"), as its [] in the Company's _____ office. Of course, the Company may change your position, duties, and work location from time to time in its discretion. This letter supersedes and replaces the terms of your [employment agreement][offer letter agreement] with the Company dated, [Click And Type Date].

You will continue to receive an annualized salary of \$[Click And Type Amount] (the "**Annual Base Salary**") [], increased to \$[], effective April 1, 2021], less applicable withholdings, which will be paid semi-monthly in accordance with the Company's normal payroll procedures.

You will continue to be eligible to earn an annual discretionary bonus equal to [[•]% of your Annual Base Salary][[•]], increased to [[•]% of your Annual Base Salary][[•]], effective April 1, 2021]. The amount of this bonus will be determined in the sole discretion of the Company based on the performance of the Company during the calendar year and may also be based in part on your individual performance. The Company will pay you this bonus, if any, by no later than March 15th of the following calendar year. Subject to the satisfaction of any other conditions established by the Company for such bonus, the bonus is not earned until paid and no pro-rated amount will be paid if your employment terminates for any reason prior to the payment date.

You were previously granted certain equity awards under the Company's 2015 Long-Term Incentive Plan, as amended. Your equity awards will continue to be governed by the terms of the 2015 Long-Term Incentive Plan and the grant documents thereunder. You will remain eligible to receive future equity awards at the discretion of the Board or the Compensation Committee of the Board.

During your employment, you will remain eligible to participate in the standard benefits plans offered to similarly situated employees by the Company from time to time, subject to plan terms and generally applicable Company policies. A full description of these benefits is available upon request. The Company may change compensation and benefits from time to time in its discretion.

You will be eligible to receive severance and change in control benefits under the Company's Severance and Change in Control Plan and an individual participation agreement thereunder, which will be effective as of the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Company's common stock, pursuant to which such common stock is priced for the initial public offering.

In connection with your continued at-will employment with the Company, you will receive and have access to Company confidential information and trade secrets. Accordingly, enclosed with this offer letter is an Employee Confidential Information and Inventions Assignment Agreement ("**PIIA**"), which contains restrictive covenants and prohibits unauthorized use or disclosure of the Company's confidential information and trade secrets, among other obligations. Please review the PIIA and only sign it after careful consideration.

We also ask that, if you have not already done so, you disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the manner in which you may be employed. It is the Company's understanding that any such agreements will not prevent you from continuing to perform the duties of your position and you represent that such is the case. Moreover, you agree that, during the term of your continued at-will employment with the Company, you have not and will not engage in any other employment, occupation, consulting, or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company. Similarly, you agree not to bring any third-party confidential information to the Company, including that of your former employer, and that you will not in any way utilize any such information in continuing to perform your duties for the Company.

Your employment with the Company will be, and has been at all times, "at-will." You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice.

For purposes of federal immigration law, you were required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. If there are any updated documents concerning your identity and continued eligibility for employment in the United States, you must submit such documentation within five (5) business days from the date you sign this letter, or our employment relationship with you may be terminated.

To ensure the timely and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action arising from or relating to the enforcement, breach, performance, negotiation, execution, or interpretation of this letter agreement, the PIIA, or your employment, or the termination of your employment, including but not limited to all statutory claims, will be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by law, by final, binding and confidential arbitration by a single arbitrator conducted by Judicial Arbitration and Mediation Services Inc. ("**JAMS**") under the then applicable JAMS rules (at the following web address: <https://www.jamsadr.com/rules-employment-arbitration/>). A hard copy of the rules will be provided to you upon request. **By agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** In addition, all claims, disputes, or causes of action under this provision, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. The Company acknowledges that you will have the right to be represented by legal counsel at any arbitration proceeding. Questions of whether a claim is subject to arbitration under this agreement shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (c) be authorized to award any or all remedies that you or the Company would be entitled to seek in a court of law. You and the Company shall equally share all JAMS' arbitration fees. Each party is responsible for its own attorneys' fees, except as expressly set forth in your PIIA. To the extent JAMS does not collect or you otherwise do not pay to JAMS an equal share of all JAMS' arbitration fees for any reason, and the Company pays JAMS your share, you acknowledge and agree that the Company shall be entitled to recover from you half of the JAMS arbitration fees invoiced to the parties (less any amounts you paid to JAMS) in a federal or state court of competent jurisdiction. Nothing in this letter agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

To indicate your acceptance of the Company's confirmatory offer letter, please sign and date this letter in the space provided below. This letter, along with any agreements relating to proprietary rights between you and the Company, set forth the terms of your employment with the Company and supersede any prior representations or agreements including, but not limited to, any prior offer letter or employment agreement between you and the Company and any representations made during your interviews or negotiations, whether written or oral. You acknowledge and agree that you are not relying on any representations other than the terms set forth in this letter. This letter, including, but not limited to, its at-will employment provision, may not be modified or amended except by a written agreement signed by the Company CEO and you. This confirmatory offer of employment will terminate if it is not accepted, signed, and returned by [].

We look forward to your favorable reply and to a productive and enjoyable work relationship.

Sincerely,

[]

Acknowledged and accepted:

[]

DATE

Enclosures

Employee Confidential Information and Inventions Assignment Agreement
Severance and Change in Control Plan and individual participation agreement thereunder

**ACV AUCTIONS INC.
PERFORMANCE BONUS PLAN**

1. PURPOSE

The ACV Auctions Inc. Performance Bonus Plan (the “*Plan*”) is designed to provide incentives to participating employees to make important contributions to the success of ACV Auctions Inc. (the “*Company*”) and reward such employees for outstanding performance. The Plan is also intended to enhance the ability of the Company to attract and retain highly talented individuals.

2. ADMINISTRATION

The Plan will be administered by the Compensation Committee (the “*Plan Administrator*”) of the Board of Directors (the “*Board*”) of the Company. The Plan Administrator will have the sole discretion and authority to administer and interpret the Plan, and the decisions of the Plan Administrator will in every case be final and binding on all persons having an interest in the Plan.

3. ELIGIBILITY

(a) Participation

Each employee of the Company who (i) is an “officer” of the Company (within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and Rule 16a-1 thereunder) (such individuals, the “*Officers*”) or is otherwise designated by the Plan Administrator as a participant in the Plan and (ii) has been provided with a Target Award (as defined in Section 4 below) and eligibility in the Plan by means of a written agreement with the Company or written notification by the Company, is eligible to participate in the Plan and shall be considered a “*Participant*” in the Plan. Unless otherwise specified by the Plan Administrator or expressly provided in a written agreement between a Participant and the Company, an individual who commences employment with the Company during an applicable performance period may become a Participant for such performance period, commencing on the date such individual commences employment with the Company (provided such individual meets all other eligibility criteria for participation in the Plan) and will receive a pro-rated Target Award (as defined below) for such initial performance period.

(b) Awards

Each Participant in a performance period will be granted an award of a contingent right to a future payment under the Plan (an “*Award*”) for such performance period, which will be paid contingent upon achievement of applicable performance goals established by the Plan Administrator for the applicable performance period and earned upon satisfaction of all applicable conditions for earning such Awards.

(c) Award Payments

In order to be eligible to receive payment of an Award, a Participant must meet the following criteria unless otherwise specified by the Plan Administrator or expressly provided in a written agreement between such Participant and the Company: (A) continue to be employed with the Company from the date his or her participation in the Plan commences for the applicable performance period through the date the Award is paid; and (B) comply with any rules of the Plan established by the Plan Administrator. If a Participant ceases to be an Officer during a performance period but continues to be an employee through the date the Award is paid and otherwise is eligible to receive payment of an Award, such individual's Award may be adjusted as determined appropriate by the Plan Administrator. There is no guarantee for any payment of an Award under the Plan. Awards are paid as advances and not earned until no longer subject to recoupment in accordance with the Clawback Provisions described in Section 6(h) below, as applicable.

4. METHOD FOR ESTABLISHING AND DETERMINING AWARDS

(a) Establishment of Target Awards

For each performance period, each Participant shall have a target award opportunity under the Plan ("*Target Award*"), expressed in such Participant's offer letter with the Company or otherwise in writing and approved by the Plan Administrator, as either a percentage of such Participant's Base Salary earned during such performance period or as a set dollar amount. The Plan Administrator is not obligated to treat all Plan Participants similarly. For purposes of the Plan, unless otherwise determined by the Plan Administrator, "*Base Salary*" for a Participant means the total amount of base salary or base wages earned by such Participant during the applicable performance period while such individual is a Participant. Base Salary does not include any bonuses, commissions or other incentive compensation, amounts received or otherwise recognized in connection with equity awards, expense reimbursements, relocation payments, overtime or shift differential payments, contributions made by the Company under any employee benefit plan, the value of any employee benefits or perquisites paid for by the Company, or any other similar items of compensation. Base Salary will be determined before any deductions for taxes or benefits and deferrals of compensation pursuant to any Company-sponsored plan.

(b) Establishment of Performance Periods

The Plan Administrator will establish the applicable performance periods during which actual performance will be measured against the performance goals established by the Plan Administrator to determine the Participant's potential Award. Performance periods will generally be established by the Plan Administrator in reference to the Company's fiscal year and may consist of a single fiscal year, multiple fiscal years, or one or more portions of a fiscal year.

(c) Establishment of Performance Goals

With respect to each performance period, the Plan Administrator will establish the following for each Participant: (i) one or more performance goals (which may be corporate performance goals and/or individual performance goals) and (ii) the relative weights, if any, of such performance goals and (iii) such other terms and conditions of the Award, if any, the Plan Administrator determines appropriate in its discretion (and in accordance with the terms of the Plan). The Plan Administrator will make such determinations under this Section 5(c) at the times and in the manner determined appropriate in its sole discretion and is not obligated to treat all Plan Participants similarly. Unless otherwise determined by the Plan Administrator, performance goals established for each Award shall be selected pursuant to the "Performance Goals" and "Performance Criteria" set forth in the Company's 2021 Equity Incentive Plan (or successor thereto).

(d) Evaluation of Performance Results

Following the end of each performance period, the Plan Administrator will determine whether (and to what extent) the performance goals established for such performance period have been achieved.

(e) Determination of Actual Awards

For each performance period, the Plan Administrator will determine the amount of any actual Award for each Participant (which may be below, at or above the applicable Target Award) based on (i) the extent to which the performance goals established for such performance period have been achieved (and any relative weighting of such performance goals), (ii) such Participant's Target Award, and (iii) if and the extent to which any and all other conditions for a Participant to earn and receive an Award have been met. Notwithstanding the foregoing, in determining the amount of any actual Award for any Participant, the Plan Administrator will have the discretion to reduce the amount of any actual Award below the amount calculated under the terms of the Plan, including to zero, or increase the amount of any actual Award above the amount calculated under the terms of the Plan. In making such determination the Plan Administrator may take into consideration such other factors as it determines appropriate, in its sole discretion, including the Participant's individual performance. Awards will additionally be subject to any maximum payout limitation approved by the Plan Administrator for the applicable performance period.

Unless otherwise determined by the Plan Administrator: (i) any Participant who switches from full-time to part-time employment during the performance period will have his or her actual Award reduced on a pro-rata basis based upon the applicable percentage of full-time equivalent employment that was in effect on an aggregate basis during the performance period and (ii) no adjustment will be made to the determined amount of an actual Award for any Participant due to any reduction in the percentage of full-time equivalent employment of a Participant that occurs after expiration of the performance period and prior to determination of the actual Award.

Unless prohibited by applicable law or otherwise determined by the Plan Administrator: (i) any Participant who is absent due to an approved leave of absence during the performance period, and who otherwise is eligible to receive and earns an actual Award for such performance period, will have his or her actual Award reduced on a pro-rata basis based upon the applicable period of active employment during the performance period and (ii) no adjustment will be made to the determined amount of an actual Award for any Participant due to any leave of absence that commences after expiration of the performance period and prior to determination of the actual Award.

5. PAYMENT OF AWARDS

Following, and subject to, the Plan Administrator's determination of actual Awards for a performance period, the Plan Administrator will approve the payment of Awards for such performance period, subject to satisfaction of any continued services or additional conditions established by the Plan Administrator to receive the Award. Payment of Awards under the Plan will be made as soon as practicable after such approval or satisfaction of such conditions, as applicable. However, Awards are not earned until no longer subject to recovery pursuant to the

Clawback Provisions described in Section 6(h) below, as applicable. As a result, to the extent the Clawback Provisions described in Section 6(h) below apply, the Company pays Awards in advance of the Participant's earning of the Award, and such advances are subject to recovery pursuant to the Clawback Provisions described in Section 6(h) below.

All Awards made under the Plan will be paid in the form of cash or, if approved by the Board or the Committee, an equity award under the Company's 2021 Equity Incentive Plan (or any successor thereto), as determined by the Plan Administrator in its sole discretion. The terms and conditions of any such equity award will be determined by the Plan Administrator in its sole discretion.

6. MISCELLANEOUS

(a) Withholding of Compensation. The Company will deduct and withhold from any amounts payable to Participants under the Plan any amounts required to be deducted and withheld by the Company under the provisions of any applicable federal, state, local or foreign statute, law, regulation, ordinance or order. The Company reserves the right to require a Participant to satisfy such deduction and withholding obligation in such manner as specified by the Company under applicable law, in the event that amounts payable to Participants under the Plan are not paid in the form of cash.

(b) Plan Funding. The Plan will be unfunded. Nothing contained in the Plan will be deemed to require the Company to deposit, invest or set aside amounts for the payment of any Awards under the Plan.

(c) Amendment or Termination of the Plan. The Plan may be amended or terminated at any time by the Compensation Committee or the Board.

(d) No Guarantee of Continued Service. The Plan will not confer any rights upon an employee to remain in service with the Company or any affiliate of the Company for any specific duration or interfere with or otherwise restrict in any way the rights of the Company or any affiliate of the Company to terminate an employee's service with the Company (or affiliate, if applicable) for any reason, with or without cause or advance notice.

(e) No Assignment or Transfer. None of the rights, benefits, obligations or duties under the Plan may be assigned or transferred by any individual employee or Participant. Any purported assignment or transfer by any employee or Participant will be void. Participation in the Plan does not give any individual any ownership, security, or other rights in any assets of the Company.

(f) Validity. In the event any provision of the Plan is held invalid, void, or unenforceable, the same will not affect, in any respect whatsoever, the validity of any other provision of the Plan.

(g) Governing Documents. Each Award under the Plan shall be governed by the provisions of the Plan as set forth herein. This Plan contains the entire agreement between the Company and each Participant on this subject, and supersedes all prior bonus compensation plans or programs of the Company and all other previous oral or written statements regarding any such bonus compensation programs or plans.

(h) Clawback/Recovery. All Awards and payouts under the Plan will be subject to recoupment in accordance with the following provisions, as applicable (the “*Clawback Provisions*”): (i) any clawback policy that the Company (x) is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company’s securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law and (y) otherwise voluntarily adopts, to the extent applicable and permissible under applicable law; and (ii) such other clawback, recovery or recoupment provisions set forth in an individual written agreement between the Company and the Participant. No recovery of compensation under such a Clawback Provision will be an event giving rise to a right to resign for “good reason” or “constructive termination” (or similar term) under any agreement with the Company.

(i) Recovery of Mistaken Payments: On occasion or by mistake, the Company may overpay or make incorrect payments of Awards. For these situations, to the extent permitted by applicable law, the Company reserves the right to offset or recover such mistaken payment amounts from any future payments of compensation to the Participant. By signing below, the Participant hereby authorizes the Company to reduce from any amounts owed to the Participant by the Company (including Base Salary, expense reimbursements, other bonuses or accrued vacation pay) such mistaken payment amounts and, to the extent the mistaken payment amounts are not repaid to the Company from such reduction, then the unpaid balance becomes a debt the Participant owes to the Company.

(j) Governing Law. The rights and obligations of any employee under the Plan will be governed by and interpreted, construed and enforced in accordance with the laws of the state in which the Participant primarily performs services to the Company, without regard to its or any other jurisdiction’s conflicts of laws principles.

(k) Section 409A. All Plan payments are intended to satisfy the requirements for the “short-term deferral” exemption from application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4) and any ambiguities herein shall be interpreted accordingly.

ACV AUCTIONS INC.
PERFORMANCE BONUS PLAN

TARGET AWARD AND PERFORMANCE GOALS FOR FY []

Plan Year:

Performance Period:

Target Award: []% of Base Salary

Performance Goals (each as set, calculated and determined by ACV Auctions Inc., in its discretion):

[INSERT DETAILS]

Participant's Acknowledgement:

I have read and understood the terms and conditions of the ACV Auctions Inc. Performance Bonus Plan (attached hereto) (the "Plan") and my participation terms described above, and I accept and agree to be bound by the Plan such terms. I understand that failure to sign this document will disqualify me from earning any other payments under the Plan, and that I will not be otherwise eligible to earn any or other bonus payments.

Name: _____

ACV AUCTIONS INC.

NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

Each member of the Board of Directors (the “*Board*”) who is not also serving as an employee of or consultant to ACV Auctions Inc. (the “*Company*”) or any of its subsidiaries (each such member, an “*Eligible Director*”) will receive the compensation described in this Non-Employee Director Compensation Policy (this “*Policy*”) for his or her Board service upon and following the date of the underwriting agreement between the Company and the underwriters managing the initial public offering of the Company’s common stock (the “*Common Stock*”), pursuant to which the Common Stock is priced in such initial public offering (the “*Effective Date*”). This Policy is effective as of the Effective Date and may be amended at any time in the sole discretion of the Board or the Compensation Committee of the Board. An Eligible Director may decline all or any portion of his or her compensation by giving notice to the Company prior to the date cash may be paid or equity awards are to be granted, as the case may be.

A. Annual Cash Compensation

All annual cash fees are vested upon payment and are payable to Eligible Directors in equal quarterly installments in arrears on the last day of each of the Company’s fiscal quarters in which the service occurred (each such date, the “*Retainer Accrual Date*”). If an Eligible Director joins the Board or a committee of the Board other than the first day of a fiscal quarter of the Company, each annual retainer set forth below will be pro-rated based on days served in the applicable fiscal year, with the pro-rated amount paid for the first fiscal quarter that the Eligible Director provides the service and regular full quarterly payments thereafter; provided, however, that if the Eligible Director leaves service prior to the last day of a fiscal quarter, the fee for such fiscal quarter will be pro-rated.

1. Annual Board Service Retainer:
 - a. All Eligible Directors: \$33,500
 - b. Independent Chair of the Board Service Retainer (in addition to Eligible Director Service Retainer): \$25,000
 - c. Lead Independent Director (in addition to Eligible Director Service Retainer): \$17,000
2. Annual Committee Chair Service Retainer:
 - a. Chair of the Audit Committee: \$20,000
 - b. Chair of the Compensation Committee: \$12,000
 - c. Chair of the Nominating and Corporate Governance Committee: \$7,500
3. Annual Committee Member Service Retainer (not applicable to Committee Chairs):
 - a. Member of the Audit Committee: \$8,500
 - b. Member of the Compensation Committee: \$5,000
 - c. Member of the Nominating and Corporate Governance Committee: \$3,900

B. Equity Compensation

The equity compensation set forth below will be granted under the Company's 2021 Equity Incentive Plan or any successor plan (the "**Plan**"). All equity compensation granted under this Policy will be in the form of RSUs (as defined in the Plan). All RSUs granted under this Policy will vest as described below subject to the Eligible Director's Continuous Services (as defined in the Plan) through such vesting dates on the terms specified below; provided, however, that all RSUs granted under this Policy will accelerate and vest in full upon a Change in Control (as defined in the Plan), subject in each case to the Eligible Director's Continuous Service through such date.

1. **Initial Grant.** For each Eligible Director who is first elected or appointed to the Board following the Effective Date, on the date of such Eligible Director's initial election or appointment to the Board (or, if such date is not a market trading day, the first market trading day thereafter) (the "**Initial Grant Date**"), such Eligible Director will be automatically, and without further action by the Board or Compensation Committee of the Board, granted RSUs (the "**Initial Grant RSUs**"). The Initial Grant RSUs will have an aggregate grant date fair value, as calculated in accordance with Financial Accounting Standards Board, Accounting Standards Codification Topic 718, *Compensation—Stock Compensation* ("**FASB ASC Topic 718**"), that is equal to \$330,000.

The Initial Grant RSUs will vest in three equal annual installments measured from the Initial Grant Date. Vesting of the Initial Grant RSUs is subject in all cases to the Eligible Director's Continuous Service (as defined in the Plan) through each such applicable vesting date.

2. **Refresher Grants.** On the date of each annual meeting of the Company stockholders held after the Effective Date (an "**Annual Meeting**"), each Eligible Director who: (i) has served as a non-employee member of the Board for at least six months prior to such Annual Meeting and (ii) continues to serve as a non-employee member of the Board following such Annual Meeting, will be automatically, and without further action by the Board or Compensation Committee of the Board, granted RSUs (the "**Refresher Grant RSUs**") on such date (the "**Refresher Grant Date**"); provided, however, that no Eligible Director who was serving on the Board as of the Effective Date shall be eligible for a Refresher Grant RSU until the date of the Annual Meeting held in 2024. The Refresher Grant RSUs will have an aggregate grant date fair value, as calculated in accordance with FASB ASC Topic 718, that is equal to \$165,000.

The Refresher Grant RSUs will vest on the first anniversary of the Refresher Grant Date, provided that, the Refresher Grant RSUs shall become fully vested as of the day immediately preceding the next Annual Meeting, if sooner. Vesting of the Refresher Grant RSUs is subject in all cases to the Eligible Director's Continuous Service (as defined in the Plan) through each such applicable vesting date.

-
3. Elections to Receive a Retainer Grant in Lieu of Cash Retainer Each Eligible Director may elect to receive all of his or her Annual Cash Compensation payable under A above, beginning with the first calendar year that commences after the Effective Date and any subsequent calendar year, into an RSU Award (each, a “**Retainer Grant**”) in accordance with this Section 3 (such election, a “**Retainer Grant Election**”). If an Eligible Director timely makes a Retainer Grant Election pursuant to this Section 3, the Retainer Grant shall be automatically granted to each Eligible Director on January 1 of each year (or if such date is not a market trading day, the first market trading day thereafter) and will have an aggregate grant date fair value, as calculated in accordance with FASB ASC Topic 718, equal to the aggregate amount of Annual Cash Compensation otherwise expected to be payable to such Eligible Director for the upcoming calendar year under A above. The Retainer Grant will vest in four equal installments on each Retainer Accrual Date during the year, subject to the Eligible Director’s Continuous Service (as defined in the Plan) through each such applicable vesting date.

An Eligible Director may only make a Retainer Grant Election before the start of the calendar year to which such election relates and during a period in which the Company is not in a quarterly or special blackout period and the Eligible Director is not aware of any material non-public information. Each Retainer Grant Election must be timely submitted to the Company’s Chief Financial Officer (or such other individual as the Company designates) in writing and subject to any other conditions specified by the Board or Compensation Committee of the Board. An Eligible Director who fails to make a timely Retainer Grant Election will not receive a Retainer Grant and instead will receive the Annual Cash Compensation in cash.

C. Non-Employee Director Compensation Limit

Notwithstanding the foregoing, the aggregate value of all compensation granted or paid, as applicable, to any individual for service as a Non-Employee Director (as defined in the Plan) shall in no event exceed the limits set forth in Section 3(d) of the Plan.

ACV AUCTIONS INC.
SEVERANCE AND CHANGE IN CONTROL PLAN

Section 1. INTRODUCTION.

The ACV Auctions Inc. Severance and Change in Control Plan (the "**Plan**") is hereby established by the Board of Directors of ACV Auctions Inc. (the "**Company**") effective upon the IPO Date (as defined below). The purpose of the Plan is to provide for the payment of severance and/or Change in Control (as defined below) benefits to eligible employees of the Company. This Plan document also is the Summary Plan Description for the Plan.

For purposes of the Plan, the following terms are defined as follows:

(a) "**Affiliate**" means any corporation (other than the Company) in an "unbroken chain of corporations" beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(b) "**Base Salary**" means base pay (excluding incentive pay, premium pay, commissions, overtime, bonuses and other forms of variable compensation) as in effect prior to any reduction that would give rise to an employee's right to a resignation for Good Reason (if applicable).

(c) "**Cause**" means, with respect to a particular employee, the meaning ascribed to such term in any written employment agreement, offer letter or similar agreement between such employee and the Company defining such term, and, in the absence of such agreement, means with respect to such employee, the term "Cause" as defined in the Equity Plan. The determination whether a termination is for Cause shall be made by the Plan Administrator in its sole and exclusive judgment and discretion.

(d) "**Change in Control**" has the meaning ascribed to such term in the Equity Plan.

(e) "**Change in Control Period**" means the period commencing three months prior to the Closing of a Change in Control and ending 12 months following the Closing of a Change in Control.

(f) "**Closing**" means the initial closing of the Change in Control as defined in the definitive agreement executed in connection with the Change in Control. In the case of a series of transactions constituting a Change in Control, "Closing" means the first closing that satisfies the threshold of the definition for a Change in Control.

(g) "**Code**" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(h) "**Committee**" means the Board of Directors or the Compensation Committee of the Board of Directors of the Company.

(i) “**Company**” means ACV Auctions Inc. or, following a Change in Control, the surviving entity resulting from such event.

(j) “**Confidentiality Agreement**” means the Company’s standard form of Confidential Information and Inventions Assignment Agreement or any similar or successor document.

(k) “**Covered Termination**” means, with respect to an employee, except as otherwise provided in an individual Participation Agreement, a termination of employment that is due to a termination by the Company without Cause (and other than as a result of the employee’s death or Disability) that results in such employee’s Separation from Service. For clarity, your death, Disability or your resignation for any reason, including Good Reason, shall not constitute a Covered Termination.

(l) “**Disability**” means any physical or mental condition which renders an employee incapable of performing the work for which he or she was employed by the Company or similar work offered by the Company. The Disability of an employee shall be established if (i) the employee satisfies the requirements for benefits under the Company’s long-term disability plan or (ii) if no long-term disability plan, the employee satisfies the requirements for Social Security disability benefits.

(m) “**Eligible Employee**” means an employee of the Company that meets the requirements to be eligible to receive Plan benefits as set forth in Section 2.

(n) “**Equity Plan**” means the ACV Auctions Inc. 2021 Equity Incentive Plan, as amended from time to time, or any successor plan thereto.

(o) “**Good Reason**” for an employee’s resignation means the occurrence of any of the following undertaken by the Company without the employee’s written consent:

(1) a material reduction in a such employee’s base salary (unless pursuant to a salary reduction program applicable generally to similarly situated employees of the Company);

(2) relocation of such employee’s principal place of employment with the Company (or successor to the Company, if applicable) to a place that increases such employee’s one-way commute by more than 50 miles as compared to such employee’s then-current principal place of employment immediately prior to such relocation (excluding regular travel in the ordinary course of business); provided that (i) if such employee’s principal place of employment is his or her personal residence, this clause (2) shall not apply and (ii) if the employee works remotely during any period in which such employee’s regular principal office location is a Company office that is closed, then neither the employee’s relocation to remote work or back to the office from remote work will be considered a relocation of such employee’s principal office location for purposes of this definition;

(3) a material breach by the Company of any provision of this Plan or any other material agreement between such employee and the Company concerning the terms and conditions of such employee’s employment with the Company; or

(4) the assignment to the employee of any duties or responsibilities which result in the material diminution of the employee's then-current authority, duties or responsibilities.

Notwithstanding the foregoing, in order for the employee's resignation to be deemed to have been for Good Reason, the employee must (a) provide written notice to the Company of such employee's intent to resign for Good Reason within 30 days after the first occurrence of the event giving rise to Good Reason, which notice shall describe the event(s) the employee believes give rise to Good Reason; (b) allow the Company at least 30 days from receipt of the written notice to cure the event (such period, the "**Cure Period**"), and (c) if the event is not reasonably cured within the Cure Period, the employee's resignation from all positions held with the Company is effective not later than 30 days after the expiration of the Cure Period.

(p) "**IPO Date**" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Company's Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(q) "**Participation Agreement**" means an agreement between an employee and the Company in substantially the form of **APPENDIX A** attached hereto, and which may include such other terms as the Committee deems necessary or advisable in the administration of the Plan.

(r) "**Plan Administrator**" means the Committee prior to the Closing and the Representative upon and following the Closing, as applicable.

(s) "**Representative**" means one or more members of the Committee or other persons or entities designated by the Committee prior to or in connection with a Change in Control that will have authority to administer and interpret the Plan upon and following the Closing as provided in Section 9(a).

(t) "**Section 409A**" means Section 409A of the Code and the treasury regulations and other guidance thereunder and any state law of similar effect.

(u) "**Separation from Service**" means a "separation from service" within the meaning of Treasury Regulations Section 1.409A-1(h), without regard to any alternative definition thereunder.

Section 2. ELIGIBILITY FOR BENEFITS.

(a) **Eligible Employee.** An employee of the Company is eligible to participate in the Plan if (i) the Plan Administrator has designated such employee as eligible to participate in the Plan by providing such employee a Participation Agreement; (ii) such employee has signed and returned such Participation Agreement to the Company within the time period required therein; and (iii) such employee meets the other Plan eligibility requirements set forth in this Section 2 and in the Participation Agreement. The determination of whether an employee is an Eligible Employee shall be made by the Plan Administrator, in its sole discretion, and such determination shall be binding and conclusive on all persons.

(b) Release Requirement. Except as otherwise provided in an individual Participation Agreement, in order to be eligible to receive benefits under the Plan, the employee also must execute a general waiver and release, in such a form as provided by the Company (the "**Release**"), within the applicable time period set forth therein, and such Release must become effective in accordance with its terms, which must occur in no event more than 60 days following the date of the applicable Covered Termination.

(c) Plan Benefits Provided In Lieu of Any Previous Benefits. Except as otherwise provided in an individual Participation Agreement, this Plan shall supersede any change in control or severance benefit plan, policy or practice previously maintained by the Company with respect to an Eligible Employee and any change in control or severance benefits in any individually negotiated employment contract or other agreement between the Company and an Eligible Employee. Notwithstanding the foregoing, the Eligible Employee's outstanding equity awards shall remain subject to the terms of the Equity Plan or other applicable equity plan under which such awards were granted (including the award documentation governing such awards) that may apply upon a Change in Control and/or termination of such employee's service and no provision of this Plan shall be construed as to limit the actions that may be taken, or to violate the terms, thereunder.

(d) Exceptions to Severance Benefit Entitlement. An employee who otherwise is an Eligible Employee will not receive benefits under the Plan in the following circumstances, as determined by the Plan Administrator in its sole discretion:

(1) The employee is terminated by the Company for any reason (including due to the employee's death or Disability) or voluntarily terminates employment with the Company in any manner, and in either case, such termination does not constitute a Covered Termination. Voluntary terminations include, but are not limited to, resignation, retirement or failure to return from a leave of absence on the scheduled date.

(2) The employee voluntarily terminates employment with the Company in order to accept employment with another entity that is wholly or partly owned (directly or indirectly) by the Company or an Affiliate.

(3) The employee is offered an identical or substantially equivalent or comparable position with the Company or an Affiliate. For purposes of the foregoing, a "substantially equivalent or comparable position" is one that provides the employee substantially the same level of responsibility and compensation and would not give rise to the employee's right to a resignation for Good Reason.

(4) The employee is offered immediate reemployment by a successor to the Company or an Affiliate or by a purchaser of the Company's assets, as the case may be, following a Change in Control and the terms of such reemployment would not give rise to the employee's right to a resignation for Good Reason. For purposes of the foregoing, "immediate reemployment" means that the employee's employment with the successor to the Company or an Affiliate or the purchaser of its assets, as the case may be, results in uninterrupted employment such that the employee does not incur a lapse in pay or benefits as a result of the change in ownership of the Company or the sale of its assets. For the avoidance of doubt, an employee who becomes immediately reemployed as described in this Section 2(d)(4) by a successor to the Company or an Affiliate or by a purchaser of the Company's assets, as the case may be, following a Change in Control shall continue to be an Eligible Employee following the date of such reemployment.

(5) The employee is rehired by the Company or an Affiliate and recommences employment prior to the date severance benefits under the Plan are scheduled to commence.

(e) **Termination of Severance Benefits.** An Eligible Employee's right to receive severance benefits under this Plan shall terminate immediately if, at any time prior to or during the period for which the Eligible Employee is receiving severance benefits under the Plan, the Eligible Employee

(1) willfully breaches any material statutory, common law, or contractual obligation to the Company or an Affiliate (including, without limitation, the contractual obligations set forth in the Confidentiality Agreement and any other confidentiality, non-disclosure and developments agreement, non-competition, non-solicitation, or similar type agreement between the Eligible Employee and the Company, as applicable);

(2) fails to enter into the terms of the Confidentiality Agreement; or

(3) without the prior written approval of the Plan Administrator, engages in a Prohibited Action (as defined below). In addition, if benefits under the Plan have already been paid to the Eligible Employee and the Eligible Employee subsequently engages in a Prohibited Action during the Prohibited Period (or it is determined that the Eligible Employee engaged in a Prohibited Action prior to receipt of such benefits), any benefits previously paid to the Eligible Employee shall be subject to recoupment by the Company on such terms and conditions as shall be determined by the Plan Administrator, in its sole discretion. The "**Prohibited Period**" shall commence on the date of the Eligible Employee's Covered Termination and continue for the number of months corresponding to the Severance Period set forth in such Eligible Employee's Participation Agreement. A "**Prohibited Action**" shall occur if the Eligible Employee: (i) breaches a material provision of the Confidentiality Agreement and/or any obligations of confidentiality, non-solicitation, non-disparagement, no conflicts or non-competition set forth in the Eligible Employee's employment agreement, offer letter, any other written agreement between the Eligible Employee and the Company, or under applicable law; (ii) encourages or solicits any of the Company's then current employees to leave the Company's employ for any reason or interferes in any other manner with employment relationships at the time existing between the Company and its then current employees; or (iii) induces any of the Company's then current clients, customers, suppliers, vendors, distributors, licensors, licensees, or other third parties to terminate their existing business relationship with the Company or interferes in any other manner with any existing business relationship between the Company and any then current client, customer, supplier, vendor, distributor, licensor, licensee, or other third parties.

Section 3. AMOUNT OF BENEFITS.

(a) **Benefits in Participation Agreement.** Benefits under the Plan shall be provided to an Eligible Employee as set forth in the Participation Agreement.

(b) **Additional Benefits.** Notwithstanding the foregoing, the Committee may, in its sole discretion, provide benefits to individuals who are not Eligible Employees (“*Non-Eligible Employees*”) chosen by the Plan Administrator, in its sole discretion, and the provision of any such benefits to a Non-Eligible Employee shall in no way obligate the Company to provide such benefits to any other individual, even if similarly situated. If benefits under the Plan are provided to a Non-Eligible Employee, references in the Plan to “Eligible Employee” (and similar references) shall be deemed to refer to such Non-Eligible Employee.

(c) **Certain Reductions.** In addition to Section 2(e) above, the Company, in its sole discretion, shall have the authority to reduce an Eligible Employee’s severance benefits, in whole or in part, by any other severance benefits, pay and benefits provided during a period following written notice of a business closing or mass layoff, pay and benefits in lieu of such notice, or other similar benefits payable to the Eligible Employee by the Company or an Affiliate that become payable in connection with the Eligible Employee’s termination of employment pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act or any other similar state law or (ii) any Company policy or practice providing for the Eligible Employee to remain on the payroll for a limited period of time after being given notice of the termination of the Eligible Employee’s employment, and the Plan Administrator shall so construe and implement the terms of the Plan. Any such reductions that the Company determines to make pursuant to this Section 3(c) shall be made such that any severance benefit under the Plan shall be reduced solely by any similar type of benefit under such legal requirement, agreement, policy or practice (*i.e.*, any cash severance benefits under the Plan shall be reduced solely by any cash payments or severance benefits under such legal requirement, agreement, policy or practice). The Company’s decision to apply such reductions to the severance benefits of one Eligible Employee and the amount of such reductions shall in no way obligate the Company to apply the same reductions in the same amounts to the severance benefits of any other Eligible Employee. In the Company’s sole discretion, such reductions may be applied on a retroactive basis, with severance benefits previously paid being re-characterized as payments pursuant to the Company’s statutory obligation.

(d) **Parachute Payments.** Except as otherwise provided in an individual Participation Agreement, if any payment or benefit an Eligible Employee will or may receive from the Company or otherwise (a “*Payment*”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “*Excise Tax*”), then any such Payment shall be equal to the Reduced Amount. The “*Reduced Amount*” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (*i.e.*, the amount determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Eligible Employee’s receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be

subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the "**Reduction Method**") that results in the greatest economic benefit for the Eligible Employee. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "**Pro Rata Reduction Method**").

Notwithstanding any provisions in this Section above to the contrary, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for the Eligible Employee as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without Cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

The Company shall appoint a nationally recognized accounting or law firm to make the determinations required by this Section. The Company shall bear all expenses with respect to the determinations by such accounting or law firm required to be made hereunder. If the Eligible Employee receives a Payment for which the Reduced Amount was determined pursuant to clause (x) above and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, Eligible Employee agrees to promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) above) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) above, the Eligible Employee shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

Section 4. RETURN OF COMPANY PROPERTY.

An Eligible Employee will not be entitled to any severance benefit under the Plan unless and until the Eligible Employee returns all Company Property. For this purpose, "**Company Property**" means all paper and electronic Company documents (and all copies thereof) and other Company property which the Eligible Employee had in his or her possession or control at any time, including, but not limited to, Company files, notes, drawings, records, plans, forecasts, reports, studies, analyses, proposals, agreements, financial information, research and development information, sales and marketing information, operational and personnel information, specifications, code, software, databases, computer-recorded information, tangible property and equipment (including, but not limited to, computers, facsimile machines, mobile telephones, servers), credit cards, entry cards, identification badges and keys; and any materials of any kind which contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part). As a condition to receiving benefits under the Plan, an Eligible Employee must not make or retain copies, reproductions or summaries of any such Company documents, materials or property. However, an Eligible Employee is not required to return his or her personal copies of documents evidencing the Eligible Employee's hire, termination, compensation, benefits and stock options and any other documentation received as a stockholder of the Company.

Section 5. TIME OF PAYMENT AND FORM OF BENEFITS.

The Company reserves the right in the Participation Agreement to specify whether payments under the Plan will be paid in a single sum, in installments, or in any other form and to determine the timing of such payments. All such payments under the Plan will be subject to applicable withholding for federal, state, foreign, provincial and local taxes. All benefits provided under the Plan are intended to satisfy the requirements for an exemption from application of Section 409A to the maximum extent that an exemption is available and any ambiguities herein shall be interpreted accordingly; *provided, however*, that to the extent such an exemption is not available, the benefits provided under the Plan are intended to comply with the requirements of Section 409A to the extent necessary to avoid adverse personal tax consequences and any ambiguities herein shall be interpreted accordingly.

It is intended that (i) each installment of any benefits payable under the Plan to an Eligible Employee be regarded as a separate “payment” for purposes of Treasury Regulations Section 1.409A-2(b)(2)(i), (ii) all payments of any such benefits under the Plan satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9)(iii), and (iii) any such benefits consisting of COBRA premiums also satisfy, to the greatest extent possible, the exemption from the application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(9)(v). However, if the Company determines that any severance benefits payable under the Plan constitute “deferred compensation” under Section 409A and the Eligible Employee is a “specified employee” of the Company, as such term is defined in Section 409A(a)(2)(B)(i), then, solely to the extent necessary to avoid the imposition of the adverse personal tax consequences under Section 409A, (A) the timing of such severance benefit payments shall be delayed until the earlier of (1) the date that is six months and one day after the Eligible Employee’s Separation from Service and (2) the date of the Eligible Employee’s death (such applicable date, the “*Delayed Initial Payment Date*”), and (B) the Company shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the severance benefit payments that the Eligible Employee would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the severance benefits had not been delayed pursuant to this paragraph and (2) commence paying the balance, if any, of the severance benefits in accordance with the applicable payment schedule.

In no event shall payment of any severance benefits under the Plan be made prior to an Eligible Employee’s Separation from Service or prior to the effective date of the Release. If the Company determines that any severance payments or benefits provided under the Plan constitute “deferred compensation” under Section 409A, and the Eligible Employee’s Separation from Service occurs at a time during the calendar year when the Release could become effective in the calendar year following the calendar year in which the Eligible Employee’s Separation from Service occurs, then regardless of when the Release is returned to the Company and becomes effective, the Release will not be deemed effective, solely for purposes of the timing of payment of severance benefits under this Plan, any earlier than the latest permitted effective date (the

“Release Deadline”). If the Company determines that any severance payments or benefits provided under the Plan constitute “deferred compensation” under Section 409A, then except to the extent that severance payments may be delayed until the Delayed Initial Payment Date pursuant to the preceding paragraph, on the first regular payroll date following the effective date of an Eligible Employee’s Release, the Company shall (1) pay the Eligible Employee a lump sum amount equal to the sum of the severance benefit payments that the Eligible Employee would otherwise have received through such payroll date but for the delay in payment related to the effectiveness of the Release and (2) commence paying the balance, if any, of the severance benefits in accordance with the applicable payment schedule.

Section 6. TRANSFER AND ASSIGNMENT.

The rights and obligations of an Eligible Employee under this Plan may not be transferred or assigned without the prior written consent of the Company. This Plan shall be binding upon any entity or person who is a successor by merger, acquisition, consolidation or otherwise to the business formerly carried on by the Company without regard to whether or not such entity or person actively assumes the obligations hereunder and without regard to whether or not a Change in Control occurs.

Section 7. MITIGATION.

Except as otherwise specifically provided in the Plan, an Eligible Employee will not be required to mitigate damages or the amount of any payment provided under the Plan by seeking other employment or otherwise, nor will the amount of any payment provided for under the Plan be reduced by any compensation earned by an Eligible Employee as a result of employment by another employer or any retirement benefits received by such Eligible Employee after the date of the Eligible Employee’s termination of employment with the Company.

Section 8. CLAWBACK; RECOVERY.

All payments and severance benefits provided under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company’s securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Plan Administrator may impose such other clawback, recovery or recoupment provisions as the Plan Administrator determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of common stock of the Company or other cash or property upon the occurrence of a termination of employment for Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for Good Reason, constructive termination, or any similar term under any plan of or agreement with the Company.

Section 9. RIGHT TO INTERPRET AND ADMINISTER PLAN; AMENDMENT AND TERMINATION.

(a) Interpretation and Administration. Prior to the Closing, the Committee shall be the Plan Administrator and shall have the exclusive discretion and authority to establish rules, forms, and procedures for the administration of the Plan and to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, but not limited to, the eligibility to participate in the Plan and amount of benefits paid under the Plan. The rules, interpretations, computations and other actions of the Committee shall be binding and conclusive on all persons. Upon and after the Closing, the Plan will be interpreted and administered in good faith by the Representative who shall be the Plan Administrator during such period. All actions taken by the Representative in interpreting the terms of the Plan and administering the Plan upon and after the Closing will be final and binding on all Eligible Employees. Any references in this Plan to the "Committee" or "Plan Administrator" with respect to periods following the Closing shall mean the Representative.

(b) Amendment. The Plan Administrator reserves the right to amend this Plan at any time; *provided, however,* that any amendment of the Plan will not be effective as to a particular employee who is or may be adversely impacted by such amendment or termination and has an effective Participation Agreement without the written consent of such employee.

(c) Termination. Unless otherwise extended by the Committee, the Plan will automatically terminate upon the earlier of (i) the third anniversary of the IPO Date and (ii) the satisfaction of all the Company's obligations under the Plan.

Section 10. NO IMPLIED EMPLOYMENT CONTRACT.

The Plan shall not be deemed (i) to give any employee or other person any right to be retained in the employ of the Company or (ii) to interfere with the right of the Company to discharge any employee or other person at any time, with or without cause, which right is hereby reserved. This Plan does not modify the at-will employment status of any Eligible Employee.

Section 11. LEGAL CONSTRUCTION.

This Plan is intended to be governed by and shall be construed in accordance with the Employee Retirement Income Security Act of 1974 ("*ERISA*") and, to the extent not preempted by ERISA, the laws of the State of New York.

Section 12. CLAIMS, INQUIRIES AND APPEALS.

(a) Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is:

ACV Auctions Inc.
Compensation Committee of the Board of Directors or Representative
Attention to: Corporate Secretary
640 Ellicott Street, #321
Buffalo, New York 14203

(b) Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application, and of the applicant's right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

- (1) the specific reason or reasons for the denial;
- (2) references to the specific Plan provisions upon which the denial is based;
- (3) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and
- (4) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described in Section 12(d) below.

This notice of denial will be given to the applicant within 90 days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional 90 days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial 90 day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within 60 days after the application is denied. A request for a review shall be in writing and shall be addressed to:

ACV Auctions Inc.
Compensation Committee of the Board of Directors or Representative
Attention to: Corporate Secretary
640 Ellicott Street, #321
Buffalo, New York 14203

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) shall have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and other information relating to his or her claim. The applicant (or his or her representative) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Decision on Review. The Plan Administrator will act on each request for review within 60 days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional 60 days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial 60 day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will set forth, in a manner calculated to be understood by the applicant, the following:

(1) the specific reason or reasons for the denial;

(2) references to the specific Plan provisions upon which the denial is based;

(3) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and

(4) a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA.

(e) Rules and Procedures. The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant's own expense.

(f) Exhaustion of Remedies. No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 12(a) above, (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 12(c) above, and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to an Eligible Employee's claim or appeal within the relevant time limits specified in this Section 12, the Eligible Employee may bring legal action for benefits under the Plan pursuant to Section 502(a) of ERISA.

Section 13. BASIS OF PAYMENTS TO AND FROM PLAN.

The Plan shall be unfunded, and all cash payments under the Plan shall be paid only from the general assets of the Company.

Section 14. OTHER PLAN INFORMATION.

(a) Employer and Plan Identification Numbers. The Employer Identification Number assigned to the Company (which is the "Plan Sponsor" as that term is used in ERISA) by the Internal Revenue Service is 47-2415221. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 510.

(b) Ending Date for Plan's Fiscal Year. The date of the end of the fiscal year for the purpose of maintaining the Plan's records is December 31.

(c) Agent for the Service of Legal Process. The agent for the service of legal process with respect to the Plan is:

ACV Auctions Inc.
Attention to: Corporate Secretary
640 Ellicott Street, #321
Buffalo, New York 14203

In addition, service of legal process may be made upon the Plan Administrator.

(d) Plan Sponsor. The "Plan Sponsor" is:

ACV Auctions Inc.
640 Ellicott Street, #321
Buffalo, New York 14203
(512) 631-1200

(e) Plan Administrator. The Plan Administrator is the Committee prior to the Closing and the Representative upon and following the Closing. The Plan Administrator's contact information is:

ACV Auctions Inc.
Compensation Committee of the Board of Directors or Representative
640 Ellicott Street, #321
Buffalo, New York 14203

The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

Section 15. STATEMENT OF ERISA RIGHTS.

Participants in this Plan (which is a welfare benefit plan sponsored by ACV Auctions Inc.) are entitled to certain rights and protections under ERISA. If you are an Eligible Employee, you are considered a participant in the Plan and, under ERISA, you are entitled to:

(a) Receive Information About Your Plan and Benefits

(1) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(2) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Administrator may make a reasonable charge for the copies; and

(3) Receive a summary of the Plan's annual financial report, if applicable. The Plan Administrator is required by law to furnish each Eligible Employee with a copy of this summary annual report.

(b) Prudent Actions by Plan Fiduciaries. In addition to creating rights for Plan Eligible Employees, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Eligible Employees and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

(c) Enforce Your Rights. If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

(d) Assistance with Your Questions. If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of

Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

APPENDIX A
PARTICIPATION AGREEMENT

APPENDIX A

PARTICIPATION AGREEMENT

Name: _____

Section 1. ELIGIBILITY.

You have been designated as eligible to participate in the ACV Auctions Inc. Severance and Change in Control Plan (the "**Plan**"), a copy of which is attached to this Participation Agreement (the "**Participation Agreement**"). Capitalized terms not explicitly defined in this Participation Agreement but defined in the Plan shall have the same definitions as in the Plan. You will receive the benefits set forth below if you meet all the eligibility requirements set forth in the Plan and this Participation Agreement, including, without limitation, executing the required Release within the applicable time period set forth therein and allowing such Release to become effective in accordance with its terms. Notwithstanding the schedule for provision of benefits as set forth below, the schedule and timing of payment of any benefits under this Participant Agreement is subject to any delay in payment that may be required under Section 5 of the Plan.

Section 1. CHANGE IN CONTROL SEVERANCE BENEFITS.

[If you are terminated in a Covered Termination (as defined below) that occurs during the Change in Control Period (a "**CIC Covered Termination**"), you will receive the severance benefits set forth in this Section 2. All severance benefits described herein are subject to standard deductions and withholdings. For purposes of your participation in the Plan, a "Covered Termination" shall have the following meaning which shall replace and supersede the definition in the Plan:

"**Covered Termination**" means, with respect to an employee, a termination of employment that is due to (1) a termination by the Company without Cause (and other than as a result of the employee's death or Disability) or (2) the employee's resignation for Good Reason, and in either case of (1) or (2), results in such employee's Separation from Service.]¹

[If during the Change in Control Period either (i) you are terminated in a Covered Termination or (ii) you resign for Good Reason and such resignation constitutes a Separation from Service (either (i) or (ii), a "**CIC Covered Termination**"), then in either case, you will receive the severance benefits set forth in this Section 2. All severance benefits described herein are subject to standard deductions and withholdings.]²

(a) Base Salary. You shall receive a cash payment in an amount equal to [_____] months (the "**Severance Period**") of payment of your Base Salary. The Base Salary payment will be paid to you in a lump sum cash payment no later than the second regular payroll date following the later of (i) the effective date of the Release or (ii) the Closing, but in any event not later than March 15 of the year following the year in which your Separation from Service occurs.

¹ Insert for Tier 1 only.

² Insert for Tier 2 only.

³ Insert 18 months for Tier 1 or 12 months for Tier 2.

(b) Bonus Payment. You will be entitled to []⁴ of the annual target cash bonus established for you, if any, pursuant to the annual performance bonus or annual variable compensation plan established by the Board of Directors or Committee (or any authorized committee or designee thereof) for the year in which your CIC Covered Termination occurs. If at the time of the CIC Covered Termination you are eligible for the annual target cash bonus for the year in which the CIC Covered Termination occurs, but the target percentage (or target dollar amount, if specified as such in the applicable bonus plan) for such bonus has not yet been established for such year, the target percentage shall be the target percentage established for you for the preceding year (but adjusted, if necessary for your position for the year in which the CIC Covered Termination occurs). For the avoidance of doubt, the amount of the annual target bonus to which you are entitled under this Section 2(b) will be calculated (1) assuming all articulated performance goals for such bonus (including, but not limited to, corporate and individual performance, if applicable), for the year of the CIC Covered Termination was achieved at target levels; (2) as if you had provided services for the entire year for which the bonus relates; and (3) ignoring any reduction in your Base Salary that would give rise to your right to resignation for Good Reason (such bonus to which you are entitled under this Section 2(b), the “**Annual Target Bonus Severance Payment**”). The Annual Target Bonus Severance Payment shall be paid in a lump sum cash payment no later than the second regular payroll date following the later of (i) the effective date of the Release or (ii) the Closing, but in any event not later than March 15 of the year following the year in which your Separation from Service occurs.

(c) Payment of Continued Group Health Plan Benefits. If you timely elect continued group health plan continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”) following your CIC Covered Termination date, the Company shall pay directly to the carrier the full amount of your COBRA premiums on behalf of you for your continued coverage under the Company’s group health plans, including coverage for your eligible dependents, until the earliest of (i) the end of the Severance Period following the date of your CIC Covered Termination, (ii) the expiration of your eligibility for the continuation coverage under COBRA, or (iii) the date when you become eligible for substantially equivalent health insurance coverage in connection with new employment (such period from your termination date through the earliest of (i) through (iii), the “**COBRA Payment Period**”). Upon the conclusion of such period of insurance premium payments made by the Company, you will be responsible for the entire payment of premiums (or payment for the cost of coverage) required under COBRA for the duration of your eligible COBRA coverage period, if any. For purposes of this Section, (1) references to COBRA shall be deemed to refer also to analogous provisions of state law and (2) any applicable insurance premiums that are paid by the Company shall not include any amounts payable by you under an Internal Revenue Code Section 125 health care reimbursement plan, which amounts, if any, are your sole responsibility. You agree to promptly notify the Company as soon as you become eligible for health insurance coverage in connection with new employment or self-employment.

⁴ Insert 150% for Tier 1 or 100% for Tier 2.

Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that it cannot provide the COBRA premium benefits without potentially incurring financial costs or penalties under applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then in lieu of paying COBRA premiums directly to the carrier on your behalf, the Company will instead pay you on the last day of each remaining month of the COBRA Payment Period a fully taxable cash payment equal to the value of your monthly COBRA premium for the first month of COBRA coverage, subject to applicable tax withholding (such amount, the "**Special Severance Payment**"), such Special Severance Payment to be made without regard to your election of COBRA coverage or payment of COBRA premiums and without regard to your continued eligibility for COBRA coverage during the COBRA Payment Period. Such Special Severance Payment shall end upon expiration of the COBRA Payment Period.

(d) Equity Acceleration. The vesting and exercisability of each outstanding unvested stock option and other stock award, as applicable, that you hold covering Company common stock as of the date of your CIC Covered Termination (each, an "**Equity Award**") that is subject to time-vesting shall be accelerated in full and any reacquisition or repurchase rights held by the Company in respect of Company common stock issued pursuant to any time-vesting Equity Award granted to you shall lapse in full. To the extent your CIC Covered Termination occurs prior to the Change in Control, the acceleration set forth in this Section 2(d) shall be contingent and effective upon the Change in Control and your Equity Awards will remain outstanding following your CIC Covered Termination to give effect to such acceleration as necessary. For the avoidance of doubt, any Equity Awards subject to performance-vesting shall vest and become exercisable according to their individual award agreements.

Section 2. NON-CHANGE IN CONTROL SEVERANCE BENEFITS. If you are terminated in a Covered Termination that occurs at a time that is not during the Change in Control Period, you will receive:

(a) the base salary cash payment described in Section 2(a) above, but the Severance Period for purposes of calculating such benefits shall be []⁵ months; and

(b) the COBRA benefits described in Section 2(c) above, but the Severance Period for purposes of calculating such benefits shall be []⁶ months.

You shall not be eligible to receive any other benefits under the Plan except as described in Section 2(a) and Section 2(c) above.

For the avoidance of doubt, in no event shall you be entitled to benefits under both Section 2 and this Section 3. If you are eligible for severance benefits under both Section 2 and this Section 3, you shall receive the benefits set forth in Section 2 and such benefits shall be reduced by any benefits previously provided to you under Section 3.

⁵ Insert 12 months for Tier 1 or 9 months for Tier 2.

⁶ Insert 12 months for Tier 1 or 9 months for Tier 2.

Section 3. CHANGE IN CONTROL ACCELERATION UPON ACQUIROR'S FAILURE TO ASSUME, CONTINUE OR SUBSTITUTE. If (i) in connection with a Change in Control, any outstanding unvested Equity Award that you hold will not be assumed or continued by the successor or acquiror entity (or its parent company) in such Change in Control or substituted for a similar award of the successor or acquiror entity (or its parent company) (a "**Terminating Award**") and (ii) your continued employment with the Company has not terminated as of immediately prior to the effective time of such Change in Control, then you will become vested, with respect to any then unvested portion of such Terminating Award, effective immediately prior to, but subject to the consummation of such Change in Control. With respect to any such outstanding Terminating Award that is subject to performance-vesting, unless otherwise provided in the individual grant notice and award agreement evidencing such award, such performance-vesting award will accelerate vesting at 100% of the target level. For the avoidance of doubt, the benefits under this Section 4 are contingent on a Change in Control and do not require your Covered Termination or other termination of service. In addition, you may be eligible for benefits under this Section 4 in addition to benefits under Section 2 or Section 3 and in such case, you shall receive benefits under both sections, without duplication.

Section 4. ACKNOWLEDGEMENTS; INTERACTION WITH PRIOR BENEFITS.

As a condition to participation in the Plan, you hereby acknowledge each of the following:

(a) The benefits that may be provided to you under this Participation Agreement are subject to certain reductions and termination under Section 2 and Section 3 of the Plan.

(b) Your eligibility for and receipt of any severance benefits to which you may become entitled as described in Section 2 or Section 3 above is expressly contingent upon your execution of and compliance with the terms and conditions of the Plan, the Release and the Confidentiality Agreement. Severance benefits under this Participation Agreement shall immediately cease in the event of your violation of the provisions of Confidentiality Agreement or any other written agreement with the Company.

(c) As further described in Section 2(c) of the Plan, this Participation Agreement and the Plan supersede and replace any change in control or severance benefits previously provided to you, including but not limited to any benefits under your employment or other written agreement or plan, and by executing below you expressly agree to such treatment.

To accept the terms of this Participation Agreement and participate in the Plan, please sign and date this Participation Agreement in the space provided below and return it to _____ no later than _____, _____.

ACV Auctions Inc.

By: _____

Eligible Employee

[Insert Name]

Date: _____

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated February 26, 2021 (except for the effects of the reverse stock split as discussed in Note 18 to the consolidated financial statements, as to which the date is March 15, 2021), in Amendment No. 1 to the Registration Statement (Form S-1 No. 333-253617) and related Prospectus of ACV Auctions Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

New York, New York
March 15, 2021