

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

**FORM S-1  
REGISTRATION STATEMENT**  
*UNDER  
THE SECURITIES ACT OF 1933*

**Volcon, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**3711**  
(Primary Standard Industrial  
Classification Code Number)

**84-4882689**  
(I.R.S. Employer  
Identification Number)

**2590 Oakmont Drive, Suite 520**  
**Round Rock, TX 78665**  
**(512) 400-4271**  
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Greg Endo**  
**2590 Oakmont Drive, Suite 520**  
**Round Rock, TX 78665**  
**(512) 400-4271**  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

*Copies to:*

**Cavas S. Pavri**  
**Schiff Hardin LLP**  
**100 N. 18th, Suite 300**  
**Philadelphia, PA 19103**  
**Telephone: (202) 724-6847**  
**Fax: (202) 778-6460**

**Anthony W. Basch, Esq.**  
**J. Britton Williston, Esq.**  
**Kaufman & Canoles, P.C.**  
**Two James Center, 14th Floor**  
**1021 East Cary Street**  
**Richmond, Virginia 23219**  
**Telephone: (804) 771-5700**  
**Fax: (888) 360-9092**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

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, 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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	Proposed maximum aggregate offering price (1)	Amount of registration fee (1)
Common Stock, par value \$0.00001(2)	\$17,885,312.50	\$1,951.29
Underwriter warrant (3)		

<b>Common Stock underlying underwriter's warrant (4)</b>	<b>\$1,117,832.03</b>	<b>\$121.96</b>
<b>Total</b>		<b>\$2,073.24</b>

- (1) Estimated solely for purposes of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.
- (2) Pursuant to Rule 416 under the Securities Act, the securities being registered hereunder include such indeterminate number of additional shares of common stock as may be issued after the date hereof as a result of stock splits, stock dividends or similar transactions.
- (3) No separate registration fee required pursuant to Rule 457(g) under the Securities Act.
- (4) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. We have calculated the proposed maximum aggregate offering price of the common stock underlying the underwriter's warrants by assuming that such warrants are exercisable at a price per share equal to 125% of the price per share sold in this offering.

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

**The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement 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 September 10, 2021.**

## **PRELIMINARY PROSPECTUS**

**3,025,000 Shares**

**Volcon, Inc.**

**Common Stock**

We are offering 3,025,000 shares of our common stock. We anticipate a public offering price between \$4.50 and \$5.50 per share.

Prior to this offering, there has been no public market for our common stock. We intend to list the common stock on the NASDAQ Capital Market under the symbol "VLCN". If our common stock is not approved for listing on the NASDAQ Capital Market, we will not consummate this offering. The underwriters have informed us that the gross proceeds of this offering will not be less than \$15,000,000.

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, and we have elected to comply with certain reduced public company reporting requirements.

**An investment in our common stock involves significant risks. You should carefully consider the risk factors beginning on page 8 of this prospectus before you make your decision to invest in our 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.**

	<b>Per Share</b>	<b>Total</b>
Initial public offering price		
Underwriting discounts and commissions (1)		
Proceeds to us, before expenses.		

- (1) In addition to the discounts and commissions disclosed above, upon consummation of this offering we will issue to Aegis, or its designees, warrants to purchase an aggregate number of shares of our common stock equal to 5.0% of the number of shares of common stock issued in this offering, at an exercise price per share equal to 125.0% of the public offering price. See "Underwriting" for a description of additional compensation payable to the Underwriters.

The underwriters may also exercise their option to purchase up to 226,875 additional shares from us at the public offering price, less the underwriting discount, for 45 days after the date of this prospectus to cover over-allotments, if any.

Delivery of the shares is expected to be made on or about September \_\_, 2021.

**Aegis Capital Corp.**

**The date of this prospectus is September \_\_, 2021**

---

## TABLE OF CONTENTS

<a href="#">Prospectus Summary</a>	1
<a href="#">Risk Factors</a>	8
<a href="#">Cautionary Note Regarding Forward-Looking Statements</a>	19
<a href="#">Use Of Proceeds</a>	20
<a href="#">Dividend Policy</a>	20
<a href="#">Capitalization</a>	21
<a href="#">Dilution</a>	22
<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	23
<a href="#">Business</a>	28
<a href="#">Management</a>	34
<a href="#">Certain Relationships and Related Party Transactions</a>	43
<a href="#">Security Ownership of Certain Beneficial Owners and Management</a>	44
<a href="#">Description of Securities</a>	45
<a href="#">Shares Eligible for Future Sale</a>	48
<a href="#">Underwriting</a>	50
<a href="#">Legal Matters</a>	54
<a href="#">Experts</a>	54
<a href="#">Where You Can Find More Information</a>	54

Through and including \_\_\_\_\_, 2021 (the 25<sup>th</sup> 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 unsold allotments or subscriptions.

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

Market data and certain industry data and forecasts used throughout this prospectus were obtained from internal company surveys, market research, consultant surveys, publicly available information, reports of governmental agencies and industry publications and surveys. Industry surveys, publications, consultant surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable, but that the accuracy and completeness of such information is not guaranteed. We have not independently verified any of the data from third party sources, nor have we ascertained the underlying economic assumptions relied upon therein. Similarly, internal surveys, industry forecasts and market research, which we believe to be reliable based on our management's knowledge of the industry, have not been independently verified. Forecasts are particularly likely to be inaccurate, especially over long periods of time. In addition, we do not necessarily know what assumptions regarding general economic growth were used in preparing the forecasts we cite. Statements as to our market position are based on the most currently available data. While we are not aware of any misstatements regarding the industry data presented in this prospectus, our estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading "Risk Factors" in this prospectus.

---

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to invest in our common stock. You should read this entire prospectus carefully, including the "Risk Factors" section, our historical consolidated financial statements and the notes thereto, each included elsewhere in this prospectus. Unless otherwise indicated or the context requires otherwise, the words "we," "us," "our," the "Company," or "our Company," and "Volcon" refer to Volcon, Inc., a Delaware corporation.*

### Overview

We are an all-electric, off-road powersports vehicle company developing and building electric two and four-wheel motorcycles and utility terrain vehicles (UTVs), also known as side-by-sides, along with a complete line of upgrades and accessories. In October 2020, we began building and testing prototypes for our future offerings with two off-road motorcycles – the Grunt and the Runt. We are currently taking orders on our website for these initial offerings and expect to begin delivering the Grunt in the third quarter of 2021 and the Runt in the first quarter of 2022. Also in 2022, we expect to expand our offerings with the Volcon Stag, a UTV, followed in 2023 by a higher performance, longer range UTV called the Beast.

Both our dirt bikes and UTVs feature unique, load-managing frames with industrial designs protected by design patents. Additional patents have been filed for the unique design of Volcon's electric motors.

We initially intend to sell and distribute our vehicles and accessories in the U.S. on a direct-to-consumer sales platform. We are currently negotiating dealership agreements with retail partners to display and sell our vehicles and accessories. Once we have dealers in each state, customers can either purchase a vehicle and accessories through our website and pick them up at a local dealership, or they can buy them directly from a local dealership. Some of these retail partners will also provide warranty and repair services to our customers. To date, we have not entered into any dealership agreements.

As of September 1, 2021, U.S. customers have made deposits for 278 Grunts and 5 Runts, plus accessories and a delivery fee representing total deposits of \$1.8 million. These orders are cancelable by the customer until the vehicle is delivered and after a 14-day acceptance period, therefore the deposits have been recorded as deferred revenue. Based on our current production capacity, we believe we will deliver all the Grunts by November 2021 and the Runts by the first quarter of 2022.

Our vehicles and accessories will be sold globally in a three-phase rollout of export sales— Latin America importers in 2021, Canada, Europe, and Africa in 2022 and Southeast Asia plus Australia in 2023. Export sales are executed with individual importers in each country that buy vehicles by the container. Each importer will sell vehicles to

local dealers or directly to customers. Local dealers will provide warranty and repair services for vehicles purchased in their country.

As of September 1, 2021, we have received orders from Latin America importers for 92 Grunts. Payment for these orders is due prior to shipment and are cancelable until shipped. Based on our current production capacity, we believe we will be able to fulfill all pending orders by November 2021.

The estimated fulfillment of all orders we have received assumes we are successfully able to increase our production capacity in the future, of which there is no assurance. We only recently commenced assembling vehicles and we may encounter delays or setbacks as we increase production. If we are unable to satisfy pending orders on a timely basis, customers may cancel their orders.

We are assembling the Grunt in a leased production facility in Round Rock, Texas. We signed a lease for a new production facility in Round Rock, Texas that will allow us to increase our production capacity. We expect to move into this facility in the fourth quarter of 2021. We have signed a lease for a built-to-suit manufacturing facility on 53 acres in Liberty Hill, Texas, 25 miles northwest of downtown Austin, from an entity controlled by our founders. We expect to begin production at this facility in the third quarter of 2022.

## **Our Industry**

The powersports industry is made up of on-road and off-road motorcycles, all-terrain vehicles (ATVs), UTVs, personal watercraft, snow machines, and portable generators. We are focusing solely on off-road motorcycles and UTVs. The ATV market, in which a single rider sits on top of a four-wheeled vehicle (as opposed to sitting inside a UTV), is not a market we intend to pursue because of significant safety, legal liability and legislative challenges.

The off-road powersports industry has been on a steady path of growth since the recession of 2008. Off-road new unit sales have grown 46.5% over 2019. We believe this growth has been accelerated by the COVID-19 pandemic, as more consumers seek safe, outdoor recreation.

Outdoor recreation is a major driver of the American economy. In 2019, the U.S. Bureau of Economic Analysis (BEA) found that outdoor recreation drives \$788 billion of economic activity in America. The bureau noted that two and four-wheel powersports make up \$39 billion of that total—the fourth largest total of all outdoor recreation activities.

Prior to the COVID-19 pandemic, off-road powersports were on a steady path of growth. When the COVID-19 pandemic hit, that growth accelerated rapidly. Year-over-year growth for off-road motorcycling, despite a short contraction in March and April of 2020, has risen 46.5%.

While post-COVID pandemic may not see growth rates this steep, we believe the new culture of escape and outdoor activities will continue to drive off-road powersports recreation. The industry is forecast to deliver \$15 billion in new unit sales by 2025 with \$48 billion in total economic impact. We believe there are currently no all-electric off-road powersports companies, and few traditional powersports companies make electric products, so off-road electric vehicle data does not exist yet.

## **Our Products**

We will feature motorcycle and UTV products that are all-electric and for off-road use only. The off-road market is growing faster than on-road and on-road products require costly levels of certification, homologation and compliance with the Department of Transportation (DOT), the National Highway Traffic Safety Administration (NHTSA) and other government regulators. As such, we are solely focusing on the off-road market. Due to these regulations, our vehicles are not legal for on-road use. All vehicles will come with a warning label stating “This vehicle is designed and manufactured for off road use only. It does not conform to federal motor vehicle safety standards and operation on public streets, roads, or highways is illegal”, and therefore our vehicles cannot be legally registered for on-road use in any state. In addition to powersports vehicles, we will source, market and sell a complete line of accessories and upgrades. These will feature parts designed to increase performance or appearance, in addition to practical add-ons to equip Volcon vehicles for hunters, ranchers and farmers.

### *The Grunt*

In the third quarter of 2021, the Volcon Grunt will be the first product to market. The Grunt is an electric off-road motorcycle with unique design features and capabilities.

The Grunt’s distinctive low height and oversize tires are designed to make it look like the minibikes of the 1970s and ‘80s. These unique elements of the Grunt are not just for styling, but we believe they help make it easier to ride as compared to other off-road motorcycles on the market. The low seat height and big tires help make the Grunt stable at all speeds on all surfaces. The electric drivetrain has no clutch and no gears, making it easy for almost anyone to ride.

Although the Grunt and Runt can be used as delivered, we have developed an app, which can be downloaded at no charge by anyone, that we believe will enhance the riding experience. The Grunt has a small dash with limited data; however, the rider can use their phones and the app (subject to the rider’s cellular connectivity) as a dashboard by mounting it on the handlebars. The app will make it easier for users to set ride modes, check battery status, and update the bike’s firmware. In the future we plan to add a trip navigation feature to the app.

The Grunt is designed for family off-road adventures, work on the farm or fun transport around private land. Its range can be up to 35 miles (with an optional second battery that provides an additional 35 miles) in its “explore” mode setting and it charges in less than three hours from a standard wall outlet.

### *The Runt*

In the first quarter of 2022, the Volcon Runt will also be available to the market. The Runt shares the styling of its big-brother, the Grunt, but it is sized for seven to 14-year-olds.

The Runt is easy to ride and includes features that we believe no other minibike has that will make parents feel more comfortable with their children on two wheels.

Like the Grunt, the Runt’s large tires and low-slung chassis make it extremely easy to ride. The Runt rider can see speed, battery charge and ride mode via the ride control app.

The app will also work with the Runt and will let the parents of the child login on their own phones to control the maximum acceleration and speed of the Runt. They

can also geo-fence the child and have the Runt stop working beyond a certain boundary. Notifications for the child exceeding a certain speed or tipping the bike over can also be sent to the parents via text.

The Runt will have a range of up to 35 miles in its “explore” mode setting and charges in less than three hours from a standard wall outlet.

#### *Future Products*

We expect to introduce the Volcon Stag in the second half of 2022. The Stag will be Volcon’s utility/sport UTV with a 64” width to ensure it is able to operate in all states, including the many states with 65”-maximum-width trails. It will feature hauling and towing abilities for work on a farm or job site, but also fold-up seating for four so it can be used for weekend family adventures. We are designing the electric drivetrain to be quiet and reliable. We believe the electric nature of the Stag will also mean low maintenance. Where a gas UTV motor has over 1,000 moving parts, the Stag’s motor will have just two.

The Volcon Beast, which we expect will be available in late 2023, will be the flagship model in the Volcon line. We are designing the Beast to have superior range and speed, but still be able to haul and tow far more than a traditional UTV.

The Beast will feature a category-leading suspension, including an optional computer-controlled, fully active suspension system. Its long wheelbase will easily accommodate five along with hauling space and a 3,000-pound towing capacity, and like all Volcon vehicles, the Beast will feature the Ride Control app.

#### **Risks Relating to Our Business**

Our business and ability to execute our business strategy are subject to a number of risks of which you should be aware before you decide to buy our securities. In particular, you should consider the following risks, which are discussed more fully in the section entitled “Risk Factors”:

- Our losses from operations could continue to raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.
- We are an early-stage company, and although pre-orders of our initial vehicles have commenced, we have not delivered any vehicles to customers.
- We may experience delays or other complications in the design, manufacture, launch and production ramp of our vehicles which could harm our brand, business, prospects, financial condition and operating results.

- We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of our products according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components, could have a material adverse effect on our financial condition and operating results.
- We are currently taking orders for two vehicles, the Grunt and the Runt, and if these vehicles fail to perform as expected, our reputation could be harmed and our ability to develop, market and sell our vehicles could be harmed.
- Our success will depend on our ability to economically produce our vehicles at scale, and our ability to produce vehicles of sufficient quality and appeal to customers on schedule and at scale is unproven.
- We may not succeed in establishing, maintaining and strengthening our brand, which could materially and adversely affect customer acceptance of our products, which could in turn materially affect our business, results of operations or financial condition.
- Increases in costs, disruption of supply, or shortage of materials could harm our business.
- An adverse determination in any significant product liability claim against us could materially adversely affect our business, results of operations or financial condition.
- The markets in which we operate are in their infancy and highly competitive, and we may not be successful in competing in these industries as the industry further develops. We currently face competition from new and established competitors and expect to face competition from others in the future, including competition from companies with new technology.
- Potential tariffs or a global trade war could increase our costs and could further increase the cost of our products, which could adversely impact the competitiveness of our products and our financial results.
- Pre-orders for our vehicles are cancelable and the deposit fully refundable, and there can be no assurance that such pre-orders will be converted into sales.
- Our sales will be dependent on the development of a network of dealers, some of whom will also provide warranty support. To date, we have not entered into any dealer agreements in the United States.
- Our success is dependent upon the success of the off-road vehicle industry and upon consumers’ willingness to adopt electric vehicles.
- The electric vehicle market and its associated technologies are rapidly evolving and may be subject to unforeseen changes. Developments in alternative technologies may adversely affect the demand for our vehicles.
- The battery efficiency of our vehicles may decline over time, which may negatively influence potential customers’ decisions whether to purchase our vehicles.

#### **Implications of Being an Emerging Growth Company**

We qualify as an “emerging growth company” as the term is used in The Jumpstart Our Business Startups Act of 2012 (JOBS Act), and therefore, we may take advantage of certain exemptions from various public company reporting requirements, including:

- a requirement to only have two years of audited financial statements and only two years of related selected financial data and management’s discussion and analysis;
- exemption from the auditor attestation requirement on the effectiveness of our internal controls over financial reporting;

- reduced disclosure obligations regarding executive compensation; and
- exemptions from the requirements of holding a non-binding advisory stockholder vote on executive compensation and any golden parachute payments.

We may take advantage of these provisions for up to five years or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company if we have more than \$1.07 billion in annual revenues, have more than \$700.0 million in market value of our capital stock held by non-affiliates or issue more than \$1.07 billion of non-convertible debt over a three-year period. We may choose to take advantage of some, but not all, of the available benefits of the JOBS Act. We have taken advantage of some of the reduced reporting requirements in this prospectus. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock. In addition, the JOBS Act provides that an emerging growth company can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will not be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

## Company Information

Our principal executive offices are located at 2590 Oakmont Drive, Suite 520, Round Rock, TX 78665. Our website address is [www.volcon.com](http://www.volcon.com). The information on or accessible through our website is not part of this prospectus.

## The Offering

Securities we are offering	3,025,000 shares of common stock (or 3,251,875 shares if the underwriters' overallotment option is exercised in full)
Common stock outstanding immediately before this offering	2,569,719 shares (includes 266,666 shares issued on September 10, 2021 to lender for a 6% promissory note totaling \$2.0 million, before issuance costs of \$155,000)
Common stock outstanding immediately after this offering	11,337,894 shares (includes 5,743,175 shares issued upon the closing of this offering for the conversion of our series A and series B preferred stock)
Overallotment option:	We have granted the underwriters a 45 day option to purchase up to 226,875 shares of our common stock at the public offering price, solely to cover over-allotments, if any.
Use of proceeds	We intend to use the proceeds from this offering (i) for non-recurring engineering costs related to our development of our four-wheel UTVs, the Stag and the Beast; (ii) to fund the purchase of inventory and production costs of our vehicles; (iii) capital expenditures to build assembly lines; (iv) to repay the 6% promissory note; and (v) for working capital. See "Use of Proceeds."
Risk Factors	See "Risk Factors" and other information appearing elsewhere in this prospectus for a discussion of factors you should carefully consider before deciding whether to invest in our securities.
Lock-up	We, our directors, executive officers, and certain shareholders have agreed not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any of our securities for a period of 90 days after the date of this prospectus. See "Underwriting" for more information.
Proposed listing symbol	We have applied to have our common stock listed on the NASDAQ Capital Market under the symbol "VLCN."

The number of shares of common stock to be outstanding after this offering is based on 2,569,719 shares outstanding as of September 10, 2021 plus 5,743,175 shares that will be issued upon the closing of this offering for the conversion of our series A and series B preferred stock, and does not give effect to:

- 11,516,142 shares issuable upon exercise of outstanding warrants to purchase our common stock at a weighted average exercise price of \$1.03 per share;
- 450,000 shares underlying restricted stock units granted to employees vesting over time;
- 1,646,875 shares issuable upon exercise of outstanding options issued to employees, directors and advisory board members to purchase our common stock at a weighted average exercise price of \$1.44 per share;
- 740,618 shares available for future issuance under the Volcon, Inc. 2021 Stock Plan; and
- 151,250 shares of common stock issuable upon exercise of warrants to be issued to the underwriters in connection with this offering at an exercise price of \$6.25 per share assuming the mid point of the range.

Unless otherwise indicated, this prospectus reflects and assumes no exercise by the underwriters of their over-allotment option.

On July 27, 2021, our board of directors approved a common stock dividend of 1.5 shares per share of common stock. Unless otherwise indicated, all common stock, warrants, options, restricted stock unit amounts, and related per share prices, have been adjusted in this prospectus to reflect this stock dividend. Series A and Series B preferred stock will convert to common stock on a 1 to 2.5 ratio due to this stock dividend.

## Summary Financial Data

The following tables set forth a summary of our unaudited financial data for the six-month period ended June 30, 2021 and our financial data for the period from February 21, 2020 (inception) to December 31, 2020 and as of June 30, 2021, and we have derived this data from our financial statements appearing elsewhere in this prospectus. You should read this data together with our financial statements and related notes appearing elsewhere in this prospectus and the sections in this prospectus entitled "Capitalization" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our historical results for any prior period are not necessarily

indicative of our future results.

Statements of Operations Data	Six Months Ended June 30, 2021 (Unaudited)	For the Period February 21, 2020 (Inception) to December 31, 2020
Revenue	\$ —	\$ —
Sales and marketing expense	814,388	125,752
Product and Technology Expense	4,562,526	407,760
General and administrative expense	14,047,543	833,277
Interest and other expense	30,828	7,624
Net loss	<u>\$ (19,455,285)</u>	<u>\$ (1,374,413)</u>
Net loss per common share	<u>\$ (9.59)</u>	<u>\$ (5.69)</u>
Balance Sheet Data	As of June 30, 2021	
	Actual	As adjusted – IPO (1)
Cash and cash equivalents	\$ 6,017,095	\$ 19,475,845
Total assets	12,138,117	25,596,867
Working capital	7,577,899	21,036,649
Accumulated deficit (2)	(20,829,698)	(21,629,698)
Total stockholders' equity (2)	9,094,733	22,553,483

- (1) The “as adjusted – IPO” column assumes the receipt of the net proceeds from the sale of shares of our common stock by us in this offering, at an assumed public offering price of \$5.00 per share, the midpoint of the range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.
- (2) Assumes the issuance in September 2021 of 266,666 shares of common stock in connection with the issuance of a 6% promissory note totaling \$2.0 million. Proceeds of \$800,000 received from the promissory note are recorded as shareholders' equity based on the allocation of the proceeds between the promissory note and shares of common stock issued. In addition, total issuance costs of \$155,000 were allocated to the promissory note and shareholders' equity of \$93,000 and \$62,000, respectively. The “as adjusted – IPO” column assumes the promissory note is repaid from the proceeds from sale of shares of common stock in this offering in accordance with the terms of the promissory note resulting in a loss on repayment of \$893,000.

A \$1.00 increase (decrease) in the assumed public offering price of \$5.00 per share, the midpoint of the range set forth on the cover page of this prospectus, would increase (decrease) each of cash and cash equivalents, additional paid-in capital, and total stockholders' equity by approximately \$3,025,000, assuming the number of shares offered by us as stated on the cover page of this prospectus remains unchanged and after deducting the estimated underwriting discounts and commissions payable by us. Similarly, each increase (decrease) of 100,000 shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) each of cash and cash equivalents, additional paid-in capital, and total stockholders' equity by \$500,000, assuming that the assumed public offering price of \$5.00 per share, the midpoint of the range set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions payable by us.

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider each of the following risks, together with all other information set forth in this prospectus, including the financial statements and the related notes, before making a decision to buy our common stock. If any of the following risks actually occurs, our business could be harmed. In that case, the trading price of our common stock could decline, and you may lose all or part of your investment.*

### Risks Related to the Company's Business, Operations, and Industry

***Our losses from operations could continue to raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.***

We do not have sufficient existing cash and cash equivalents, without giving effect to the proceeds from this offering, to support operations for at least one year following the date our financial statements included in this prospectus are issued. Our independent registered public accounting firm has included an explanatory paragraph in its report on our financial statements as of December 31, 2020 and for the period from February 21, 2020 (inception) to December 31, 2020, stating that our recurring losses from operations since inception and required additional funding to finance our operations raise substantial doubt about our ability to continue as a going concern. If we are unable to obtain sufficient funding, we could be forced to delay the rollout of our vehicles, and our financial condition and results of operations will be materially and adversely affected, and we may be unable to continue as a going concern. After the completion of this offering, future financial statements may continue to disclose substantial doubt about our ability to continue as a going concern. If we seek additional financing to fund our business activities in the future and there remains substantial doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding to us on commercially reasonable terms or at all.

***Our independent auditor registered public accounting firm previously identified material weaknesses in our internal control over financial reporting. If we are unable to remediate these material weaknesses or we or our auditor identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business and stock price.***

In connection with the preparation and audit of our consolidated financial statements for the period ended December 31, 2020, our auditor identified material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or 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 consolidated financial statements will not be prevented or detected on a timely basis. These material weaknesses are as follows:

- Inadequate segregation of duties within account processes due to limited personnel
- Insufficient written policies and procedures for accounting, IT, financial reporting and record keeping (no control procedures in place)

We have begun efforts to remediate these material weaknesses including hiring a chief financial officer and a controller and have begun developing written policies and procedures. While we believe these efforts will remediate the material weaknesses, we may not be able to complete our evaluation, testing or any required remediation in a timely fashion, or at all. We cannot assure you that the measures we have taken to date and may take in the future, will be sufficient to remediate the control deficiencies that led

to our material weaknesses in internal control over financial reporting or that they will prevent or avoid potential future material weaknesses. The effectiveness of our internal control over financial reporting is subject to various inherent limitations, including cost limitations, judgments used in decision making, assumptions about the likelihood of future events, the possibility of human error and the risk of fraud. If we are unable to remediate the material weakness, our ability to record, process and report financial information accurately, and to prepare financial statements within the time periods required of public companies could be adversely affected which, in turn, may adversely affect our reputation and business and the market price of our common stock. In addition, any such failures could result in litigation or regulatory actions by the SEC or other regulatory authorities, loss of investor confidence, delisting of our securities and harm our reputation and financial condition, or diversion of financial and management resources from the operation of our business.

***We are an early-stage company, and although orders of our initial vehicles have commenced, we have not delivered any vehicles to customers.***

We formed our corporation in February 2020. Since formation, we have focused on designing our initial vehicles, the Grunt and the Runt, and commencing the marketing of such vehicles by accepting reservations on our website. To date, we have not delivered any vehicles to customers or completed any sales to customers of vehicles. We may never achieve commercial success. We have no meaningful historical financial data upon which we may base our projected revenue and operating expenses. Our limited operating history makes it difficult for potential investors to evaluate our products or prospective operations and business prospects. As a pre-revenue company, we are subject to all the risks inherent in business development, financing, unexpected expenditures, and complications and delays that often occur in a new business. Investors should evaluate an investment in us in light of the uncertainties encountered by developing companies in a competitive environment. There can be no assurance that our efforts will be successful or that we will ultimately be able to attain profitability.

***We may experience delays or other complications in the design, manufacture, launch and production ramp of our vehicles and our future planned vehicles which could harm our brand, business, prospects, financial condition and operating results.***

We may encounter unanticipated challenges, such as supply chain constraints, that lead to initial delays in producing our vehicles and ramping up our production. These challenges may be more significant for our Stag and Beast vehicles as we have not finalized the designs for these vehicles or begun to establish the assembly lines for these prospective vehicles. Any significant delay or other complication in the production of our vehicles or the development, manufacture, and production ramp of our future vehicles such as the Stag and Beast, including complications associated with expanding our production capacity and supply chain or obtaining or maintaining regulatory approvals, and/or coronavirus impacts, could materially damage our brand, business, prospects, financial condition and operating results.

***We may be unable to meet our growing production plans and delivery plans, any of which could harm our business and prospects.***

Our plans call for achieving and sustaining significant increases in vehicles production and deliveries. Our ability to achieve these plans will depend upon a number of factors, including our ability to utilize our current manufacturing capacity, achieve the planned production yield and further increase capacity as planned while maintaining our desired quality levels and optimize design and production changes, and our suppliers' ability to support our needs. If we are unable to realize our plans, our brand, business, prospects, financial condition and operating results could be materially damaged.

***We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of our products according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components, could have a material adverse effect on our financial condition and operating results.***

Our vehicles contain numerous purchased parts which we source globally from direct suppliers, the majority of whom are currently single-source suppliers. Any significant unanticipated demand would require us to procure additional components in a short amount of time. While we believe that we will be able to secure additional or alternate sources of supply for most of our components in a relatively short time frame, there is no assurance that we will be able to do so or develop our own replacements for certain highly customized components of our products.

If we encounter unexpected difficulties with key suppliers such as our battery and chassis suppliers, and if we are unable to fill these needs from other suppliers, we could experience production delays and potential loss of access to important technology and parts for producing, servicing and supporting our vehicles. This limited, and in many cases single source, supply chain exposes us to multiple potential sources of delivery failure or component shortages for the production of our vehicles. The loss of any single or limited source supplier or the disruption in the supply of components from these suppliers could lead to design changes and delays in product deliveries to our customers, which could hurt our relationships with our customers and result in negative publicity, damage to our brand and a material and adverse effect on our business, prospects, financial condition and operating results.

***Changes in our supply chain may result in increased cost. If we are unsuccessful in our efforts to control and reduce supplier costs, our operating results will suffer.***

There is no assurance that our suppliers will ultimately be able to meet our cost, quality and volume needs, or do so at the times needed. Furthermore, as the scale of our production increases, we will need to accurately forecast, purchase, warehouse and transport to our manufacturing facilities components at much higher volumes than we have experience with. If we are unable to accurately match the timing and quantities of component purchases to our actual needs, or successfully implement automation, inventory management and other systems to accommodate the increased complexity in our supply chain, we may incur unexpected production disruption, storage, transportation and write-off costs, which could have a material adverse effect on our financial condition and operating results.

***The duration and scope of the impacts of the COVID-19 pandemic are uncertain and has adversely affect our supply chain and may in affect our operations, distribution, and demand for our products.***

If we were to encounter a significant disruption due to COVID-19 at one or more of our suppliers, we may not be able to satisfy customer demand for a period of time. We have recently experienced delays and extended delivery dates with respect to the computer chips we utilize for our vehicles. Although we believe these delays will not affect our ability to deliver our initial vehicles, they may restrict our ability to deliver vehicles in the future. Furthermore, the impact of COVID-19 on the economy, demand for our products and impacts to our operations, including the measures taken by governmental authorities to address it, may precipitate or exacerbate other risks and/or uncertainties, including specifically many of the risk factors set forth herein, which may have a significant impact on our operating results and financial condition, although we are unable to predict the extent or nature of these impacts at this time.

***We are currently taking orders for the Grunt, and if this vehicle fails to perform as expected,our reputation could be harmed and our ability to develop, market and sell our vehicles could be harmed.***



If our vehicles were to contain defects in design and manufacture that cause them not to perform as expected or that require repair or take longer than expected to deliver, our ability to develop, market and sell our vehicles could be harmed. While we intend to perform internal testing on the vehicles we assemble, as a start-up company we currently have a no frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our vehicles. There can be no assurance that we will be able to detect and fix any defects in our products prior to their sale to consumers. Any product defects, delays, or other failure of our products to perform as expected could harm our reputation and result in delivery delays, product recalls, product liability claims, significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

***Our success will depend on our ability to economically produce our vehicles at scale, and our ability to produce vehicles of sufficient quality and appeal to customers on schedule and at scale is unproven.***

Our business success will depend in large part on our ability to economically produce, market and sell our vehicles at sufficient capacity to meet the demands of our customers. We will need to scale our production capacity in order to successfully implement our business strategy, and we plan to do so in the future by, among other things, completing the build-out of an additional facility we leased in August 2021 in Round Rock, Texas and our Liberty Hill, Texas assembly facility when it is constructed.

We have no experience in large-scale production of our vehicles, and we do not know whether we will be able to develop efficient, automated, low-cost production capabilities and processes, such that we will be able to meet the quality, price, and production standards, as well as the production volumes, required to successfully market our vehicles and meet our business objectives and customer needs. Any failure to develop and scale our production capability and processes could have a material adverse effect on our business, results of operations or financial condition.

---

10

***We may not succeed in establishing, maintaining and strengthening our brand, which could materially and adversely affect customer acceptance of our products, which could in turn materially affect our business, results of operations or financial condition.***

Our business and prospects heavily depend on our ability to develop, maintain and strengthen the Volcon brand. If we are unable to establish, maintain and strengthen our brand, we may lose the opportunity to build and maintain a critical mass of customers. Our ability to develop, maintain and strengthen our brand will depend heavily on the success of our marketing efforts. Failure to develop and maintain a strong brand would materially and adversely affect customer acceptance of our vehicles, could result in suppliers and other third parties being less likely to invest time and resources in developing business relationships with us, and could materially adversely affect our business, results of operations or financial condition.

***If we are unable to achieve our targeted manufacturing costs for our vehicles, our financial condition and operating results will suffer.***

As a start-up company, we have no historical data that allows us to ensure our targeted manufacturing costs will be achievable. While we expect in the future to better understand our manufacturing costs, there is no guarantee we will be able to achieve sufficient cost savings to reach our gross margin and profitability goals. We may also incur substantial costs or cost overruns in utilizing and increasing the production capability of our vehicle assembly facilities.

If we are unable to achieve production cost targets on our vehicles pursuant to our plans, we may not be able to meet our gross margin and other financial targets. Many of the factors that impact our manufacturing costs are beyond our control, such as potential increases in the costs of our materials and components, such as batteries and chassis. If we are unable to continue to control and reduce our manufacturing costs, our operating results, business and prospects will be harmed.

***Increases in costs, disruption of supply, or shortage of materials could harm our business.***

We may experience increases in the cost or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and negatively impact our business, prospects, financial condition and operating results. The prices for these materials fluctuate, and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased production of electric vehicle (EV) products by our competitors, and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to battery packs. These risks include:

- an increase in the cost, or decrease in the available supply, of materials used in the battery packs;
- disruption in the supply of battery packs due to quality issues or recalls by battery cell manufacturers; and
- tariffs on the materials we source in China, which make up a significant amount of the materials we require

Our business is dependent on the continued supply of battery cells for the battery packs used in our vehicles. Any disruption in the supply of battery cells could disrupt production of our vehicles. Substantial increases in the prices for our materials or prices charged to us, such as those charged by battery cell suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased prices. Any attempts to increase prices in response to increased material costs could result in cancellations of vehicle orders and therefore materially and adversely affect our brand, image, business, prospects and operating results.

---

11

***An adverse determination in any significant product liability claim against us could materially adversely affect our business, results of operations or financial condition.***

The development, production, marketing, sale and usage of our vehicles will expose us to significant risks associated with product liability claims. The powersports vehicles industry in particular is vulnerable to significant product liability claims, and we may face inherent risk of exposure to claims in the event our vehicles do not perform or are claimed to not have performed as expected. If our products are defective, malfunction or are used incorrectly by our customers, it may result in bodily injury, property damage or other injury, including death, which could give rise to product liability claims against us. Any losses that we may suffer from any liability claims and the effect that any product liability litigation may have upon the brand image, reputation and marketability of our products could have a material adverse impact on our business, results of operations or financial condition. No assurance can be given that material product liability claims will not be made in the future against us, or that claims will not arise in the future in excess or outside of our insurance coverage and contractual indemnities with suppliers and manufacturers. We believe we have adequate product liability insurance; however, as we release new products and expand our sales channels, we may not be able to obtain adequate product liability insurance or the cost of doing so may be prohibitive. Adverse determinations of material product liability claims made against us could also harm our reputation and cause us to lose customers and could have a material adverse effect on our business, results of operations or financial condition.

***The markets in which we operate are in their infancy and highly competitive, and we may not be successful in competing in these industries as the industry further develops. We currently face competition from new and established competitors and expect to face competition from others in the future, including competition from***

*companies with new technology.*

The EV market is in its infancy, and we expect it will become more competitive in the future. There is no assurance that our vehicles will be successful in the respective markets in which they compete. A significant and growing number of established and new companies, as well as other companies, have entered or are reported to have plans to enter the EV market, including the off-road market that we intend to pursue. Most of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing, sales networks and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. Increased competition could result in lower vehicles sales, price reductions, revenue shortfalls, loss of customers and loss of market share, which could harm our business, prospects, financial condition and operating results.

***We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs.***

Others, including our competitors, may hold or obtain patents, copyrights, trademarks or other proprietary rights that could prevent, limit or interfere with our ability to make, use, develop, sell or market our products and services, which could make it more difficult for us to operate our business. From time to time, the holders of such intellectual property rights may assert their rights and may bring suits alleging infringement or misappropriation of such rights. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to cease making, selling or incorporating certain components or intellectual property into the products we offer, to pay substantial damages and/or license royalties, to redesign our products, and/or to establish and maintain alternative branding for our products.

We have applied for trademark rights for the "Volcon" brand name and our logo in the United States and Latin America. We have received notice from two entities who have indicated they will protest the issuance of a trademark for the Volcon name due to the similarity of Volcon to their trademarks, even though our products are different. We are currently in negotiation with these entities to obtain an agreement that our Volcon trademark can co-exist with their trademarks. If we are unsuccessful in obtaining agreement with these entities, we will need to consider the use of a different trademark for our Company and our products.

In the event that we were required to take one or more such actions, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention.

***Potential tariffs or a global trade war could increase our costs and could further increase the cost of our products, which could adversely impact the competitiveness of our products and our financial results.***

Our vehicles depend on materials from China, namely batteries, which are among the main components of our vehicles. We cannot predict what actions may be taken with respect to tariffs or trade relations between the United States and China, what products may be subject to such actions, or what actions may be taken by the China in retaliation. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs, trade agreements or related policies have the potential to adversely impact our supply chain and access to equipment, our costs and our product margins. Any such cost increases or decreases in availability could slow our growth and cause our financial results and operational metrics to suffer.

***Subsequent to fulfilling orders we have received directly from consumers, we intend to sell our vehicles and accessories through a network of third parties, and there is no assurance that we will be able to successfully build out this network.***

Initially, we intend to sell our vehicles directly to the consumer via our website. We also intend to sell our vehicles in the U.S. to major outdoor retailer chains, farm and agriculture suppliers that are also vehicle dealers and even some high-quality powersports dealerships. Some of the vehicle transactions will be executed through the Volcon web platform and fulfilled by a dealer but most will be sold directly by our dealers.

We are also developing a line of aftermarket accessories for our vehicles that will be manufactured and produced by third parties. We intend to market our accessories on our website but also use our dealer network to display and sell these accessories.

We also intend to sell our vehicles internationally through international distributors. We have signed distributor agreements with distributors in Central and South America. We are relying on these distributors to market, promote, sell and service our vehicles and sell accessories in their designated countries/territories.

We believe our success will be highly dependent on our ability to build out this network in the major markets in which we intend to compete for customers, and to maintain this network in the future. Our model is dependent not only on our ability to create the foregoing network, but also on the commitment and motivation of these third parties to promote our brand and products.

***Orders for vehicles are cancelable and the deposit fully refundable until delivered to and accepted by the customer 14 days from delivery, and there can be no assurance that such orders will be converted into sales.***

As of September 1, 2021, U.S. customers have made deposits for 278 Grunts and 5 Runts, plus accessories and a deliver fee representing total deposits of \$1.8 million. These orders are cancelable by the customer until the vehicle is delivered and after a 14-day acceptance period, therefore the deposits have been recorded as deferred revenue. Based on our current production capacity, we believe we will deliver all of the Grunts by November 2021 and the Runts by the first quarter of 2022.

As of September 1, 2021, we have received orders from Latin America importers for 92 Grunts. Payment for these orders is due prior to shipment and are cancelable until shipped. Based on our current production capacity, we believe we will be able to fulfill all pending orders by November 2021.

The estimated fulfillment of all orders we have received assumes we are successfully able to increase our production capacity in the future, of which there is no assurance. We only recently commenced assembling vehicles and we may encounter delays or setbacks as we increase production. If we are unable to satisfy pending orders on a timely basis, customers may cancel their orders.

In some cases, there will be significant time between a customer ordering a vehicle and the eventual delivery of the vehicle, which creates a heightened risk that a customer that ordered a vehicle may change his or her mind and not ultimately take delivery of the vehicle, and accessories if purchased in their order, even though the customer paid the full list price to complete their order. As a result, no assurance can be made that orders will not be cancelled. Any cancellations could harm our financial condition, business, prospects and operating results.

***We may be unable to improve our existing products and develop and market new products that respond to customer needs and preferences and achieve market acceptance.***

We may not be able to compete as effectively with our competitors, and ultimately satisfy the needs and preferences of our customers, unless we can successfully enhance existing products, develop new innovative products and distinguish our products from our competitors' products through innovation and design. Product development requires significant financial, technological, and other resources. There can be no assurance that we will be able to incur a level of investment in research and development that will be sufficient to successfully make us competitive in product innovation and design. In addition, even if we are able to successfully enhance existing products and develop new products, there is no guarantee that the markets for our existing products and new products will progress as anticipated. If any of the markets in which our existing products compete do not develop as expected, our business, results of operations or financial condition could be materially adversely affected.

***We have no experience servicing our vehicles, we intend to primarily utilize third parties to service our vehicles, and if we are unable to address the service requirements of our customers, our business could be materially and adversely affected.***

We have no experience servicing or repairing our vehicles, and we intend to primarily utilize third parties to service our vehicles. We are in the process of developing a network of third-party service providers who will also be our dealers, but we can provide no assurance that we will be successful in building out this network in all the markets in which we hope to compete, or that we will be able to maintain such a network in the future. Servicing electric vehicles is different than servicing vehicles with internal combustion engines and requires specialized skills, including high voltage training and servicing techniques. If we are unable to successfully address the service requirements of our customers, our business and prospects will be materially and adversely affected. If we are unable to successfully address the servicing requirements of our customers or establish a market perception that we maintain high-quality support, our reputation could be harmed, we may be subject to claims from our customers, and our business, results of operations or financial condition may be materially and adversely affected.

***Significant product repair and/or replacement due to product warranty claims or product recalls could have a material adverse impact on our business, results of operations or financial condition.***

We will provide a one-year warranty against defects for our vehicles, and a two-year warranty on the batteries in our vehicles. Our warranty will generally require us to repair or replace defective products during such warranty periods at no cost to the consumer. We will record provisions based on an estimate of product warranty claims, but there is the possibility that actual claims may exceed these provisions and therefore negatively impact our results of operations or financial condition.

In addition, we may in the future be required to make product recalls or could be held liable in the event that some of our products do not meet safety standards or statutory requirements on product safety, even if the defects related to any such recall or liability are not covered by our limited warranty. The repair and replacement costs that we could incur in connection with a recall could have a material adverse effect on our business, results of operations or financial condition. Product recalls could also harm our reputation and cause us to lose customers, particularly if recalls cause consumers to question the safety or reliability of our products, which could have a material adverse effect on its business, results of operations or financial condition.

***Our success is dependent upon the success of the off-road vehicle industry and upon consumers' willingness to adopt electric vehicles.***

Our success is dependent upon the success of the off-road vehicle industry as a whole, and in particular upon consumers' willingness to adopt electric vehicles as an alternative to combustion vehicles. If the market for electric off-road vehicles does not develop at the rate or in the manner or to the extent that we expect, our business, results of operations or financial condition may be adversely materially affected. The market for electric vehicles is relatively new, rapidly evolving, characterized by rapidly changing technologies, price competition, additional competitors, evolving government regulation and industry standard, frequent new vehicle announcements and changing consumer demands and behaviors. Factors that may influence the adoption of electric vehicles include:

- perceptions about electric vehicle quality, safety, design, performance and costs;
- the limited range over which electric vehicles may be driven on a single battery charge, and the decline of an electric vehicle's range resulting from deterioration over time in the battery's ability to hold a charge;
- the ability to easily charge electric vehicles;
- volatility in the cost of oil and gasoline, and improvements in the fuel economy of combustion engines; and
- the environmental consciousness of off-road vehicles customers.

The influence of any of the factors described above may cause our customers not to purchase our vehicles and may otherwise materially adversely affect our business, results of operations or financial condition.

***We currently operate in an area that is not heavily regulated, and future changes in government oversight may subject us to increased regulations, which may increase our expenses.***

The off-road vehicle market is not heavily regulated, as compared to on-road vehicles, and, as such, we are not currently subject to significant government regulations. As this market develops and grows, it may come under increased regulatory scrutiny, which may result in increased regulations. This increase in regulations may result in increased costs and expenses, which may materially and adversely affect our business, results of operations or financial condition.

***We will lease a new facility from an entity controlled by our founders, and this arrangement was not conducted on an arm's length basis.***

We will be leasing a dedicated, built-to-suit manufacturing facility on 53 acres in Liberty Hill, Texas from an entity controlled by our founders. Although we believe the lease terms are at or below current market rates, due to the relationship between our company and our founders, the negotiation of the lease agreement was not conducted on an arm's length basis. As such, it is possible that the terms were less favorable to us than in a transaction negotiated in an arm's length transaction.

#### **Risks Related to Our Common Stock and this Offering**

***Our directors and executive officers will continue to exercise significant control over us after this offering, which will limit your ability to influence corporate matters and could delay or prevent a change in corporate control.***

Immediately following the completion of this offering, the existing holdings of our directors and executive officers, assuming full exercise of the warrants held by such individuals, will be, in the aggregate, approximately 57% of our outstanding common stock. As a result, these stockholders will be able to influence our management and affairs and control the outcome of matters submitted to our stockholders for approval, including the election of directors and any sale, merger, consolidation, or sale of all or substantially all of our assets.

These stockholders acquired their shares of common stock for substantially less than the price of the shares of common stock being acquired in this offering, and these stockholders may have interests, with respect to their common stock, that are different from those of investors in this offering and the concentration of voting power among one

or more of these stockholders may have an adverse effect on the price of our common stock.

In addition, this concentration of ownership might adversely affect the market price of our common stock by: (1) delaying, deferring or preventing a change of control of our company; (2) impeding a merger, consolidation, takeover or other business combination involving our company; or (3) discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company.

***We are party to certain agreements with our founders that may create a conflict of interest for our board of directors in evaluating a potential change of control transaction.***

We have entered into consulting agreements with Pink Possum, LLC (“Pink Possum”), an entity controlled by Mr. Okonsky, and Highbridge Consultants, LLC (“Highbridge”), an entity controlled by Mr. James, pursuant to which Messrs. Okonsky and James provide us with services. Pursuant to the consulting agreements, upon the occurrence of a Fundamental Transaction, which generally includes a business combination, merger, or sale of all or substantially all of our assets (or similar events), for an aggregate gross sales price of \$100.0 million or more, each entity will receive a cash payment equal to 1% of such gross sales price. Since Messrs. Okonsky and James are entitled to these payments, they may have a conflict of interest in determining whether a particular Fundamental Transaction is in the best interests of our shareholders. Furthermore, these payments upon the consummation of a Fundamental Transaction may make our company less attractive to a potential acquirer or may reduce the valuation we receive in connection with a Fundamental Transaction.

***We have broad discretion in how we use the proceeds of this offering and may not use these proceeds effectively.***

We will have considerable discretion in the application of the net proceeds of this offering. As a result, investors will be relying upon management’s judgment with only limited information about our specific intentions for the use of the net proceeds of this offering. We may use the net proceeds for purposes that do not yield a significant return or any return at all for our stockholders. In addition, pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

***Purchasers in this offering will experience immediate and substantial dilution in net tangible book value.***

The initial public offering price is substantially higher than the net tangible book value of each outstanding share of our common stock. Purchasers of common stock in this offering will experience immediate and substantial dilution on a book value basis. The dilution per share in the net tangible book value per share of common stock will be \$3.02 per share, based on a \$5.00 initial public offering price, which is the midpoint of the price range in this offering. If outstanding stock options and warrants to purchase shares of common stock are exercised, there would be further dilution. See “Dilution.”

***Your ownership may be diluted if additional capital stock is issued to raise capital, to finance acquisitions or in connection with strategic transactions.***

We intend to seek to raise additional funds, finance acquisitions or develop strategic relationships by issuing equity or convertible debt securities in addition to the shares issued in this offering, which would reduce the percentage ownership of our existing stockholders. Our board of directors has the authority, without action or vote of the stockholders, to issue all or any part of our authorized but unissued shares of common or preferred stock. Our certificate of incorporation authorizes us to issue up to 100,000,000 shares of common stock and 5,000,000 shares of preferred stock. Future issuances of common or preferred stock would reduce your influence over matters on which stockholders vote and would be dilutive to earnings per share. In addition, any newly issued preferred stock could have rights, preferences and privileges senior to those of the common stock. Those rights, preferences and privileges could include, among other things, the establishment of dividends that must be paid prior to declaring or paying dividends or other distributions to holders of our common stock or providing for preferential liquidation rights. These rights, preferences and privileges could negatively affect the rights of holders of our common stock, and the right to convert such preferred stock into shares of our common stock at a rate or price that would have a dilutive effect on the outstanding shares of our common stock.

***We are not subject to Sarbanes-Oxley regulations and lack the financial controls and safeguards required of public companies.***

We do not have the internal infrastructure necessary, and are not required, to complete an attestation about our financial controls that would be required under Section 404 of the Sarbanes Oxley Act of 2002. There can be no assurance that we will be able to remediate our material weaknesses or that there are no new significant deficiencies or material weaknesses in the quality of our financial controls. We expect to incur additional expenses and diversion of management’s time if and when it becomes necessary to perform the system and process evaluation, testing and remediation required in order to comply with the management certification and auditor attestation requirements.

## **General Risk Factors**

***If our stock price fluctuates after the offering, you could lose a significant part of your investment.***

The market price of our common stock could be subject to wide fluctuations in response to, among other things, the risk factors described in this prospectus, and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us. Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political, and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock. In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management’s attention from other business concerns, which could seriously harm our business.

***We will incur increased costs as a result of being a publicly-traded company.***

As a company with publicly-traded securities, we will incur additional legal, accounting and other expenses not presently incurred. In addition, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as well as rules promulgated by the SEC and the national securities exchange on which we list, requires us to adopt corporate governance practices applicable to U.S. public companies. These rules and regulations will increase our legal and financial compliance costs.

***If securities or industry analysts do not publish research or reports about us, or if they adversely change their recommendations regarding our common stock, then our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts publish about us, our industry and our market. If no analyst elects to cover us and publish research or reports about us, the market for our common stock could be severely limited and our stock price could be adversely affected. As a small-cap company, we are more likely than our larger competitors to lack coverage from securities analysts. In addition, even if we receive analyst coverage, if one or more analysts ceases coverage of us or fails to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline. If one or more analysts who elect to cover us issue negative reports or adversely change their recommendations regarding our common stock, our stock price could decline.

*As an “emerging growth company” under the Jumpstart Our Business Startups Act, or JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements.*

As an “emerging growth company” under the JOBS Act, we are permitted to, and intend to, rely on exemptions from certain disclosure requirements. We are an emerging growth company until the earliest of:

- the last day of the fiscal year during which we have total annual gross revenues of \$1.07 billion or more;
- the last day of the fiscal year following the fifth anniversary of this offering;
- the date on which we have, during the previous 3-year period, issued more than \$1 billion in non-convertible debt; or
- the date on which we are deemed a “large accelerated issuer” as defined under the federal securities laws.

For so long as we remain an emerging growth company, we will not be required to:

- have an auditor report on our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002;
- comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements (auditor discussion and analysis);
- submit certain executive compensation matters to shareholders advisory votes pursuant to the “say on frequency” and “say on pay” provisions (requiring a non-binding shareholder vote to approve compensation of certain executive officers) and the “say on golden parachute” provisions (requiring a non-binding shareholder vote to approve golden parachute arrangements for certain executive officers in connection with mergers and certain other business combinations) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;
- include detailed compensation discussion and analysis in our filings under the Securities Exchange Act of 1934, as amended, and instead may provide a reduced level of disclosure concerning executive compensation;
- may present only two years of audited financial statements and only two years of related Management’s Discussion and Analysis of Financial Condition and Results of Operations, or MD&A; and
- are eligible to claim longer phase-in periods for the adoption of new or revised financial accounting standards under §107 of the JOBS Act.

We intend to take advantage of all of these reduced reporting requirements and exemptions, other than the longer phase-in periods for the adoption of new or revised financial accounting standards under §107 of the JOBS Act.

Certain of these reduced reporting requirements and exemptions were already available to us due to the fact that we also qualify as a “smaller reporting company” under SEC rules. For instance, smaller reporting companies are not required to obtain an auditor attestation and report regarding management’s assessment of internal control over financial reporting; are not required to provide a compensation discussion and analysis; are not required to provide a pay-for-performance graph or CEO pay ratio disclosure; and may present only two years of audited financial statements and related MD&A disclosure.

We cannot predict if investors will find our securities less attractive due to our reliance on these exemptions. If investors were to find our common stock less attractive as a result of our election, we may have difficulty raising all of the proceeds we seek in this offering.

#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This document contains forward-looking statements. In addition, from time to time, we or our representatives may make forward-looking statements orally or in writing. We base these forward-looking statements on our expectations and projections about future events, which we derive from the information currently available to us. Such forward-looking statements relate to future events or our future performance, including: our financial performance and projections; our growth in revenue and earnings; and our business prospects and opportunities. You can identify forward-looking statements by those that are not historical in nature, particularly those that use terminology such as “may,” “should,” “expects,” “anticipates,” “contemplates,” “estimates,” “believes,” “plans,” “projected,” “predicts,” “potential,” or “hopes” or the negative of these or similar terms. In evaluating these forward-looking statements, you should consider various factors, including: our ability to change the direction of the Company; our ability to keep pace with new technology and changing market needs; and the competitive environment of our business. These and other factors may cause our actual results to differ materially from any forward-looking statement. Forward-looking statements are only predictions. The forward-looking events discussed in this document and other statements made from time to time by us or our representatives, may not occur, and actual events and results may differ materially and are subject to risks, uncertainties and assumptions about us. We are not obligated to publicly update or revise any forward-looking statement, whether as a result of uncertainties and assumptions, the forward-looking events discussed in this document and other statements made from time to time by us or our representatives might not occur.

While we believe we have identified material risks, these risks and uncertainties are not exhaustive. Other sections of this prospectus describe additional factors that could adversely impact our business and financial performance. 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 to predict all risks and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance or achievements. Moreover, neither we nor any other person assumes responsibility for the accuracy or completeness of any of these forward-looking statements. You should not rely upon forward-looking statements as predictions of future events. We are under no duty to update any of these forward-looking statements after the date of this prospectus to conform our prior statements to actual results or revised expectations, and we do not intend to do so.

Forward-looking statements include, but are not limited to, statements about:

- our ability to obtain additional funding to market our vehicles and develop new products;
- our ability to produce our vehicles with sufficient scale and quality to satisfy customers;
- whether we experience delays in the design, production and launch of our vehicles;
- the inability of our suppliers to deliver the necessary components for our vehicles at prices and volumes acceptable to us;
- our ability to establish a network of dealers to sell and service our vehicles.
- our vehicles failing to perform as expected;
- our facing product warranty claims or product recalls;
- our facing adverse determinations in significant product liability claims;
- customers not adopting electric vehicles;
- the development of alternative technology that adversely affects our business;
- the impact of COVID-19 on our business;
- increased government regulation of our industry; and
- tariffs and currency exchange rates.

We caution you not to place undue reliance on the forward-looking statements, which speak only as of the date of this prospectus in the case of forward-looking statements contained in this prospectus.

#### USE OF PROCEEDS

We estimate that we will receive net proceeds from the sale of common stock of approximately \$13.6 million (or approximately \$14.6 million if the underwriters' option to purchase additional common stock from us is exercised in full), based upon an assumed initial public offering price of \$5.00 per share, the midpoint of the 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 intend to use the net proceeds from this offering as follows: (i) approximately \$5.0 million for non-recurring engineering costs related to our development of our vehicles; (ii) approximately \$4.0 million to fund the purchase of inventory and production costs of our vehicles; (iii) approximately \$2.0 million for capital expenditures to build assembly lines; (iv) \$2.0 million to repay the 6% promissory note issued in September 2021, which we utilized for working capital and to pay offering expenses; and (v) the remainder for working capital. To the extent the underwriters' option to purchase additional common stock from us is exercised, we intend to use any additional net proceeds from such over-allotment option for working capital.

We believe the net proceeds of this offering, together with our cash and cash equivalents, will be sufficient to meet our cash, operational and liquidity requirements for at least twelve months.

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. Accordingly, our management will have broad discretion in the application of these proceeds. Net offering proceeds not immediately applied to the uses summarized above will be invested in short-term investments such as money market funds, commercial paper, U.S. treasury bills and similar securities investments pending their use.

#### DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain earnings, if any, to finance the growth and development of our business. We do not expect to pay any cash dividends on our common stock in the foreseeable future. Payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in any financing instruments, provisions of applicable law and other factors the board deems relevant.

#### CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2021 on:

- an actual basis; and
- a pro forma as adjusted basis after giving effect to: (1) the sale of 3,025,000 shares of our common stock in this offering at a public offering price of \$5.00 (the midpoint of the range set forth on the cover page of this prospectus), and our receipt of the estimated \$13.6 million in net proceeds from this offering, after deducting underwriting commissions and estimated offering expenses payable by us; (2) the issuance of 266,666 shares of common stock to a lender for providing a 6% promissory note of \$2.0 million, that will be repaid from the proceeds from the sale of shares in this offering and resulting loss on repayment of \$893,000 (3) the conversion of 1,191,388 shares of Series A preferred stock that will convert into 2,978,588 shares of common stock upon the closing of this offering issued in our private placement that was completed in January 2021; (4) 1,105,827 shares of Series B preferred stock that will convert into 2,764,587 shares of common stock upon the closing of this offering issued in our private placement that was commenced in March 2021 and completed in June 2021; and (5) the issuance of 162,507 shares of common stock to employees.

You should read this capitalization table together with "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes appearing elsewhere in this prospectus.

	At June 30, 2021	
	Actual	Pro Forma
Cash and cash equivalents	\$ 6,017,095	\$ 19,475,845
Notes payable – short and long-term	93,687	93,687
Stockholders' equity:		
Preferred Stock, \$0.00001 par value: 5,000,000 authorized		
Series A Preferred stock, \$0.00001 par value: 1,400,000 authorized, convertible one share to 2.5 common shares, actual and pro forma; 1,191,388 shares issued and outstanding, actual and no shares issued and outstanding, pro forma	12	-
Series B Preferred stock, \$0.00001 par value, convertible one share to 2.5 common shares: 1,500,000 authorized, actual and pro forma; 1,105,827 shares issued and outstanding, actual and no shares issued and outstanding, pro forma	11	-
Common stock, \$0.00001 par value: 100,000,000 shares authorized, actual; 2,140,546 shares issued and outstanding, 11,304,561 shares issued and outstanding, pro forma (1)	8	64
Additional paid-in capital	29,924,400	44,276,117
Accumulated deficit	(20,829,698)	(21,722,698)
Total stockholders' equity	9,094,733	22,553,483
Total capitalization	\$ 9,188,420	\$ 22,647,170

- (1) Amount includes 2,140,546 actual shares outstanding as of June 30, 2021 plus (i) 266,666 shares issued on September 10, 2021 to a lender for issuing a 6% promissory note of \$2.0 million to the Company, (ii) 162,507 shares of common stock awarded to employees on July 27, 2021, (iii) 5,743,175 shares of common stock issuable upon conversion of our Series A preferred stock and Series B preferred stock, and (iv) 3,025,000 shares issued from this offering.

The number of shares of common stock to be outstanding after this offering does not give effect to:

- 11,516,142 shares of common stock underlying outstanding warrants at a weighted average exercise price of \$1.03 per share;
- 1,646,875 shares of common stock underlying outstanding options with a weighted average exercise price of \$1.44 per share;
- 450,000 shares of common stock reserved for issuance upon vesting of restricted stock units;
- 740,618 shares available for future issuance under the Volcon, Inc. 2021 Stock Plan;
- 151,250 shares of common stock issuable upon exercise of warrants to be issued to the underwriters in connection with this offering with an exercise price of \$6.25 per share assuming the midpoint of the range.

## DILUTION

Purchasers of our common stock in this offering will experience an immediate dilution of net tangible book value per share from the initial public offering price. Dilution in net tangible book value per share represents the difference between the amount per share paid by the purchasers of shares of common stock and the net tangible book value per share immediately after this offering.

As of June 30, 2021, our net tangible book value was \$9,042,075, or \$4.22 per share of common stock. Net tangible book value per share represents our total tangible assets, less our total liabilities, divided by the number of outstanding shares of our common stock.

Dilution represents the difference between the amount per share paid by purchasers in this offering and the pro forma net tangible book value per share of common stock after the offering. After giving effect to (i) the sale of shares of common stock in this offering at the offering price of \$5.00 per share, the midpoint of the range set forth on the cover page of this prospectus, and after deducting underwriting commissions and estimated offering expenses payable by us, (ii) the issuance of 1,191,388 shares of Series A preferred stock completed in February 2021 at an offering price of \$6.43 per share that will convert into 2,978,588 shares of common stock upon the closing of this offering issued in a private placement that was, (iii) the issuance of 1,105,827 shares of Series B preferred stock that was completed in June 2021 at an offering price of \$9.50 per share that will convert into 2,764,587 shares of common stock upon the closing of this offering issued in a private placement, (iv) the issuance of 162,507 shares of common stock to employees for attaining certain performance targets, and (v) the issuance of 266,666 shares of common stock in September 2021 to a lender for issuing a \$2.0 million of 6% promissory note to the Company, but without adjusting for any other change in our net tangible book value subsequent to June 30, 2021, our pro forma net tangible book value would have been \$1.98 per share. This represents an immediate decrease in pro forma net tangible book value of \$2.24 per share to our existing stockholders and immediate dilution of \$3.02 per share to new investors purchasing shares at the proposed public offering price. The following table illustrates the dilution in pro forma net tangible book value per share to new investors as of June 30, 2021:

Assumed initial public offering price per share	\$ 5.00
Net tangible book value per share at June 30, 2021	\$ 4.22
Decrease in net tangible book value per share to the existing stockholders attributable to this offering	\$ (2.24)
Adjusted net tangible book value per share after this offering	\$ 1.98
Dilution in net tangible book value per share to new investors	\$ 3.02

The following tables set forth, as of September 10, 2021, the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid by the existing holders of our common stock and the price to be paid by new investors at the public offering price.

	Shares Purchased			Total Consideration		Average Price Per Share
	Number	Percent		Amount	Percent	
Existing stockholders (1)	8,312,894	73%	\$	18,914,814	56%	\$ 2.28
Investors purchasing shares in this offering	3,025,000	27%		15,125,000	44%	\$ 5.00
Total	11,337,894	100%	\$	34,039,814	100%	\$ 3.01

- (1) Includes 2,569,719 shares of common stock outstanding as of September 10, 2021, and 5,743,175 shares of common stock to be issued for the conversion of 1,191,388 shares of Series A preferred stock issued at \$6.43 per share and 1,105,827 shares of Series B preferred stock issued at \$9.50 per share upon completion of the offering.

The number of shares of common stock to be outstanding after this offering does not give effect to:

- 11,516,142 shares issuable upon exercise of outstanding warrants at a weighted average exercise price of \$1.03 per share;
- 1,646,875 shares of common stock issuable upon exercise of options with a weighted average conversion price of \$1.75 per share;
- 450,000 shares of common stock reserved for issuance upon vesting of restricted stock units;
- 740,618 shares available for future issuance under the Volcon, Inc. 2021 Stock Plan; and
- 151,250 shares of common stock issuable upon exercise of warrants to be issued to the underwriters in connection with this offering at an exercise price of \$6.25 per share assuming the midpoint of the range.

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

*The following discussion of our financial condition and results of operations should be read in conjunction with the financial statements and the notes thereto included in this prospectus. The following discussion contains forward-looking statements. Actual results could differ materially from the results discussed in the forward-looking statements. See "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" above.*

### Overview

We are an all-electric, off-road powersports vehicle company developing and building electric two and four-wheel motorcycles and utility terrain vehicles (UTVs), also known as side-by-sides. In October 2020, we launched our offerings with two off-road motorcycles – the Grunt and the Runt. We are currently taking orders on our website for these initial offerings, and expect to begin delivering the Grunts in the third quarter of 2021 and the Runts in the first quarter of 2022. Also in 2022, we expect to expand our offerings with the Volcon Stag, a UTV, followed in 2023 by a higher performance, longer range UTV called the Beast.

We are assembling the Grunt in a leased production facilities in Round Rock, Texas. We will be leasing a dedicated, built-to-suit manufacturing facility on 53 acres in Liberty Hill, Texas, 25 miles northwest of downtown Austin from an entity controlled by our founders. We expect to begin production at this facility in the third quarter of 2022.

We initially intend to sell and distribute our vehicles and accessories in the U.S. on a direct-to-consumer sales platform. We are currently negotiating dealership agreements with retail partners to display and sell our vehicles and accessories. Once we have dealers in each state, customers can either purchase a vehicle and accessories through our website and pick them up at a local dealership, or they can buy them directly from a local dealership. Some of these retail partners will also provide warranty and repair services to our customers.

As of September 1, 2021, U.S. customers have made deposits for 278 Grunts and 5 Runts, plus accessories and a deliver fee representing total deposits of \$1.8 million. These orders are cancelable by the customer until the vehicle is delivered and after a 14-day acceptance period, therefore the deposits have been recorded as deferred revenue. Based on our current production capacity, we believe we will deliver all of the Grunts by November 2021 and all of the Runts by the first quarter of 2022.

Our vehicles and accessories will be sold globally in a three-phase rollout of export sales— Latin America importers in 2021, Canada, Europe, and Africa in 2022 and Southeast Asia plus Australia in 2023. Export sales are executed with individual importers in each country that buy vehicles by the container. Each importer will sell vehicles to local dealers or directly to customers. Local dealers will provide warranty and repair services for vehicles purchased in their country.

As of September 1, 2021, we have received orders from Latin America importers for 92 Grunts. Payment for these orders is due prior to shipment and are cancelable until shipped. Based on our current production capacity, we believe we will be able to fulfill all pending orders by November 2021.

### Results of Operations

We were formed on February 21, 2020. Operations for the period from February 21, 2020 (inception) to June 30, 2020 and the three months ended June 30, 2020 are not materially different; therefore, the financial information for 2020 below is from the inception through June 30, 2020.

	February 21, 2020 (inception) to June 30, 2020	Three months ended June 30, 2021	Six months ended June 30, 2021
Operating expenses:			
Sales and marketing	\$ 17,600	\$ 466,307	\$ 814,388
Product development	50,159	3,007,655	4,562,526
General and administrative	4,339	649,174	14,047,543
Total operating expenses	72,098	4,123,136	19,424,457
Loss from operations	72,098	(4,123,136)	(19,424,457)
Interest and other expense	—	12,463	30,828
Net loss	\$ 72,098	\$ (4,135,599)	\$ (19,455,285)

Due to recurring losses there is no provision for income taxes for any period presented.

### Sales and marketing

Sales and marketing expenses relate to costs to increase exposure and awareness for our products and developing our network of U.S. dealers and international distributors. Sales and marketing expenses for the period ended June 30, 2020 were not significant as we did not have significant operations during this period as there were no



sales and marketing employees. Sales and marketing expense were \$466,307 and \$814,388 for the three and six months ended June 30, 2021, respectively.

For the three months ended June 30, 2021, sales and marketing expenses were primarily related to professional fees of \$214,000, employee payroll costs of \$148,000, and stock-based compensation of \$29,000 for share based awards granted to employees. For the six months ended June 30, 2021, sales and marketing expenses were primarily related to professional fees of \$396,000, employee payroll costs of \$242,000, and stock-based compensation of \$76,000 for share based awards granted to employees and consultants.

We expect sales and marketing expense to increase as we expand our U.S. dealer network and our international distributor network and promote our products.

#### *General and Administrative Expense*

General and administrative expenses relate to costs for our finance, accounting and administrative functions to support the development, manufacturing and sales of our products. General and administrative expenses for the period ended June 30, 2020 were not significant as we did not have significant operations during this period as there were no employees. General and administrative expense were \$649,174 and \$14,047,543 for the three and six months ended June 30, 2021, respectively.

For the three months ended June 30, 2021, general and administrative expenses were primarily related to employee payroll costs of \$168,000, stock-based compensation of \$97,000 for share based awards granted to employees and consultants, and professional fees of \$361,000. For the six months ended June 30, 2021, general and administrative expenses were primarily related to employee payroll costs of \$252,000, stock-based compensation of \$13,225,000 (consisting of \$13.0 million due to warrants issued to our founders in March 2021 and \$225,000 due to share based awards granted to employees and consultants), and professional fees of \$496,000.

We expect general and administrative expenses, other than stock based compensation related to the founder warrants, to increase as we increase staffing to support sales, manufacturing, product development and to comply with public company requirements.

#### *Product Development Expense*

Product development expenses relate to development of our products and process to manufacture these products. Product development expense was not significant for the period from February 21, 2020 (inception) through June 30, 2020 as we did not have any employees as of June 30, 2020. Product development expenses for the three and six months ended June 30, 2021 were \$3,007,655 and \$4,562,526, respectively.

Product development expenses for the three months ended June 30, 2021 are primarily employee payroll costs of \$535,000, stock-based compensation of \$78,000 for share based awards granted to employees and consultants, professional fees of \$596,000 for product design, and prototype parts and tooling costs of \$1,576,000. Product development expenses in for the six months ended June 30, 2021 are primarily employee payroll costs of \$743,000, stock-based compensation of \$105,000 for share based awards granted to employees and consultants, professional fees of \$848,000 for product design, and prototype parts and tooling costs \$2,489,000.

We expect product development costs to increase in the future as our product development activities expand for new vehicle models.

#### *Interest and Other Expenses*

Interest and other expense for the three and six months ended June 30, 2021 primarily relates to interest on our notes payable used to purchase two vehicles and accretion on our lease obligation.

#### *Net Loss*

Net loss for the period from February 21, 2020 (inception) through June 30, 2020 was \$72,098 compared to \$4,135,599 and \$19,455,285 for the three and six months ended June 30, 2021.

#### **Liquidity and Capital Resources**

On June 30, 2021, we had cash of \$6.0 million and we had working capital of \$7.6 million. Since inception in February 2020, we have funded our operations from proceeds from debt and equity sales.

#### *Cash used in operating activities*

Operating activities for the period from February 21, 2020 (inception) to June 30, 2020 mainly included research and development costs, and professional fees for consultants and attorneys for the formation of the Company and early product development efforts. These costs were paid for by the founders on behalf of the Company. Net cash used in operating activities was \$8.3 million for the six months ended June 30, 2021 and includes all of our operating costs except stock-based compensation, and depreciation and amortization. Cash used in operating activities include increases in inventory and prepaid inventory totaling \$2.5 million as we made payments and deposits to purchase raw materials to begin production of the Grunt in September 2021 for delivery to customers.

#### *Cash used in investing activities*

Net cash used in investing activities was \$0.5 million for the six months ended June 30, 2021 and mainly included purchases of equipment and tooling related to our product development and certain intangible assets. There were no cash uses or cash provided from investing activities for the period ended June 30, 2020.

#### *Cash provided by financing activities*

There was no cash provided or used for financing activities for the period ended June 30, 2020. Net cash provided by financing activities was \$14.3 million for the six months ended June 30, 2021.

In January 2021, we completed a WeFunder SAFE offering which was convertible into preferred stock upon future financing events. We received gross proceeds of \$2,258,940 and paid expenses of \$53,500.

In February 2021, we completed an offering of our Series A preferred stock. We received gross proceeds of \$2,669,978 and issued 415,287 shares of Series A preferred stock. We paid commissions and expenses of \$205,470 and issued 79,750 shares of common stock and warrants to purchase 79,750 shares of common stock with an exercise price of \$2.57 to placement agents in connection with the offering. This equity financing resulted in the SAFE investments of \$2.0 million as of December 31, 2020 converting into 424,269 shares of Series A preferred stock and the WeFunder SAFE investments converting into 351,832 shares of Series A preferred stock.

From April 2021 to June 2021, we sold 1,105,827 shares of Series B preferred stock at \$9.50 per share resulting in gross proceeds of \$10.5 million. We paid commissions and expenses of \$890,026 and issued 123,295 shares of common stock and warrants to purchase 197,272 shares of common stock with an exercise price of \$3.80 to placement agents in connection with the offering.

Our continuation as a going concern is dependent upon our ability to obtain continued financial support from our stockholders, necessary equity financing to continue operations and the attainment of profitable operations. As of June 30, 2021, we had incurred an accumulated deficit of \$20,774,674 since inception and have not yet generated any revenue from operations. Additionally, management anticipates that our cash on hand as of June 30, 2021 is insufficient to fund planned operations beyond one year from the date of the issuance of the financial statements as of and for the three and six months ended June 30, 2021. These factors raise substantial doubt regarding our ability to continue as a going concern.

On September 10, 2021, the Company entered into an agreement with a lender for a 6% promissory note of \$2 million. The promissory note has a maturity date of one year from inception or immediately upon the completion of this offering. For providing the above promissory note, the Company agreed to issue 266,666 shares of our common stock and agreed to pay \$35,000 of the placement agent's and investor's legal costs and paid a 6% commission to the placement agent, who is the underwriter of this offering. Such payment is cash compensation for providing services for a private placement in accordance with FINRA Rule 5110 Supplementary Material .01(b)(2).

We believe that the proceeds from this offering, along with proceeds from sales of the Grunt and related accessories which will begin in September 2021, and Runts and related accessories in the first quarter of 2022, will provide sufficient capital to fund operations beyond one year from the date of the issuance of the financial statements as of and for the three and six months ended June 30, 2021.

### **JOBS Act and Recent Accounting Pronouncements**

The recently enacted JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, for complying with new or revised accounting standards. In other words, an "emerging growth company" can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We have implemented all new accounting pronouncements that are in effect and may impact our financial statements and we do not believe that there are any other new accounting pronouncements that have been issued that might have a material impact on our financial position or results of operations.

### **Critical Accounting Policies**

#### **Use of Estimates in Financial Statement Presentation**

The preparation of the financial statements in conformity with generally accepted accounting principles in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of expenses during the reporting periods.

Making estimates requires management to exercise judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ significantly from those estimates.

#### **Revenue recognition**

Revenue is recognized when we transfer control of the product to the customer and a 14-day acceptance period has expired or the customer has acknowledged acceptance prior to the end of the 14-day acceptance period. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring control of our vehicles, parts and accessories. Consideration that is received in advance of the transfer of goods is deferred until delivery has occurred. Sales and other taxes we collect concurrent with revenue-producing activities are excluded from revenue. If a right of return exists, we adjust revenue for the estimated effect of returns. Until we develop sales history, we will estimate expected returns based on industry data for sales returns as a percent of sales, type of product, and a projection of this experience into the future. Our sales do not have a financing component.

*Sales promotions and incentives.* We provide for estimated sales promotion and incentive expenses, which are recognized as a component of sales in measuring the amount of consideration we expect to receive in exchange for transferring goods or providing services. Examples of sales promotion and incentive programs include distributor fees and volume incentives. Sales promotion and incentive expenses are estimated based on current programs for each product line. We record these amounts as a liability in the balance sheet until they are ultimately paid. Adjustments to sales promotions and incentives accruals are made as actual usage becomes known in order to properly estimate the amounts necessary to generate consumer demand based on market conditions as of the balance sheet date.

*Shipping and handling charges and costs.* We record shipping and handling charged to the customer and related shipping costs as a component of cost of sales when control has transferred to the customer.

#### **Product warranties**

We provide a one-year warranty on our vehicles, and a two-year warranty on the battery pack. We accrue warranty reserves at the time a vehicle is delivered to the customer. Warranty reserves include our best estimate of the projected cost to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact our evaluation of historical data. We review our reserves quarterly to ensure that our accruals are adequate in meeting expected future warranty obligations, and we will adjust our estimates as needed. Factors that could have an impact on the warranty reserve include the following: changes in manufacturing quality, shifts in product mix, changes in warranty coverage periods, product recalls and changes in sales volume. Warranty expense is recorded as a component of cost of revenues in the statement of operations. The portion of the warranty provision which is expected to be incurred within 12 months from the balance sheet date will be classified as current, while the remaining amount will be classified as long-term liabilities.

#### **Income taxes**

Deferred taxes are determined utilizing the "asset and liability" method, whereby deferred tax asset and liability account balances are determined based on differences

between financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We provide a valuation allowance, when it is more likely than not that deferred tax assets will not be realized in the foreseeable future.

The impact of an uncertain income tax position on the income tax return is recognized at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. Interest and penalties on income taxes will be classified as a component of the provisions for income taxes.

### **Stock-based compensation**

We measure the total amount of employee stock-based compensation expense for a grant based on the grant date fair value of each award and recognizes the stock-based compensation expense on a straight-line basis over the requisite service period of an award. Stock-based compensation is based on unvested outstanding awards. We have elected to recognize forfeitures when realized.

## **BUSINESS**

### **Overview**

We are an all-electric, off-road powersports vehicle company developing and building electric two and four-wheel motorcycles and utility terrain vehicles (UTVs), also known as side-by-sides. In October 2020, we began building and testing prototypes for our future offerings with two off-road motorcycles – the Grunt and the Runt. We are currently taking orders on our website for these initial offerings and expect to begin delivering the Grunt in the third quarter of 2021 and the Runt in the first quarter of 2022. Also in 2022, we expect to expand our offerings with the Volcon Stag, a UTV, followed in 2023 by a higher performance, longer range UTV called the Beast.

We are assembling the Grunt in a leased production facilities in Round Rock, Texas. We will be leasing a dedicated, built-to-suit manufacturing facility on 53 acres in Liberty Hill, Texas, 25 miles northwest of downtown Austin from an entity controlled by our founders. We expect to begin production at this facility in the third quarter of 2022.

We initially intend to sell and distribute our vehicles and accessories in the U.S. on a direct-to-consumer sales platform. We are currently negotiating dealership agreements with retail partners to display and sell our vehicles and accessories. Once we have dealers in each state, customers can either purchase a vehicle and accessories through our website and pick them up at a local dealership, or they can buy them directly from a local dealership. Some of these retail partners will also provide warranty and repair services to our customers.

Our vehicles and accessories will be sold globally in a three-phase rollout of export sales– Latin America importers in 2021, Canada, Europe, and Africa in 2022 and Southeast Asia plus Australia in 2023. Export sales are executed with individual importers in each country that buy vehicles by the container. Each importer will sell vehicles to local dealers or directly to customers. Local dealers will provide warranty and repair services for vehicles purchased in their country.

Both our dirt bikes and UTVs feature unique, load-managing frames with industrial designs protected by design patents. Additional patents have been filed for the unique design of Volcon's electric motors.

### **Our Industry**

The powersports industry is made up of on-road and off-road motorcycles, all-terrain vehicles (ATVs), UTVs, personal watercraft, snow machines, and portable generators. We are focusing solely on off-road motorcycles and UTVs. The ATV market, in which a single rider sits on top of a four-wheeled vehicle (as opposed to sitting inside a UTV), is not a market we intend to pursue because of significant safety, legal liability and legislative challenges.

The off-road powersports industry has been on a steady path of growth since the recession of 2008. Off-road new unit sales have grown 46.5% over 2019. We believe this growth has been accelerated by the COVID-19 pandemic, as more consumers seek safe, outdoor recreation.

Outdoor recreation is a major driver of the American economy. In 2019, the U.S. Bureau of Economic Analysis (BEA) found that outdoor recreation drives \$788 billion of economic activity in America. The BEA noted that two and four-wheel powersports make up \$39 billion of that total—the fourth largest total of all outdoor recreation activities.

Prior to the COVID-19 pandemic, off-road powersports were on a steady path of growth. When the COVID-19 pandemic hit, that growth accelerated rapidly. Year-over-year growth for off-road motorcycling, despite a short contraction in March and April of 2020 has risen 46.5% in 2020 compared with 2019.

While post-COVID pandemic may not see growth rates this steep, we believe the new culture of escape and outdoor activities will continue to drive off-road powersports recreation. The industry is forecast to deliver \$15 billion in new unit sales by 2025 with \$48 billion in total economic impact. We believe there are currently no all-electric off-road powersports companies, and few traditional powersports companies make electric products, so off-road electric vehicle data does not exist yet.

### **Our Products**

We will feature motorcycle and UTV, or side-by-side, products that are all-electric and for off-road use only. The off-road market is growing faster than on-road and on-road products require costly levels of certification, homologation and compliance with the Department of Transportation (DOT), the National Highway Traffic Safety Administration (NHTSA) and other government regulators. As such, we are solely focusing on the off-road market. Due to these regulations, our vehicles are not legal for on-road use. All vehicles will come with a warning label stating "This vehicle is designed and manufactured for off road use only. It does not conform to federal motor vehicle safety standards and operation on public streets, roads, or highways is illegal", and therefore our vehicles cannot be legally registered for on-road use in any state. In addition to powersports vehicles, we will source, market and sell a complete line of accessories and upgrades. These will feature parts designed to increase performance or appearance, in addition to practical add-ons to equip Volcon vehicles for hunters or farmers.



In the third quarter of 2021, the Volcon Grunt will be the first product to market. The Grunt is an electric off-road motorcycle with unique design features and capabilities.

The Grunt’s distinctive low height and oversize tires are designed to make it look like the minibikes of the 1970s and ‘80s. These unique elements of the Grunt are not just for styling, but we believe they help make it easier to ride as compared to other off-road motorcycles on the market. The low seat height and big tires help make the Grunt stable at all speeds on all surfaces. The electric drivetrain has no clutch and no gears, making it easy for almost anyone to ride.

Although the Grunt and Runt can be used as delivered, we have developed an app, which can be downloaded at no charge by anyone, that we believe will enhance the riding experience. The Grunt has a small dash with limited data; however, the rider can use their phones and the app (subject to the rider’s cellular connectivity) as a dashboard by mounting it on the handlebars. The app will make it easier for users to set ride modes, check battery status, and update the bike’s firmware. In the future we plan to add a trip navigation feature to the app.

The Grunt is designed for family off-road adventures, work on the farm or fun transport around private land. Its range can be up to 35 miles (with an optional second battery that provides an additional 35 miles) in its “explore” mode setting and it charges in less than three hours from a standard wall outlet.

#### *The Runt*



In the first quarter of 2022, the Volcon Runt will also be available to the market. The Runt shares the styling of its big-brother Grunt, but it is sized for seven to 14-year-olds.

The Runt is easy to ride and includes features that we believe no other minibike has that will make parents feel more comfortable with their children on two wheels.

Like the Grunt, the Runt’s large tires and low-slung chassis make it extremely easy to ride. The app will also work with the Runt and will let the parents of the child login on their own phones to control the maximum acceleration and speed of the Runt.

The Runt will have a range of up to 35 miles in its “explore” mode setting and charges in less than three hours from a standard wall outlet.

#### *The Stag*



\* Artist’s depiction of the proposed commercial version.

We expect to introduce the Volcon Stag in second half of 2022. The Stag will be Volcon’s utility/sport UTV with a 64” width to ensure it is able to operate in all states including the many states with 65”-maximum-width trails. It will feature hauling and towing abilities for work on a farm or job site, but also fold-up seating for four so it can be used for weekend family adventures. We are designing the electric drivetrain to be quiet and reliable. We believe the electric nature of the Stag will also mean low maintenance.

Where a gas UTV motor has over 1,000 moving parts, the Stag's motor will have just two.

Like the two-wheel Volcon products, the Stag will feature the innovative features of the ride control app. A touchscreen display on the dash will provide easy access to the data.

The Stag will have a longer range than the Grunt and the Runt. With larger battery capacity than its two-wheel siblings, the Stag can be charged with a typical EV Level 2 charger or on standard Level 1 charging via a household outlet.

### *The Beast*



\* Artist's depiction of the proposed commercial version.

The Volcon Beast, which we expect will be available in late 2023 will be the flagship model in the Volcon line. We are designing the Beast to have superior range and speed, but still be able to haul and tow far more than a traditional UTV.

The Beast will feature a category-leading suspension, including an optional computer-controlled, fully active suspension system. Its long wheelbase will easily accommodate five along with hauling space and a 3,000-pound towing capacity, and like all Volcon vehicles, the Beast will feature the Ride Control app.

### **Assembly and Manufacturing**

We source the parts for our vehicles from component manufacturers worldwide, with an emphasis on the United States, China and Southeast Asia. We do not have long-term supply agreements with our component suppliers. Although we currently rely on a single-source for certain of our components, we believe there are multiple sources for each of our critical components. We will initially assemble our vehicles in leased facilities in Round Rock, Texas and, once completed, our leased facility in Liberty Hill, Texas.

Our Round Rock facilities operate on a common production layout and can support Grunt and Runt on the same lines. We believe we will initially be able to produce 100 units per month, which we believe will increase to approximately 500 units per month by the end of 2021 and up to 800 units per month when at full production capacity. We expect our Liberty Hill facility, to open in the third quarter of 2022 and it will be used to produce the Stag.

We expect to provide a one-year warranty on our vehicles, and a two-year warranty on the battery pack. We will accrue warranty reserves at the time a vehicle is delivered to the customer. Warranty reserves include our best estimate of the projected cost to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact our evaluation of historical data. We review our reserves quarterly to ensure that our accruals are adequate in meeting expected future warranty obligations, and we will adjust our estimates as needed. Warranty expense is recorded as a component of cost of revenues in the statement of operations. The portion of the warranty provision which is expected to be incurred within 12 months from the balance sheet date will be classified as current, while the remaining amount will be classified as long-term liabilities.

### **Sales and Marketing**

We initially intend to sell and distribute our vehicles and accessories in the U.S. on a direct-to-consumer sales platform. We are currently negotiating dealership agreements with retail partners to display and sell our vehicles and accessories. Once we have dealers in each state, customers can either purchase a vehicle and accessories through our website and pick them up at a local dealership, or they can buy them directly from a local dealership. Some of these retail partners will also provide warranty and repair services to our customers.

Our vehicles and accessories will be sold globally in a three-phase rollout of export sales— Latin America importers in 2021, Canada, Europe, and Africa in 2022 and Southeast Asia plus Australia in 2023. Export sales are executed with individual importers in each country that buy vehicles by the container. Each importer will sell vehicles to local dealers or directly to customers. Local dealers will provide warranty and repair services for vehicles purchased in their country.

### **Intellectual Property**

Our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we currently rely on a combination of trade secrets, including know-how, employee and third-party nondisclosure agreements, and other contractual rights to establish and protect our proprietary rights in our technology.

Our industrial designs are protected by design patents. In addition, we intend to file for additional utility patents. There is no assurance that we will be granted any such patents. We do not know whether any patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims. Even if granted, there can be no assurance that our issued patents or new patent applications will provide us with protection.

The names “Grunt” and “Runt” have been granted trademark rights in the United States. We have applied for trademark rights for the “Volcon” brand name and our logo in the United States and Latin America. We have received notice from two entities who have indicated they will protest the issuance of a trademark for the Volcon name due to the similarity of Volcon to their trademarks, even though our products are different. We are working with these entities to obtain an agreement that our Volcon trademark can co-exist with their trademarks. If we are unsuccessful in obtaining agreement with these entities, we will need to consider the use of a different trademark for our Company and our products.

## Competition

There are dozens of manufacturers that sell off-road motorcycles and UTVs in the United States and even more globally. The markets for powersport vehicles are highly competitive based on a number of factors, including innovation, performance, price, technology, product features, styling, fit and finish, brand recognition, quality and distribution. We believe our ability to compete successfully in these markets depends on our ability to capitalize on our competitive strengths and build brand recognition.

Many companies, which have greater financial and marketing resources than Volcon, make electric street motorcycles, including Zero Motorcycles. Some companies make electric UTVs as part of their product line. Polaris has recently announced a joint venture with Zero Motorcycles to help them design dedicated electric UTVs, the first product of which is expected to be released in December 2021.

## Government regulations

We have focused on the off-road-only portion of the market because it is free of many of the homologation issues and highway certifications required to produce and sell an on-road vehicle. In some states, off-road vehicles do have legislative restrictions, but they are related to noise and exhaust emissions, two things our vehicles do not produce.

Federal, state and local governments have promulgated and/or are considering promulgating laws and regulations relating to the safety of our products. In the United States, the Consumer Product Safety Commission (CPSC) has federal oversight over product safety issues related to off-road vehicles. We believe that our products comply with all applicable CPSC safety standards as well as all other applicable safety standards in the United States.

The assembly, use, storage, transport and disposal of battery packs is subject to extensive regulation. Complying with these requirements involves substantial costs, and any failure to do so may result in heavy fines or other restrictions on our operations. Additionally, we may be responsible for the recycling and proper disposal of expended batteries from our vehicles. We may enter into agreements with third-parties to manage such recycling and disposal; however, we may be found liable for any failures in compliance by these third parties and subject to fines or remediation liabilities, which costs may be substantial.

We intend to sell and distribute our vehicles internationally through international distributors. As such, we will be subject to the local laws of each jurisdiction in which we sell our vehicles. These regulations may result in increased costs and expenses, which may materially and adversely affect our business, results of operations or financial condition.

## Employees

As of June 30, 2021, we had 34 full time employees and no part-time employees.

## Legal Proceedings

We may be subject to legal proceedings, investigations and claims incidental to the conduct of our business from time to time. We are not currently a party to, nor are we aware of, any legal proceedings, investigations or claims which, in the opinion of our management, are likely to have a material adverse effect on our business, financial condition or results of operations.

## Properties

Our corporate and executive offices are in located in a leased facility in Round Rock, Texas. We believe our facilities, including our lease for our future Liberty Hill, Texas facility and our recently signed lease for our new manufacturing facility in Round Rock, Texas will be sufficient to meet our current needs. However, as we expand our operations, we may require additional space in which to assemble our vehicles and we do not have any commitments for such space. We do not own any real property.

## MANAGEMENT

### Directors and Executive Officers

The following table sets forth the names and ages of all of our directors and executive officers as of July 31, 2021. Our officers are appointed by, and serve at the pleasure of, the Board of Directors.

Name	Age	Position
Christian Okonsky	57	Chairman of the Board and Chief Technology Officer
Jordan Davis	38	Chief Executive Officer
Greg Endo	56	Chief Financial Officer
Bruce Riggs	59	Chief Operating Officer
Adrian James	46	Director
Jonathan Foster	57	Director
John Kim	51	Director
Karin-Joyce Tjin	59	Director

Set forth below is biographical information about each of the individuals named in the tables above:

**Christian Okonsky, Founder, Chairman, and CTO.** Mr. Okonsky co-founded Volcon in 2020 and has served as our Chairman of the Board and Chief Technology Officer since inception. Mr. Okonsky founded AYRO, Inc. in May 2016, and served as its chairman of the board from inception to listing on NASDAQ in May 2020. Mr. Okonsky currently holds over two-dozen U.S. and foreign patents. From 1998 until 1992, Mr. Okonsky worked as an engineer for Dell in its notebook division. He is a graduate of Texas A&M with a Bachelors in Industrial Engineering. We believe Mr. Okonsky's history with our company and background provide him with the qualifications to serve as a director.

**Jordan Davis, Chief Executive Officer.** Mr. Davis will serve as our Chief Executive Officer beginning August 23, 2021. Mr. Davis is a senior executive with over 15 years of experience within the sporting goods industry. From May 2018 to August 2021, Mr. Davis served as President for O. Mustad & Son AS Fishing. From March 2010 to March 2018 Mr. Davis was employed with Remington Outdoor Company in various positions and from October 2015 to March 2018 he served as Vice President of Marketing & Business Development. Mr. Davis holds a BA of Business Administration with a dual focus in management and marketing, and an MBA in Management, both from Bushnell University (formerly Northwest Christian College).

**Greg Endo, Chief Financial Officer.** Mr. Endo has served as our Chief Financial Officer since June 2021. Prior to joining Volcon Mr. Endo worked for over 26 years at Deloitte & Touch LLP. Since August 2006 until his retirement in September 2020, he was an audit and advisory partner, advising public and private companies in the manufacturing, technology, and real estate industries. He has assisted clients on merger and acquisition transactions, equity and debt financings, IT implementations and business process design and controls. Mr. Endo is a certified public accountant in Texas. Mr. Endo has a BA of Business Administration and a Masters' Degree in Professional Accounting, both from the University of Texas at Austin and is a U.S. Army and Texas National Guard veteran.

**Bruce Riggs, Chief Operating Officer.** Mr. Riggs has served as our Chief Operating Officer since October 2020, first on a consulting bases and effective May 1, 2021, as an employee. Mr. Riggs has built an operations career in the US, Europe and Asia having served as the SVP and COO of Compal Electronics' Smart Device Group, SVP and GM of Quanta and VP of Operations in Dell's Client Product Group. His experience includes operations, logistics, supply chain management and quality for the highest tiers of the smart device, notebook computer and light electric vehicle industries with direct responsibility for manufacturing in US, China, Brazil and Scotland. He is a past chairman of the IEEE1625 Battery Standard. Mr. Riggs holds an MBA from Indiana Univ. and a BA from Lawrence University.

**Adrian James, Founder and Director.** Mr. James co-founded Volcon in 2020, and has served as a director since inception. Since 2001, Mr. James has been founder and Chief Executive Officer of Sprout Equity Ventures (Sprout). Sprout is an Austin based global investment firm specializing in acquiring and partnering with mature and growing businesses. Sprout currently manages a broad base of investments in the electric vehicle, space tourism, mining, biotech, alternative energy, clean water and technology sectors. We believe Mr. James's history with our company and his extensive investment experience provide him with the qualifications to serve as a director.

**Jonathan Foster, Director.** Mr. Foster joined our board of directors in June 2021. Mr. Foster has served as the chief financial officer and executive vice president for Moleculin Biotech, Inc. since August 2016. Mr. Foster brings more than 30 years of financial experience holding a variety of executive and senior financial positions with public, private, start-up to large corporate and international companies. From February 2012 to August 2016, Mr. Foster served as Chief Financial Officer and Executive Vice President of InfuSystem Holdings, Inc., a national provider of infusion pumps and related services to the healthcare industry. From May 2011 to January 2012, Mr. Foster served as a consultant to the Chief Financial Officer of LSG Sky Chefs, USA, Inc., a subsidiary of Deutsche Lufthansa AG. Mr. Foster served on the Board of Financial Institutions for the State of South Carolina from 2006 to 2012 and since June 2018 serves on the Board of Directors of Soliton, Inc., a medical device company focused on developing new technology for use in aesthetics, where he is the chair of the Strategic Alternative and Audit Committee and previously served as chair of the Nominating & Governance Committees. Prior Mr. Foster served in lead financial roles with a private manufacturer of hardware and in manufacturing divisions of Schlumberger, Ltd. He began his career with Deloitte in Charlotte and Atlanta. Mr. Foster is a Certified Public Accountant (South Carolina) and holds the designation of Chartered Global Management Accountant from the American Institute of Certified Public Accountants. He received his BS in Accounting from Clemson University in 1985. We believe that Mr. Foster's public company experience as an executive officer and director and his extensive accounting experience provide him with the qualifications to serve as a director.

**John Kim, Director.** Mr. Kim joined our board of directors in July 2021. Mr. Kim is a serial entrepreneur and product designer. Mr. Kim was the CEO and founder of Super73 Inc, one of the world's leading electric bicycle companies from 2015 until 2019. In 2003, Mr. Kim founded U-Life, an internet enabled home appliance company in South Korea, which was acquired by LG in 2006. Before his career as an entrepreneur, Mr. Kim was the principal designer for Yahoo Search, a car designer at Honda, and a former US Army paratrooper. Mr. Kim received a MA Design from Stanford University in 2001. We believe that Mr. Kim's experience in the electric bicycle industry and his extensive product design experience provide him with the qualifications to serve as a director.

**Karin-Joyce Tjon ("KJ"), Director.** Ms. Tjon joined our board of directors in August 2021. Ms. Tjon has over twenty years of executive experience at both public and private companies. Prior to Ms. Tjon's retirement in 2020, from July 2018 until May 2020 she served as CFO for Alorica, a multi-billion dollar customer service provider with over 100,000 employees worldwide. From February 2017 until August 2017, Ms. Tjon was President & COO for Scientific Games ("SGMS"), responsible for their Gaming and Lottery divisions. From July 2014 until September 2016 Ms. Tjon served as EVP & CFO for Epiq Systems ("EPIQ"), her responsibilities included all areas of international corporate finance as well as SAP support and risk management. Earlier in her career, Ms. Tjon was a Managing Director at Alvarez & Marsal where she worked on turnarounds as interim executive as well as supported various engagements for private equity clients. Ms. Tjon holds an MBA from Columbia University's Graduate School of Business and a BSS in Organizational Behavior from Ohio University. We believe that Ms. Tjon's public company experience as an executive officer and her extensive finance and business operations experience provides her with the qualifications to serve as a director.

## Director Independence

The rules of the Nasdaq Stock Market, or the Nasdaq Rules, require a majority of a listed company's board of directors to be composed of independent directors within one year of listing. In addition, the Nasdaq Rules require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and governance committees be independent. Under the Nasdaq Rules, a director will only qualify as an independent director if, in the opinion of our board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The Nasdaq Rules also require that audit committee members satisfy independence criteria set forth in Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. In order to be considered independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries or otherwise be an affiliated person of the listed company or any of its subsidiaries. In considering the independence of compensation committee members, the Nasdaq Rules require that our board of directors must consider additional factors relevant to the duties of a compensation committee member, including the source of any compensation we pay to the director and any affiliations with the Company.

Our board of directors undertook a review of the composition of our board of directors and its committees and the independence of each director. Based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships, our board of directors has determined that each of our directors, with the exception of Messrs. Okonsky and James, are independent as defined under the Nasdaq Rules.

## Committees of the Board of Directors

Our board of directors has established an audit committee, a compensation committee and a nominating and governance committee. Each of these committees operates under a charter that was approved by our board of directors.

**Audit Committee.** Our audit committee consists of three independent directors. The members of the audit committee are Mr. Foster, Mr. Kim and Ms. Tjon. Mr. Foster serves as the chairperson of the Audit Committee. The audit committee consists exclusively of directors who are financially literate. In addition, Mr. Foster is considered an “audit committee financial expert” as defined by the SEC’s rules and regulations.

The audit committee responsibilities include:

- overseeing the compensation and work of and performance by our independent auditor and any other registered public accounting firm performing audit, review or attestation services for us;
- engaging, retaining and terminating our independent auditor and determining the terms thereof;
- assessing the qualifications, performance and independence of the independent auditor;
- evaluating whether the provision of permitted non-audit services is compatible with maintaining the auditor’s independence;
- reviewing and discussing the audit results, including any comments and recommendations of the independent auditor and the responses of management to such recommendations;
- reviewing and discussing the annual and quarterly financial statements with management and the independent auditor;
- producing a committee report for inclusion in applicable SEC filings;
- reviewing the adequacy and effectiveness of internal controls and procedures;
- establishing procedures regarding the receipt, retention and treatment of complaints received regarding the accounting, internal accounting controls, or auditing matters and conducting or authorizing investigations into any matters within the scope of the responsibility of the audit committee; and
- reviewing transactions with related persons for potential conflict of interest situations.

**Compensation Committee.** Our compensation committee consists of three independent directors. The members of the Compensation Committee are Mr. Foster, Mr. Kim and Ms. Tjon. Mr. Foster serves as chairperson of the Compensation Committee. The committee has primary responsibility for

- reviewing and recommending all elements and amounts of compensation for each executive officer, including any performance goals applicable to those executive officers;
- reviewing and recommending for approval the adoption, any amendment and termination of all cash and equity-based incentive compensation plans;
- once required by applicable law, causing to be prepared a committee report for inclusion in applicable SEC filings;
- approving any employment agreements, severance agreements or change of control agreements that are entered into with the CEO and certain executive officers; and
- reviewing and recommending the level and form of non-employee director compensation and benefits.

**Nominating and Governance Committee.** The Nominating and Governance Committee consists of three independent directors. The members of the Nominating and Governance Committee are Mr. Foster, Mr. Kim and Ms. Tjon. Ms. Tjon serves as chairperson of the Nominating and Governance Committee. The Nominating and Governance Committee’s responsibilities include:

- recommending persons for election as directors by the stockholders;
- recommending persons for appointment as directors to the extent necessary to fill any vacancies or newly created directorships;
- reviewing annually the skills and characteristics required of directors and each incumbent director’s continued service on the board;

- reviewing any stockholder proposals and nominations for directors;
- advising the board of directors on the appropriate structure and operations of the board and its committees;
- reviewing and recommending standing board committee assignments;
- developing and recommending to the board Corporate Governance Guidelines, a Code of Business Conduct and Ethics and other corporate governance policies and programs and reviewing such guidelines, code and any other policies and programs at least annually;
- making recommendations to the board as to determinations of director independence; and
- making recommendations to the board regarding corporate governance based upon developments, trends, and best practices.

The Nominating and Governance Committee will consider stockholder recommendations for candidates for the board of directors.

Our bylaws provide that, in order for a stockholder’s nomination of a candidate for the board to be properly brought before an annual meeting of the stockholders, the



stockholder's nomination must be delivered to the Secretary of the Company no later than 120 days prior to the one-year anniversary date of the prior year's annual meeting.

## Code of Business Conduct and Ethics

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Following this offering, a copy of the code will be made available on the Corporate Governance section of our website, which is located at [www.volcon.com](http://www.volcon.com). If we make any substantive amendments to, or grant any waivers from, the code of business conduct and ethics for any officer or director, we will disclose the nature of such amendment or waiver on our website or in a current report on Form 8-K filed with the SEC.

## Compensation of Executive Officers

### Summary Compensation Table

We commence operations in February 2020. The following table shows the compensation awarded to or earned during the fiscal year ended December 31, 2020 by our chief executive officer and our chief technology officer. Other than as listed below, we did not have any officers that received more than \$100,000 in compensation. The persons listed in the following table are referred to herein as the "named executive officers."

Summary Compensation Table – 2020

Name and Principal Position	Year	Salary(\$)	Stock awards (\$)(2)	All other compensation (\$)	Total (\$)
Andrew Leisner, Former Chief Executive Officer (1)	2020	28,269	353,250	4,500 (3)	386,019
Christian Okonsky, Chief Technology Officer	2020	—		59,606 (4)	59,606 (5)

(1) Mr. Leisner resigned in July 2021. Mr. Leisner will serve on our Advisory Committee.

(2) Represents the full grant date fair value of the stock awards calculated in accordance with FASB ASC Topic 718. These amounts do not necessarily correspond to the actual value that may be realized by the named executive officer. For a summary of the assumptions made in the valuation of the awards, please see Notes to our financial statements as of and for the period ended December 31, 2020 included in this prospectus.

(3) Represents amounts paid in connection with a housing allowance.

(4) Amounts paid to an entity controlled by Mr. Okonsky.

(5) Does not include non-cash compensation payable pursuant to a consulting agreement with an entity controlled by Mr. Okonsky. For a description of the consulting agreement, see "—Narrative Disclosure to Summary Compensation Table – Christian Okonsky, Co-Founder and Chief Technology Officer, and Adrian James, Co-Founder" below.

## Narrative Disclosure to Summary Compensation Table

### Andrew R. Leisner, Former Chief Executive Officer

On September 28, 2020, we entered into an employment agreement with Andrew Leisner pursuant to which Mr. Leisner agreed to serve as our Chief Executive Officer commencing October 5, 2020 on an at-will basis. The agreement provided for an initial annual base salary of \$225,000, and for the first year of his employment Mr. Leisner received \$18,000 in living expenses. In addition, Mr. Leisner received a restricted stock unit award of 187,500 shares vesting 62,500 per year over a three-year period. In May 2021, Mr. Leisner also received a grant of 187,500 stock options with an exercise price of \$1.00 per share vesting 62,500 per year over a three-year period beginning with his employment date. Mr. Leisner resigned in July 2021 and his options and restricted stock units were forfeited upon his resignation. Mr. Leisner has agreed to serve on our advisory committee and he received a grant of 5,000 stock options with an exercise price of \$3.00 that will vest over one year beginning in July 2021 for his participation on this committee. Mr. Leisner has agreed not to compete with us until six months after the termination of his employment.

### Jordan Davis, Chief Executive Officer

On August 5, 2021, we entered into an employment agreement with Jordan Davis pursuant to which Mr. Davis agreed to serve as our Chief Executive Officer commencing August 23, 2021 on an at-will basis. The agreement provides for an initial annual base salary of \$230,000, and for the first year of his employment Mr. Davis will receive \$9,000 in living expenses. Pursuant to the agreement, Mr. Davis is eligible to receive an annual bonus of \$172,500 based on the achievement milestone approved by our board of directors. Pursuant to the agreement, Mr. Davis was granted a ten-year option to purchase 450,000 shares at an exercise price of \$3.00 per share. The option vests in three equal installments on each of the succeeding three anniversary dates of the execution of the agreement, provided Mr. Davis is employed on such vesting date. In the event of a "change of control" (as defined in the agreement) prior to the final vesting of all of the options, all of the unvested options shall immediately vest; provided, however, in the event the acquiring party desires to replace the unvested options with a substitute grant of equal or greater value, such proposed substitution shall be submitted to the Compensation Committee, and the Compensation Committee shall decide whether to allow the unvested options to vest or whether to cancel the unvested options and replace them with the substitute grant proposed by the acquiring party.

If Mr. Davis' employment is terminated at our election without "cause" (as defined in the agreement), Mr. Davis shall be entitled to receive severance payments equal to six months of Mr. Davis' base salary and he shall also receive the prior year's bonus, if not yet paid, payable at no less than target. In addition, if Mr. Davis' employment during a "covered period," which is defined as the period commencing 30 days prior to a change in control and ending 12 months following a change in control, Mr. Davis shall be entitled to receive 12 months of severance, and an acceleration of the vesting of the option grant described in the prior paragraph.

### Greg Endo, Chief Financial Officer

Effective June 7, 2021, we entered into an employment agreement with Greg Endo pursuant to which Mr. Endo agreed to serve as our Chief Financial Officer commencing on such date. The agreement provides for an initial annual salary of \$190,000, and for the first year of his employment Mr. Endo will receive \$18,000 in living expenses. Mr. Endo may receive an annual bonus, provided that the final determination on the amount of the annual bonus, if any, will be made by the Compensation Committee of the Board of Directors, based on criteria established by the Compensation Committee. The targeted annual bonus for 2021 is \$125,000. Pursuant to the agreement, Mr. Endo was granted a ten-year option to purchase 312,500 shares at an exercise price of \$1.00 per share. The option vests in three equal installments on each of the succeeding three anniversary dates of the execution of the agreement, provided Mr. Endo is employed on such vesting date. In the event of a "change of control" (as defined in the agreement) prior to the final vesting of all of the options, all of the unvested options shall immediately vest; provided, however, in the event the acquiring party desires to replace the unvested options with a substitute grant of equal or greater value, such proposed substitution shall be submitted to the Compensation Committee, and the Compensation Committee shall decide whether to allow the unvested options to vest or whether to cancel the unvested options and replace them with the substitute grant

proposed by the acquiring party.

If Mr. Endo's employment is terminated at our election without "cause" (as defined in the agreement), Mr. Endo shall be entitled to receive severance payments equal to six months of Mr. Endo's base salary and he shall also receive the prior year's bonus, if not yet paid, payable at no less than target. In addition, if Mr. Endo's employment during a "covered period," which is defined as the period commencing 30 days prior to a change in control and ending 12 months following a change in control, Mr. Endo shall be entitled to receive 12 months of severance, and an acceleration of the vesting of the option grant described in the prior paragraph.

#### **Bruce Riggs, Chief Operating Officer**

Effective June 16, 2021, we entered into an employment agreement with Bruce Riggs pursuant to which Mr. Riggs agreed to serve as our Chief Operating Officer commencing on May 1, 2021. The agreement provides for an initial annual salary of \$162,000. Mr. Riggs was previously a consultant to the company, and under such consulting arrangement, Mr. Riggs was granted 150,000 restricted stock units vesting in three equal installments on each of the succeeding three anniversary dates of the consulting agreement. Provided Mr. Riggs remains employed with the company, such restricted stock units will continue to vest under the same terms of the consulting arrangement. In the event of a "change of control" (as defined in the agreement) prior to the final vesting of all of the restricted stock units, all of the unvested restricted stock units shall immediately vest; provided, however, in the event the acquiring party desires to replace the unvested restricted stock units with a substitute grant of equal or greater value, such proposed substitution shall be submitted to the Compensation Committee, and the Compensation Committee shall decide whether to allow the unvested restricted stock units to vest or whether to cancel the unvested restricted stock units and replace them with the substitute grant proposed by the acquiring party.

If Mr. Riggs' employment is terminated at our election without "cause" (as defined in the agreement), Mr. Riggs shall be entitled to receive severance payments equal to six months of Mr. Riggs' base salary. In addition, if Mr. Riggs' employment during a "covered period," which is defined as the period commencing 30 days prior to a change in control and ending 12 months following a change in control, Mr. Riggs shall be entitled to receive 12 months of severance, and an acceleration of the vesting of the restricted stock units described in the prior paragraph.

#### **Christian Okonsky, Co-Founder and Chief Technology Officer, and Adrian James, Co-Founder**

On August 28, 2020, we entered into consulting agreements with Pink Possum, LLC ("Pink Possum"), an entity controlled by Mr. Okonsky, and Highbridge Consultants, LLC ("Highbridge"), an entity controlled by Mr. James, pursuant to which Messrs. Okonsky and James provide us with services. In consideration for entering into the consulting agreements, we issued the two entities ten-year warrants to purchase our common stock at an exercise price of \$0.004 per share. The number of shares of common stock issuable pursuant to the warrants was based on the number of shares of our common stock outstanding at the time of exercise and provided that Pink Possum and Highbridge would receive 18.75% and 25%, respectively, of our shares of common stock outstanding at the time of exercise on a fully diluted basis. On March 26, 2021, Pink Possum and Highbridge entered into amendments to the consulting agreements agreeing to exchange the original warrants for new ten-year warrants to purchase 4,750,000 and 6,250,000 shares, respectively, of common stock at an exercise price of \$0.98.

In addition, pursuant to the consulting agreements upon the occurrence of a Fundamental Transaction for an aggregate gross sales price of \$100.0 million or more, each entity will receive a cash payment equal to 1% of such gross sales price. For the purposes of the consulting agreements, "Fundamental Transaction" means any of the following: (i) a consolidation or merger involving the Company if the holders of the voting securities of the Company that are outstanding immediately prior to the consummation of such consolidation or merger do not, immediately after the consummation of such consolidation or merger, hold voting securities that collectively possess at least a majority of the voting power of all the outstanding securities of the surviving entity of such consolidation or merger or such surviving entity's parent entity; (ii) a transfer or issuance (in a single transaction or series of related transactions) by one or more of the Company and its stockholders to one person or to any group of persons acting in concert, of shares of the Company's capital stock then collectively possessing 50% or more of the voting power of all then outstanding shares of the Company's capital stock (computed on an as-converted to common stock basis); or (iii) any sale, license, lease, assignment or other disposition of all or substantially all of the assets of the Company. Furthermore, commencing upon the completion of this offering, if our market capitalization exceeds \$300.0 million for a period of 21 consecutive trading days, each of the entities will receive an additional cash payment equal to \$15.0 million; provided that we will have the right, in our sole discretion, to make the foregoing \$15.0 million payment by the issuance of shares of our common stock. The foregoing amounts will be payable to the entities if the above milestones occur any time prior to the ten-year anniversary of original consulting agreements, or August 28, 2030.

#### **Outstanding Equity Awards**

The following table sets forth certain information concerning our outstanding options for our named executive officers on December 31, 2020.

##### **Outstanding Equity Awards at Fiscal Year-End – 2020**

<b>Name</b>	<b>Number of shares or units that have not vested (#)</b>	<b>Market value of shares or units of stock that have not vested (\$) (1)</b>
Andrew R. Leisner	187,500 (1)	\$937,500
Christian Okonsky (2)	—	—

(1) Based on the initial public offering price of \$5.00 per share, the midpoint of the range set forth on the cover page of this prospectus. Mr. Leisner resigned in July 2021 and the restricted stock units set forth in the above table were forfeited upon his resignation.

(2) Does not include a warrant issuable pursuant to a consulting agreement with an entity controlled by Mr. Okonsky. For a description of the warrant, see "—Narrative Disclosure to Summary Compensation Table – Christian Okonsky, Co-Founder and Chief Technology Officer, and Adrian James, Co-Founder" below.

#### **Director Compensation**

Our non-employee directors do not currently receive any cash compensation. Subsequent to the completion of this offering, our board of directors will establish a compensation policy for non-employee directors.

Each independent director has received stock options which vest upon one year of service as their compensation for being a board member. No cash compensation is provided other than reimbursement for travel costs to attend meetings. The following presents the stock options provided to each independent director:

Name	Total	Exercise Price
Jonathan Foster	75,000	\$1.00
John Kim	62,500	\$1.00
Karin-Joyce Tjon	68,750	\$3.00

## 2021 Stock Plan

In January 2021, we adopted the Volcon, Inc. 2021 Stock Plan, or 2021 Plan. The 2021 Plan is a stock-based compensation plan that provides for discretionary grants of stock options, stock awards, stock unit awards and stock appreciation rights to key employees, non-employee directors and consultants. The following is a summary of the material features of the 2021 Plan.

*Administration.* The 2021 Plan is administered by either the Compensation Committee of our Board of Directors or our entire Board of Directors for the period prior to the establishment of our Compensation Committee (we refer to the body administering the 2021 Plan as the “Committee”). The Committee has full authority to select the individuals who will receive awards under the 2021 Plan, determine the form and amount of each of the awards to be granted and establish the terms and conditions of awards.

*Limit on Non-Employee Director Compensation.* Under the 2021 Plan, the aggregate value of all compensation granted or paid to any individual for service as a non-employee director with respect to any calendar year, including awards granted under the 2021 Plan and cash fees paid to such non-employee director, will not exceed \$300,000 in total value. For purposes of this limitation, the value of awards is calculated based on the grant date fair value of such awards for financial reporting purposes.

*Number of Shares of Common Stock.* The number of shares of the common stock that may be issued under the 2021 Plan is 3,000,000.

Shares issuable under the 2021 Plan may be authorized but unissued shares or treasury shares. If there is a lapse, forfeiture, expiration, termination or cancellation of any award made under the 2021 Plan for any reason, the shares subject to the award will again be available for issuance. Any shares subject to an award that are delivered to us by a participant, or withheld by us on behalf of a participant, as payment for an award or payment of withholding taxes due in connection with an award will not again be available for issuance, and all such shares will count toward the number of shares issued under the 2021 Plan. Shares purchased by us with the proceeds received from a stock option exercise will not be available again for issuance. The number of shares of common stock issuable under the 2021 Plan is subject to adjustment, in the event of any reorganization, recapitalization, stock split, stock distribution, merger, consolidation, split-up, spin-off, combination, subdivision, consolidation or exchange of shares, any change in the capital structure of the company or any similar corporate transaction. In each case, the Committee has the discretion to make adjustments it deems necessary to preserve the intended benefits under the 2021 Plan. No award granted under the 2021 Plan may be transferred, except by will, the laws of descent and distribution.

Of the shares available for issuance: (i) the maximum number issuable as stock options or stock appreciation rights to any employee in any calendar year is 500,000, (ii) the maximum number issuable as incentive stock options is 500,000 and (iii) the maximum number of shares issuable as stock awards or such units granted to any employee in any calendar year is 100,000.

*Eligibility.* All employees designated as key employees for purposes of the 2021 Plan, all non-employee directors and consultants are eligible to receive awards under the 2021 Plan.

*Awards to Participants.* The 2021 Plan provides for discretionary awards of stock options, stock awards, stock unit awards and stock appreciation rights to participants. Each award made under the 2021 Plan will be evidenced by a written award agreement specifying the terms and conditions of the award as determined by the Committee in its sole discretion, consistent with the terms of the 2021 Plan.

*Stock Options.* The Committee has the discretion to grant non-qualified stock options or incentive stock options to participants and to set the terms and conditions applicable to the options, including the type of option, the number of shares subject to the option and the vesting schedule; provided that, commencing as of the initial public offering of our common stock, the exercise price of each stock option will be the closing price of the common stock on the date on which the option is granted (“fair market value”), each option will expire ten years from the date of grant and no dividends or dividend equivalents may be paid with respect to stock options.

In addition, an incentive stock option granted to a key employee is subject to the following rules: (i) the aggregate fair market value (determined at the time the option is granted) of the shares of common stock with respect to which incentive stock options are exercisable for the first time by a key employee during any calendar year (under all incentive stock option plans of the company and its subsidiaries) cannot exceed \$100,000, and if this limitation is exceeded, that portion of the incentive stock option that does not exceed the applicable dollar limit will be an incentive stock option and the remainder will be a non-qualified stock option; (ii) if an incentive stock option is granted to a key employee who owns stock possessing more than 10% of the total combined voting power of all class of stock of the company, the exercise price of the incentive stock option will be 110% of the closing price of the common stock on the date of grant and the incentive stock option will expire no later than five years from the date of grant; and (iii) no incentive stock option can be granted after ten years from the earlier of the date the 2021 Plan was adopted or approved by stockholders.

*Stock Appreciation Rights.* The Committee has the discretion to grant stock appreciation rights to participants. The Committee determines the exercise price for a stock appreciation right, which cannot be less than 100% of the fair market value of our common stock on the date of grant. Upon the exercise of a stock appreciation right, we will pay the participant in common stock or in cash, at our discretion, an amount equal to the product of (1) the excess of the per share fair market value of our common stock on the date of exercise over the exercise price, multiplied by (2) the number of shares of common stock with respect to which the stock appreciation right is exercised. The Committee has the discretion to set the terms and conditions applicable to the award, including the number of shares subject to the stock appreciation right and the vesting schedule, provided that each stock appreciation right will expire not more than ten years from the date of grant and no dividends or dividend equivalents shall be paid with respect to any stock appreciation right prior to the exercise of the stock appreciation right.

*Stock Awards.* The Committee has the discretion to grant stock awards to participants. Stock awards will consist of shares of common stock granted without any consideration from the participant or shares sold to the participant for appropriate consideration as determined by the Board. The number of shares awarded to each participant, and the restrictions, terms and conditions of the award, will be at the discretion of the Committee. Subject to the restrictions, a participant will be a shareholder with respect to the shares awarded to him or her and will have the rights of a shareholder with respect to the shares, including the right to vote the shares and receive dividends on the shares; provided that dividends otherwise payable on any stock award subject to restrictions will be held by us and will be paid to the holder of the stock award only to the extent the restrictions on such stock award lapse.

*Stock Units.* The Committee has the discretion to grant stock unit awards to participants. Each stock unit entitles the participant to receive, on a specified date or event set forth in the award agreement, one share of common stock or cash equal to the fair market value of one share on such date or event, as provided in the award agreement. The number of stock units awarded to each participant, and the terms and conditions of the award, will be at the discretion of the Committee. Unless otherwise specified in the award agreement, a participant will not be a shareholder with respect to the stock units awarded to him prior to the date they are settled in shares of common stock. The award agreement may provide that until the restrictions on the stock units lapse, the participant will be paid an amount equal to the dividends that would have been paid had the stock units been actual shares; provided that such dividend equivalents will be held by us and paid only to the extent the restrictions lapse.

*Payment for Stock Options and Withholding Taxes.* The Committee may make one or more of the following methods available for payment of any award, including the

exercise price of a stock option, and for payment of the tax obligation associated with an award: (i) cash; (ii) cash received from a broker dealer to whom the holder has submitted an exercise notice together with irrevocable instructions to deliver promptly to us the amount of sales proceeds from the sale of the shares subject to the award to pay the exercise price or withholding tax; (iii) by directing us to withhold shares of common stock otherwise issuable in connection with the award having a fair market value equal to the minimum amount required to be withheld; and (iv) by delivery of previously acquired shares of common stock that are acceptable to the Committee and that have an aggregate fair market value on the date of exercise equal to the exercise price or withholding tax, or certification of ownership by attestation of such previously acquired shares.

*Provisions Relating to a “Change in Control” of the Company.* Notwithstanding any other provision of the 2021 Plan or any award agreement, in the event of a “Change in Control” of the Company, the Board has the discretion to provide that all outstanding awards will become fully exercisable, all restrictions applicable to all awards will terminate or lapse, and performance goals applicable to any stock awards will be deemed satisfied at the highest level. In addition, upon such Change in Control, the Committee has sole discretion to provide for the purchase of any outstanding stock option for cash equal to the difference between the exercise price and the then fair market value of the common stock subject to the option had the option been currently exercisable, make such adjustment to any award then outstanding as the Committee deems appropriate to reflect such Change in Control and cause any such award then outstanding to be assumed by the acquiring or surviving corporation after such Change in Control.

*Amendment of Award Agreements; Amendment and Termination of the 2021 Plan; Term of the 2021 Plan* The Committee may amend any award agreement at any time, provided that no amendment may adversely affect the right of any participant under any agreement in any material way without the written consent of the participant, unless such amendment is required by applicable law, regulation or stock exchange rule.

The Board may terminate, suspend or amend the 2021 Plan, in whole or in part, from time to time, without the approval of the stockholders, unless such approval is required by applicable law, regulation or stock exchange rule, and provided that no amendment may adversely affect the right of any participant under any outstanding award in any material way without the written consent of the participant, unless such amendment is required by applicable law, regulation or rule of any stock exchange on which the shares are listed.

Notwithstanding the foregoing, neither the 2021 Plan nor any outstanding award agreement can be amended in a way that results in the repricing of a stock option. Repricing is broadly defined to include reducing the exercise price of a stock option or stock appreciation right or cancelling a stock option or stock appreciation right in exchange for cash, other stock options or stock appreciation rights with a lower exercise price or other stock awards. (This prohibition on repricing without stockholder approval does not apply in case of an equitable adjustment to the awards to reflect changes in the capital structure of the company or similar events.

No awards may be granted under the 2021 Plan on or after the tenth anniversary of the initial effective date of the 2021 Plan.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In 2020, we entered into an operating lease with an entity controlled by our founders, Messrs. Okonsky and James, for our future production facility in Liberty Hill, Texas. The lease has a lease term of 5 years, and monthly payments ranging from approximately \$15,000 per month to \$17,000 per month over the lease term beginning when a certificate of occupancy is received. In February 2021, we entered into an amendment of the above lease to expand the leased premises. We paid an additional security deposit of \$139,230 and additional prepaid rent of \$315,588. The total minimum lease payments under the amended lease total approximately \$3,930,170 and we expect monthly payments to begin in the second or third quarter of 2022 based on the expected date construction will be complete.

In June 2020, we entered into a services agreement with Sustainability Initiatives, LLC (“SI”), an entity controlled by Mr. Okonsky, for accounting, graphics, marketing services and other services. This agreement, which had a term of one year and was not renewed, required us to pay SI a service fee based on hours worked with a minimum monthly fee of \$5,000. During the term of the agreement, we paid SI a total of \$60,000. In June 2021, we entered into a sublease agreement with SI for office space. The sublease term is for one year and requires us to make monthly payments of \$2,000. The sublease automatically renews annually unless either party provides 90 days’ written notice to terminate the agreement.

On August 28, 2020, we entered into consulting agreements with Pink Possum, LLC (“Pink Possum”), an entity controlled by Mr. Okonsky, and Highbridge Consultants, LLC (“Highbridge”), an entity controlled by Mr. James, pursuant to which Messrs. Okonsky and James provide us with services. In consideration for entering into the consulting agreements, we issued the two entities ten-year warrants to purchase our common stock at an exercise price of \$0.004 per share. The number of shares of common stock issuable pursuant to the warrants was based on the number of shares of our common stock outstanding at the time of exercise and provided that Pink Possum and Highbridge would receive 18.75% and 25%, respectively, of our shares of common stock outstanding at the time of exercise on a fully diluted basis. On March 26, 2021, Pink Possum and Highbridge entered into amendments to the consulting agreements agreeing to exchange the original warrants for new ten-year warrants to purchase 4,750,000 and 6,250,000 shares, respectively, of common stock at an exercise price of \$0.98. During the quarter ended March 31, 2021, we recognized compensation expense of \$5.6 million and \$7.4 million for the warrants issued to Pink Possum and Highbridge, respectively,

In addition, pursuant to the consulting agreements upon the occurrence of a Fundamental Transaction for an aggregate gross sales price of \$100.0 million or more, each entity will receive a cash payment equal to 1% of such gross sales price. For the purposes of the consulting agreements, “Fundamental Transaction” means any of the following: (i) a consolidation or merger involving the Company if the holders of the voting securities of the Company that are outstanding immediately prior to the consummation of such consolidation or merger do not, immediately after the consummation of such consolidation or merger, hold voting securities that collectively possess at least a majority of the voting power of all the outstanding securities of the surviving entity of such consolidation or merger or such surviving entity’s parent entity; (ii) a transfer or issuance (in a single transaction or series of related transactions) by one or more of the Company and its stockholders to one person or to any group of persons acting in concert, of shares of the Company’s capital stock then collectively possessing 50% or more of the voting power of all then outstanding shares of the Company’s capital stock (computed on an as-converted to common stock basis); or (iii) any sale, license, lease, assignment or other disposition of all or substantially all of the assets of the Company. Furthermore, commencing upon the completion of this offering, if our market capitalization exceeds \$300.0 million for a period of 21 consecutive trading days, each of the entities will receive an additional cash payment equal to \$15.0 million; provided that we will have the right, in our sole discretion, to make the foregoing \$15.0 million payment by the issuance of shares of our common stock. The foregoing amounts will be payable to the entities if the above milestones occur any time prior to the ten-year anniversary of original consulting agreements, or August 28, 2030.

We sublease one of our Round Rock, Texas, facilities from a company owned by our Chief Operating Officer, Bruce Riggs, and his spouse. The lease is on a month-to-month basis and requires us to make a monthly payment of \$11,500, which includes trash service. The lease is cancelable with 90-days’ notice.

## Policies and Procedures for Related Party Transactions

Our audit committee charter requires that our audit committee review and approve in advance any related party transaction. This covers, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds \$120,000 and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. All of the transactions described in this section, occurred prior to the creation of our audit committee and the adoption of this policy, and, as such, they were not conducted on an arms' length basis.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information, as of September 10, 2021, regarding beneficial ownership of our common stock by:

- each of our directors;
- each of our executive officers;
- all directors and executive officers as a group; and
- each person, or group of affiliated persons, known by us to beneficially own more than five percent of our shares of common stock.

Beneficial ownership is determined according to the rules of the SEC, and generally means that person has beneficial ownership of a security if he or she possesses sole or shared voting or investment power of that security, and includes options that are currently exercisable or exercisable within 60 days. Each director or officer, as the case may be, has furnished us with information with respect to beneficial ownership. Except as otherwise indicated, we believe that the beneficial owners of common stock listed below, based on the information each of them has given to us, have sole investment and voting power with respect to their shares, except where community property laws may apply. Except as otherwise noted below, the address for each person or entity listed in the table is c/o Volcon, Inc., 2590 Oakmont Drive, Suite 520, Round Rock, TX 78665.

Name and address of beneficial owner	Shares beneficially owned prior to offering	Percentage owned prior to offering (1)	Percentage owned after offering (2)
Christian Okonsky (3)	5,625,000	43% (3)	35% (3)
Jordan Davis	—	—	—
Greg Endo	—	—	—
Bruce Riggs	15,975	*	*
Adrian James (4)	7,000,000	48% (4)	40% (4)
Jonathan P. Foster	—	—	—
John Kim	—	—	—
Karin-Joyce Tjon	—	—	—
Andrew R. Leisner (5)	15,975	*	*
<b>Directors and Officers as a group (6)</b>	<b>12,656,950</b>	<b>66% (5)</b>	<b>57%</b>

\* Less than 1%.

- (1) Based on 2,569,719 shares of common stock outstanding as of September 10, 2021 and assumes the conversion of 2,297,215 shares of our Series A and Series B preferred stock into 5,743,175 shares of common stock upon the closing of this offering.
- (2) Based on 2,569,719 shares of common stock outstanding as of September 10, 2021 and assumes the conversion of 2,297,215 shares of our Series A and Series B preferred stock into 5,743,175 shares of common stock upon the closing of this offering, and 3,025,000 shares issued for this offering
- (3) Includes a warrant to purchase 4,750,000 shares of common stock at an exercise price of \$0.98 per share held by an entity controlled by Mr. Okonsky.
- (4) Includes a warrant to purchase 6,250,000 shares of common stock at an exercise price of \$0.98 per share held by an entity controlled by Mr. James.
- (5) Mr. Leisner resigned in July 2021.
- (6) Includes warrants for Mr. Okonsky and Mr. James as noted in (3) and (4) above.

## DESCRIPTION OF SECURITIES

*The following summary is a description of the material terms of our securities and is not complete. You should also refer to the Volcon, Inc. certificate of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part, and the applicable provisions of the Delaware General Corporation Law.*

### Authorized Capital Stock

Our amended and restated certificate of incorporation authorize us to issue up to 100,000,000 shares of common stock and 5,000,000 shares of preferred stock. We will have 11,337,894 shares of common stock outstanding immediately after the closing of this offering.

### Common Stock

Shares of our common stock have the following rights, preferences and privileges:

#### Voting

Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Any action at a meeting at which a quorum is present will be decided by a majority of the voting power present in person or represented by proxy, except in the case of any election of directors, which will be decided by a plurality of votes cast. There is no cumulative voting.

#### *Dividends*

Holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors out of funds legally available for payment, subject to the rights of holders, if any, of any class of stock having preference over the common stock. Any decision to pay dividends on our common stock will be at the discretion of our board of directors. Our board of directors may or may not determine to declare dividends in the future. See “Dividend Policy.” The board’s determination to issue dividends will depend upon our profitability and financial condition any contractual restrictions, restrictions imposed by applicable law and the SEC, and other factors that our board of directors deems relevant.

#### *Liquidation Rights*

In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of our common stock will be entitled to share ratably on the basis of the number of shares held in any of the assets available for distribution after we have paid in full, or provided for payment of, all of our debts and after the holders of all outstanding series of any class of stock have preference over the common stock, if any, have received their liquidation preferences in full.

#### *Other*

Our issued and outstanding shares of common stock are fully paid and nonassessable. Holders of shares of our common stock are not entitled to preemptive rights. Shares of our common stock are not convertible into shares of any other class of capital stock, nor are they subject to any redemption or sinking fund provisions.

### **Preferred Stock**

We are authorized to issue up to 5,000,000 shares of preferred stock. Our certificate of incorporation authorizes the board to issue these shares in one or more series, to determine the designations and the powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights (including the number of votes per share), redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors could, without stockholder approval, issue preferred stock with voting and other rights that could adversely affect the voting power and other rights of the holders of common stock and which could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a majority of our outstanding voting stock.

Prior to this offering, we will have 1,191,388 shares of our Series A preferred stock and 1,105,827 shares of our Series B preferred stock outstanding. Each of our Series A preferred stock and Series B preferred stock will convert into 2,978,588 and 2,764,587 shares of our common stock, respectively, upon the closing of this offering. The shares of Series A preferred stock and Series B preferred stock have no voting rights, except that the holders of shares of a majority of the Series A preferred stock and Series B preferred stock will be required to effect or validate any amendment, alteration or repeal of any of the provisions of the Certificate of Designation that materially adversely affects the powers, preferences or special rights of such series of preferred stock, with certain limited exceptions.

With respect to payment of dividends, the Series A preferred stock and Series B preferred stock shall rank equal to the common stock. With respect to distribution of assets upon liquidation or dissolution or winding up of the company, the Series A and Series B preferred stock holders shall receive distributions equal to their stated value before distributions can be made to common stockholders. No sinking fund has been established for the retirement or redemption of the Series A preferred stock and Series B preferred stock. The Series A preferred stock and Series B preferred stock have liquidation rights, and there are no special classifications of our Board related to the Series A preferred stock and Series B preferred stock.

### **Warrants**

On March 26, 2021, in connection with the amendment of certain consulting agreements, Pink Possum, LLC (an entity affiliated with Mr. Okonsky) and Highbridge Consultants, LLC (an entity affiliated with Mr. James) were issued ten-year warrants to purchase 4,750,000 and 6,250,000 shares, respectively, of our common stock at an exercise price of \$0.98.

As of September 1, 2021, the Company has issued ten-year warrants to consultants to purchase 516,142 shares at a weighted average exercise price of \$2.02.

### **Certificate of Incorporation and Bylaw Provisions**

Our certificate of incorporation and bylaws include a number of anti-takeover provisions that may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include:

*Advance Notice Requirements.* Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of stockholders. These procedures provide that notice of stockholder proposals must be timely and given in writing to our corporate Secretary. Generally, to be timely, notice must be received at our principal executive offices not fewer than 120 calendar days prior to the first anniversary date on which our notice of meeting and related proxy statement were mailed to stockholders in connection with the previous year’s annual meeting of stockholders. The notice must contain the information required by the bylaws, including information regarding the proposal and the proponent.

*Special Meetings of Stockholders.* Our bylaws provide that special meetings of stockholders may be called at any time by only the Chairman of the Board, the Chief Executive Officer, the President or the board of directors, or in their absence or disability, by any vice president.

*No Written Consent of Stockholders.* Our articles of incorporation and bylaws provide that any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by any consent in writing by such stockholders.

*Amendment of Bylaws.* Our stockholders may amend any provisions of our bylaws by obtaining the affirmative vote of the holders of a majority of each class of issued and outstanding shares of our voting securities, at a meeting called for the purpose of amending and/or restating our bylaws.

*Preferred Stock.* Our certificate of incorporation authorizes our board of directors to create and issue rights entitling our stockholders to purchase shares of our stock or other securities. The ability of our board to establish the rights and issue substantial amounts of preferred stock without the need for stockholder approval may delay or deter a change in control of us. See “Preferred Stock” above.

## Delaware Takeover Statute

We are subject to Section 203 of the DGCL which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any “business combination” (as defined below) with any interested stockholder for a period of three years following the date that such stockholder became an interested stockholder, unless: (1) prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (2) on consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to this plan will be tendered in a tender or exchange offer; or (3) on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66  $\frac{2}{3}$ % of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 of the DGCL defines generally “business combination” to include: (1) any merger or consolidation involving the corporation and the interested stockholder; (2) any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder; (3) subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (4) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (5) the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation. In general, Section 203 defines an “interested stockholder” as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person.

## Limitations on Liability and Indemnification of Officers and Directors

Our certificate of incorporation and bylaws limit the liability of our officers and directors and provide that we will indemnify our officers and directors, in each case, to the fullest extent permitted by the Delaware General Corporation Law. We expect to obtain additional directors’ and officers’ liability insurance coverage prior to the completion of this offering.

## Listing

We have applied to list our common stock on the NASDAQ Capital Market under the symbol “VLCN”.

## Transfer Agent

The transfer agent for our common stock is Computershare.

## SHARES ELIGIBLE FOR FUTURE SALE

Future sales of substantial amounts of common stock in the public market after this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities. We are unable to estimate the number of shares of common stock that may be sold in the future.

Upon the closing of this offering, we will have:

- 11,337,894 shares of common stock outstanding;
- 11,516,142 shares issuable upon exercise of outstanding warrants at a weighted average exercise price of \$1.03 per share;
- 1,646,875 shares issuable upon exercise of outstanding options at a weighted average exercise price of \$1.44 per share;
- 450,000 shares issuable upon vesting of restricted stock units;
- 740,618 shares available for future issuance under the Volcon, Inc. 2021 Stock Plan; and
- 151,250 shares of common stock issuable upon exercise of warrants to be issued to the underwriters in connection with this offering at an exercise price of \$6.25 per share at the midpoint of the range.

All of the shares sold in this offering will be freely tradable without restriction under the Securities Act unless purchased by one of our affiliates as that term is defined in Rule 144 under the Securities Act, which generally includes directors, officers or 10% stockholders. None of the holders of shares of our common stock or securities exercisable for or convertible into shares of our common stock have any registration rights.

## Lock-Up

Our directors and executive officers have agreed not to offer, sell, dispose of or hedge any shares of our common stock, subject to specified limited exceptions, during the period continuing through the date that is 90 days after the date of this offering.

Between January and May 2021, we issued 1,191,388 shares of our Series A preferred stock of which 415,287 shares were sold at \$6.43 per share and 776,101 shares were issued upon conversion of outstanding SAFE securities, and we sold 1,105,827 shares of our Series B preferred stock at \$9.50 per share in a private placement. Upon the closing of this offering, all of our outstanding shares of Series A and Series B preferred stock will convert into our common stock on a one-for-2.5 basis. The holders of the Series A preferred stock and Series B preferred stock have agreed to the following lock-up agreement with respect to the shares of common stock they will receive upon the closing of this offering:

- Until the 180th day after the date of this offering, the investor agreed not to sell, transfer or otherwise dispose of the shares.
- Between the 180th and 210th day after the date of this offering, the investor agreed not to sell, transfer or otherwise dispose of more than one-third of the shares.
- Between the 211th and 240th day after the date of this offering, the investor agreed not to sell, transfer or otherwise dispose of more than one-third of the purchased shares.

- After the 240th day after the date of this offering, the investor will be entitled to sell the remaining one-third of the shares purchased without restriction.

## Rule 144

Shares of common stock held by any of our affiliates, as that term is defined in Rule 144 of the Securities Act, as well as shares held by our current stockholders, may be resold only pursuant to further registration under the Securities Act or in transactions that are exempt from registration under the Securities Act. In general, under Rule 144 as currently in effect, any person who is or has been an affiliate of ours during the 90 days immediately preceding the sale and who has beneficially owned shares for at least six months is entitled to sell, within any three-month period commencing 90 days after the date of this prospectus, a number of shares that does not exceed the greater of: (i) 1% of the number of shares of common stock then outstanding, or (ii) the average weekly trading volume of the common stock during the four calendar weeks preceding the filing of a Form 144 with respect to the sale.

Sales under Rule 144 by our affiliates will also be subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

## Stock Plan

We intend to file a registration statement on Form S-8 under the Securities Act of 1933, as amended, which will register 3,000,000 shares of common stock underlying stock options or restricted stock awards for issuance under our 2021 Stock Plan. Subject to any vesting requirements, these shares registered on Form S-8 will be eligible for resale in the public markets without restriction, subject to Rule 144 limitations applicable to affiliates.

## UNDERWRITING

Aegis Capital Corp. (“Aegis”) is acting as the representative of the underwriters and the book-running manager of this offering. Under the terms of an underwriting agreement, which is filed as an exhibit to the registration statement, each of the underwriters named below has severally agreed to purchase from us the respective number of shares of common stock shown opposite its name below:

Underwriter	Number of Shares
Aegis Capital Corp.	

The underwriting agreement provides that the underwriters’ obligation to purchase shares of common stock depends on the satisfaction of the conditions contained in the underwriting agreement including:

- the representations and warranties made by us to the underwriters are true;
- there is no material change in our business or the financial markets; and
- we deliver customary closing documents to the underwriters.

## Underwriting Commissions and Discounts and Expenses

The following table shows the per share and total underwriting discounts and commissions we will pay to Aegis. These amounts are shown assuming both no exercise and full exercise of the underwriters’ option to purchase additional shares of our common stock.

	Per Share	Total	
		No Exercise	Full Exercise
Public offering price	\$	\$	\$
Underwriting discounts and commissions to be paid by us (8.0%)	\$	\$	\$
Non-accountable expense allowance (1.0%) <sup>(1)</sup>	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

- (1) We have agreed to pay a non-accountable expense allowance to Aegis equal to 1.0% of the gross proceeds received in this offering.

We estimate that the total expenses of the offering payable by us, excluding underwriting discounts and commissions, will be approximately \$300,000, including a 1.0% non-accountable expense allowance. We have also agreed to reimburse the underwriters for certain of their expenses, including “roadshow”, diligence, and reasonable legal fees and disbursements, in an amount not to exceed \$100,000 in the aggregate.

As additional compensation to Aegis, upon consummation of this offering, we will issue to Aegis or its designees warrants to purchase an aggregate number of shares of our common stock equal to 5.0% of the number of shares of common stock issued in this offering, at an exercise price per share equal to 125.0% of the public offering price (the “Underwriter Warrants”). The Underwriter Warrants and the underlying shares of common stock will not be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the Underwriter Warrants by any person for a period of 180 days beginning on the date of commencement of sales of the offering in compliance with FINRA Rule 5110.

The Underwriter Warrants will be exercisable from the date that is six months from the commencement of the sales of the offering, and will expire four years and six months after such date in compliance with FINRA Rule 5110(g)(8)(A). Furthermore, (i) the Underwriter Warrants do not have more than one demand registration right at our Company’s expense in compliance with FINRA Rule 5110(g)(8)(B); (ii) the Underwriter Warrants do not have a demand registration right with a duration of more than five years from the commencement of sales of the public offering in compliance with FINRA Rule 5110(g)(8)(C); (iii) the Underwriter Warrants do not have piggyback registration rights with a duration of more than seven years from the commencement of sales of the public offering in compliance with FINRA Rule 5110(g)(8)(D); and (iv) the Underwriter Warrants have anti-dilution terms that are consistent with FINRA Rule 5110(g)(8)(E) and (F).



### Over-Allotment Option

We have granted to the underwriters an option to purchase up to 226,875 additional shares of our common stock (7.5% of the shares sold in the offering) at the public offering price less underwriting discounts and commissions. The underwriters may exercise this option in whole or in part at any time within 45 days after the date of the offering. To the extent the underwriters exercise this option, each underwriter will be committed, so long as the conditions of the underwriting agreement are satisfied, to purchase a number of additional shares proportionate to that underwriters' initial commitment as indicated in the table at the beginning of this section plus, in the event that any underwriter defaults in its obligation to purchase shares under the underwriting agreement, certain additional shares.

### Right of First Refusal

If, for the period ending nine (9) months from the closing of the Offering, we or any of our subsidiaries (a) decides to finance or refinance any indebtedness, Aegis (or any affiliate designated by Aegis) shall have the right to act as sole book-runner, sole manager, sole placement agent or sole agent with respect to such financing or refinancing; or (b) decides to raise funds by means of a public offering or a private placement or any other capital raising financing of equity, equity-linked or debt securities, Aegis (or any affiliate designated by Aegis) shall have the right to act as sole book-running manager, sole underwriter or sole placement agent for such financing. If Aegis or one of its affiliates decides to accept any such engagement, the agreement governing such engagement will contain, among other things, provisions for customary fees for transactions of similar size and nature.

### Stabilization

In accordance with Regulation M under the Exchange Act, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock, including short sales and purchases to cover positions created by short positions, stabilizing transactions, syndicate covering transactions, penalty bids and passive market making.

- Short positions involve sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares involved in the sales made by the underwriters in excess of the number of shares they are obligated to purchase is not greater than the number of shares that they may purchase by exercising their option to purchase additional shares. In a naked short position, the number of shares involved is greater than the number of shares in their option to purchase additional shares. The underwriters may close out any short position by either exercising their option to purchase additional shares or purchasing shares in the open market.
- Stabilizing transactions permit bids to purchase the underlying security as long as the stabilizing bids do not exceed a specific maximum price.
- Syndicate covering transactions involve purchases of our common stock in the open market after the distribution has been completed to cover syndicate short positions. In determining the source of shares to close out the 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 shares through the underwriters' option to purchase additional shares. If the underwriters sell more shares than could be covered by the underwriters' option to purchase additional shares, thereby creating a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Penalty bids permit the representative to reclaim a selling concession from a syndicate member when the common stock originally sold by the syndicate member is purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.
- In passive market making, market makers in our common stock who are underwriters or prospective underwriters may, subject to limitations, make bids for or purchase shares of our common stock until the time, if any, at which a stabilizing bid is made.

These activities may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result of these activities, the price of our common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on Nasdaq or otherwise and, if commenced, may be discontinued at any time.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that Aegis will engage in these stabilizing transactions or that any transaction, once commenced, will not be discontinued without notice.

### Offering Price Determination

The public offering price was negotiated between Aegis and us. In determining the public offering price of our common stock, Aegis considered:

- the history and prospects for the industry in which we compete;
- our financial information;
- the ability of our management and our business potential and earning prospects;
- the prevailing securities markets at the time of this offering; and
- the recent market prices of, and the demand for, publicly traded shares of generally comparable companies, as well as the recent market price of our Company's common stock.

### Indemnification

We have agreed to indemnify Aegis, its affiliates and each person controlling Aegis against any losses, claims, damages, judgments, assessments, costs, and other liabilities, as the same are incurred (including the reasonable fees and expenses of counsel), relating to or arising out of the offering, undertaken in good faith.

#### **Discretionary Accounts**

The underwriters have informed us that they do not expect to make sales to accounts over which they exercise discretionary authority in excess of 5% of the shares of our common stock being offered in this offering.

#### **Lock-Up Agreements**

We, and all of our directors and executive officers have agreed that, for a period of ninety (90) days after the date of the offering, subject to certain limited exceptions, we and they will not directly or indirectly, without the prior written consent of Aegis, (a) offer, sell, or otherwise transfer or dispose of, directly or indirectly, any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company; or (b) file or caused to be filed any registration statement with the Commission relating to the offering of any shares of capital stock of the Company or any securities convertible into or exercisable or exchangeable for shares of capital stock of the Company.

The prior sentence will not apply to (i) the shares to be sold pursuant to the Underwriting Agreement, (ii) any shares of common stock issued upon the exercise of an option or other security outstanding on the date of the Offering, (iii) such issuances of options or grants of restricted stock or other equity-based awards under the Company's equity plan and the issuance of shares issuable upon exercise of any such equity-based awards, (iv) the filing of registration statements on Form S-8, (v) the issuance of securities to affiliates and subsidiaries of the Company, and, (vi) the issuance of securities in connection with mergers, acquisitions, joint ventures, licensing arrangements or any other similar non-capital raising transactions.

Aegis, 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. When determining whether or not to release common stock and other securities from lock-up agreements, Aegis will consider, among other factors, the holder's reasons for requesting the release, the number of shares of common stock and other securities for which the release is being requested and market conditions at the time.

#### **Other Relationships**

Aegis has provided us and our affiliates with investment banking and financial advisory services, including serving as placement agent for private placements of securities, for which Aegis received customary fees. Aegis may in the future provide us and our affiliates with such services. Aegis may release, or authorize us to release, as the case may be, the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time with or without notice.

In connection with our initial public offering, we will enter into an underwriting agreement with Aegis pursuant to which we will pay Aegis an aggregate of \$\_\_\_\_\_ in commissions and non-accountable expenses. In addition, we issued Aegis warrants to purchase 5% of the shares of our common stock issued in this offering at an exercise price per share equal to 125% of the public offering price.

On September 10, 2021, the Company entered into an agreement with a lender for a 6% promissory note of \$2 million. The promissory note has a maturity date of one year from inception or immediately upon the completion of this offering. For providing the above promissory note, the Company agreed to issue 266,666 shares of our common stock and agreed to pay \$35,000 of the placement agent's and investor's legal costs and paid a 6% commission to the placement agent, who is the underwriter of this offering. Such payment is cash compensation for providing services for a private placement in accordance with FINRA Rule 5110 Supplementary Material .01(b)(2).

#### **Offer restrictions outside the United States**

Other than in the United States, no action has been taken by us or the underwriter that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons who come into possession of this prospectus are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

#### **Electronic Distribution**

A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters or selling group members, if any, participating in the offering. Aegis may allocate a number of shares to the underwriters and selling group members, if any, for sale to their online brokerage account holders. Any such allocations for online distributions will be made by Aegis on the same basis as other allocations.

### **LEGAL MATTERS**

The validity of the securities offered hereby will be passed upon for us by Schiff Hardin LLP, Washington, DC. Certain legal matters in connection with this offering will be passed upon for the underwriters by Kaufman & Canoles, P.C.

### **EXPERTS**

The financial statements as of December 31, 2020 appearing in this prospectus have been audited by MaloneBailey LLP, an independent registered public accounting firm, given on the authority of such firm as experts in auditing and accounting.

### **WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the SEC a registration statement on Form S-1 under the Securities Act for the shares of common stock being offered by this prospectus. This prospectus, which is part of the registration statement, does not contain all of the information included in the registration statement and the exhibits. For further information about us and the common stock offered by this prospectus, you should refer to the registration statement and its exhibits. References in this prospectus to any of our contracts or

other documents are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract or document. You may read and copy any document that we file at the SEC's public reference room located at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms. SEC filings are also available to the public at the SEC's website at [www.sec.gov](http://www.sec.gov).

We will be subject to the reporting and information requirements of the Exchange Act and, as a result, will file periodic and current reports, proxy statements and other information with the SEC. We expect to make our periodic reports and other information filed with or furnished to the SEC, available, free of charge, through our website as soon as reasonably practicable after those reports and other information are filed with or furnished to the SEC. Additionally, these periodic reports, proxy statements and other information will be available for inspection and copying at the public reference room and website of the SEC referred to above.

## Index to Financial Statements

### For the Period Ended June 30, 2021

<a href="#">Consolidated Balance Sheets as of June 30, 2021 (unaudited)</a>	F-2
<a href="#">Consolidated Statements of Operations for the Three and Six Months Ended June 30, 2021 and the Three Months Ended June 30, 2020 and the Period February 21, 2020 (Inception) to June 30, 2020 (unaudited)</a>	F-3
<a href="#">Consolidated Statements of Changes in Shareholders' Equity (Deficit) (unaudited)</a>	F-4
<a href="#">Consolidated Statements of Cash Flows for the Three and Six Months Ended June 30, 2021 and the Three Months Ended June 30, 2020 and the Period February 21, 2020 (Inception) to June 30, 2020 (unaudited)</a>	F-5
<a href="#">Notes to Consolidated Financial Statements (Unaudited)</a>	F-7

### For the Year Ended December 31, 2020

<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-19
<a href="#">Balance Sheet as of December 31, 2020</a>	F-20
<a href="#">Consolidated Statements of Operations for the Period February 21, 2020 (Inception) to December 31, 2020</a>	F-21
<a href="#">Consolidated Statements of Changes in Shareholders' Deficit for the Period February 21, 2020 (Inception) to December 31, 2020</a>	F-22
<a href="#">Consolidated Statements of Cash Flows for the Period February 21, 2020 (Inception) to December 31, 2020</a>	F-23
<a href="#">Notes to Consolidated Financial Statements</a>	F-24

## VOLCON, INC. CONSOLIDATED BALANCE SHEETS

	June 30, 2021 (unaudited)	December 31, 2020
<b>ASSETS</b>		
Current assets:		
Cash	\$ 6,017,095	\$ 536,082
Accounts receivable	208,469	—
Inventory	860,554	—
Inventory deposits	1,671,830	—
Prepaid expenses and other current assets	283,402	102,789
Total current assets	9,041,350	638,871
Long term assets:		
Property and equipment, net	613,447	305,271
Intangible assets - domain names, net	52,658	16,954
Other long-term assets	652,813	50,560
Right of use asset - operating lease	1,777,849	842,357
<b>Total assets</b>	<b>\$ 12,138,117</b>	<b>\$ 1,854,013</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 689,076	\$ 115,444
Current portion of notes payable	16,511	8,873
Right of use operating lease liability, short term	221,646	141,943
Customer deposits	536,218	55,865
SAFE liability	—	2,000,000
Total current liabilities	1,463,451	2,322,125
Notes payable, net of discount and current portion	77,176	59,329
Right of use operating lease liability, long term	1,502,757	614,414
<b>Total liabilities</b>	<b>3,043,384</b>	<b>2,995,868</b>

## COMMITMENTS AND CONTINGENCIES

### Stockholders' equity (deficit):

Preferred stock: \$0.00001 par value, 5,000,000 shares authorized, 2,900,000 shares designated  
Series A Preferred Stock: \$0.00001 par value, 1,400,000 shares designated 1,191,388 shares issued and outstanding as of June 30, 2021, none designated, issued or outstanding as of December 31, 2020

Series B Preferred Stock: \$0.00001 par value, 1,500,000 shares designated, 1,105,827 shares issued and outstanding as of June 30, 2021, none designated, issued or outstanding as of December 31, 2020	11	—
Common stock: \$0.00001 par value, 100,000,000 shares authorized, 2,140,546 shares issued and outstanding as of June 30, 2021, 1,937,500 issued or outstanding as of December 31, 2020	8	8
Additional paid-in capital	29,924,400	232,550
Accumulated deficit	(20,829,698)	(1,374,413)
Total stockholders' equity (deficit)	9,094,733	(1,141,855)
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY (DEFICIT)</b>	<b>\$ 12,138,117</b>	<b>\$ 1,854,013</b>

The accompanying notes are an integral part of these unaudited consolidated financial statements.

F-2

**VOLCON, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**FOR THE THREE AND SIX MONTHS ENDED JUNE 30, 2021**  
**AND THE THREE MONTHS ENDED JUNE 30, 2020**  
**AND THE PERIOD FEBRUARY 21, 2020 (INCEPTION) TO JUNE 30, 2020**  
**(unaudited)**

	Three Months Ended		Six Months Ended	Period February 21, 2020 to
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Operating expenses:				
Sales and marketing	\$ 466,307	\$ 17,600	\$ 814,388	\$ 17,600
Product development	3,007,655	45,157	4,562,526	50,159
General and administrative expenses	649,174	104	14,047,543	4,339
Total operating expenses	4,123,136	62,861	19,424,457	72,098
Loss from operations	(4,123,136)	(62,861)	(19,424,457)	(72,098)
Other income (expense)	442	—	(5,490)	—
Interest expense	(12,905)	—	(25,338)	—
Total other expense	(12,463)	—	(30,828)	—
Loss before provision for income taxes	(4,135,599)	(62,861)	(19,455,285)	(72,098)
Provision for income taxes	—	—	—	—
Net loss	\$ (4,135,599)	\$ (62,861)	\$ (19,455,285)	\$ (72,098)
Net loss per common share – basic and diluted	\$ (2.00)	N/A	\$ (9.59)	N/A
Weighted average common shares outstanding – basic and diluted*	2,065,198	—	2,028,818	—

\* There were no common shares outstanding in 2020 for any period presented

The accompanying notes are an integral part of these unaudited consolidated financial statements.

F-3

**VOLCON, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY (DEFICIT)**  
**(unaudited)**

**FOR THE PERIOD FROM FEBRUARY 21, 2020 (INCEPTION) TO JUNE 30, 2020**

	Common stock		Series A preferred stock		Series B preferred stock		Additional paid-in capital	Accumulated deficit	Total
	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	Amount			
Balance at February 21, 2020	—	\$ —	—	\$ —	—	\$ —	\$ —	\$ —	\$ —
Net loss	—	—	—	—	—	—	—	(72,098)	(72,098)
Balance at June 30, 2020	—	\$ —	—	\$ —	—	\$ —	\$ —	(72,098)	(72,098)

**FOR THE SIX MONTHS ENDED JUNE 30, 2021**

Common stock	Series A preferred stock	Series B preferred stock	Additional paid-in	Accumulated
Number of	Number of	Number of	paid-in	

	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>	<u>capital</u>	<u>deficit</u>	<u>Total</u>
<b>Balance at January 1, 2021</b>	1,937,500	\$ 8	—	\$ —	—	\$ —	\$ 232,550	\$ (1,374,413)	\$ (1,141,855)
Proceeds from WeFunder offering, net of issuance costs of \$53,500	—	—	—	—	—	—	2,205,440	—	2,205,440
Issuance of series A preferred stock, net of issuance costs of \$205,470	79,750	—	415,287	4	—	—	2,464,504	—	2,464,508
Conversion of WeFunder offering to series A preferred stock	—	—	351,832	4	—	—	(4)	—	—
Conversion of SAFE Liability to series A preferred stock	—	—	424,269	4	—	—	1,999,996	—	2,000,000
Issuance of series B preferred stock, net of issuance costs of \$890,026	123,296	—	—	—	1,105,827	11	9,615,320	—	9,615,331
Stock-based compensation	—	—	—	—	—	—	13,406,594	—	13,406,594
Net loss	—	—	—	—	—	—	—	(19,455,285)	(19,455,285)
<b>Balance at June 30, 2021</b>	<u>2,140,546</u>	<u>\$ 8</u>	<u>1,191,388</u>	<u>\$ 12</u>	<u>1,105,827</u>	<u>\$ 11</u>	<u>\$ 29,924,400</u>	<u>\$ (20,829,698)</u>	<u>\$ 9,094,733</u>

The accompanying notes are an integral part of these unaudited consolidated financial statements.

F-4

**VOLCON, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE SIX MONTHS ENDED JUNE 30, 2021**  
**AND FOR THE PERIOD FROM FEBRUARY 21, 2020 (INCEPTION) TO JUNE 30, 2020**  
**(unaudited)**

	<u>Six Months Ended June 30, 2021</u>	<u>Period February 21, 2020 to June 30, 2020</u>
<b>Cash flow from operating activities:</b>		
Net loss	\$ (19,455,285)	\$ (72,098)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>		
Stock-based compensation	13,406,594	—
Loss on disposal of tooling	145,000	—
Amortization of right of use asset	131,019	—
Noncash interest expenses	23,468	—
Depreciation and amortization	63,855	—
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	(208,469)	—
Inventory	(860,554)	—
Inventory deposits	(1,671,830)	—
Prepaid assets and other current assets	(180,613)	(2,000)
Other assets	(602,253)	—
Accounts payable and accrued liabilities	573,632	20,436
Related party payable	—	53,662
Right of use liabilities - operating lease	(121,933)	—
Customer deposits	480,353	—
<b>Net cash provided by (used in) operating activities</b>	<u>(8,277,016)</u>	<u>—</u>
<b>Cash flow from investing activities:</b>		
Purchase of property and equipment	(483,039)	—
Purchase of intangible assets	(38,754)	—
<b>Net cash used by investing activities</b>	<u>(521,793)</u>	<u>—</u>
<b>Cash flow from financing activities:</b>		
Proceeds from WeFunder Offering, net of offering costs of \$53,500	2,205,440	—
Repayment of notes payable	(5,457)	—
Proceeds from issuance of Series A preferred stock, net of \$205,470 of issuance costs	2,464,508	—
Proceeds from issuance of Series B preferred stock, net of \$890,026 of issuance costs	9,615,331	—
<b>Net cash provided by financing activities</b>	<u>14,279,822</u>	<u>—</u>
<b>NET CHANGE IN CASH</b>	<u>5,481,013</u>	<u>—</u>
<b>CASH AT BEGINNING OF PERIOD</b>	<u>536,082</u>	<u>—</u>
<b>CASH AT END OF PERIOD</b>	<u>\$ 6,017,095</u>	<u>\$ —</u>

The accompanying notes are an integral part of these unaudited consolidated financial statements.

F-5

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE SIX MONTHS ENDED JUNE 30, 2021**  
**AND FOR THE PERIOD FROM FEBRUARY 21, 2020 (INCEPTION) TO JUNE 30, 2020**  
**(unaudited)**

	<b>Six Months Ended June 30, 2021</b>	<b>Period February 21, 2020 to June 30, 2020</b>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ —	\$ —
Cash paid for income taxes	\$ —	\$ —
<b>Non-cash transactions</b>		
Recognition of initial Right of use asset - operating lease	\$ 1,066,511	\$ —
Acquisition of property and equipment with note payable	\$ 30,942	\$ —
Conversion of SAFE liability to Series A preferred stock	\$ 2,000,000	\$ —
Noncash increase in related party notes payable	\$ —	\$ 53,662

F-6

**VOLCON, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1 – ORGANIZATION, NATURE OF OPERATIONS AND GOING CONCERN**

*Organization and Nature of Operations*

Volcon, Inc. (“Volcon”) was formed on February 21, 2020 as a Delaware Corporation, under the name Frog ePowersports, Inc. The Company was renamed Volcon on October 1, 2020. Volcon is developer and manufacturer of all-electric off road powersport vehicles.

On January 5, 2021, the Company created Volcon ePowersports, LLC, (“Volcon LLC”) a Colorado wholly owned subsidiary of the Company, to sell Volcon vehicles and accessories in the United States.

*Going Concern*

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. The Company has recurring losses and generated negative cash flows from operations since inception. Due to these conditions, it raised substantial doubt about its ability to continue as a going concern. Management intends to finance operating costs over the next twelve months with loans or the sale of equity. The consolidated financial statements do not include any adjustments that may result should the Company be unable to continue as a going concern.

*Impact of COVID-19*

The outbreak of the 2019 novel coronavirus disease (“COVID-19”), which was declared a global pandemic by the World Health Organization on March 11, 2020, and the related responses by public health and governmental authorities to contain and combat its outbreak and spread, has severely impacted the U.S. and world economies. Economic recessions, including those brought on by the COVID-19 outbreak may have a negative effect on the demand for the Company’s products and the Company’s operating results. The range of possible impacts on the Company’s business from the coronavirus pandemic could include: (i) changing demand for the Company’s products; and (ii) potential disruption to the Company’s supply chain and distribution network.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The significant accounting policies followed in the preparation of the consolidated financial statements are as follows:

**Basis of presentation**

The basis of accounting applied is United States generally accepted accounting principles (US GAAP). The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. All intercompany accounts, transactions and balances have been eliminated in consolidation.

**Stock Dividend**

On July 27, 2021, the board of directors approved a common stock dividend of 1.5 shares for each share of common stock. The Company has accounted for this as a stock split since all common stock shares, warrants, options and restricted stock unit amounts and common stock per share amounts will be adjusted for this stock dividend. All periods presented have been adjusted to reflect this stock dividend. As a result of the stock dividend, Series A and Series B preferred stock will convert at a ratio of 2.5 common share for each preferred share outstanding.

F-7

**Use of estimates**

The preparation of the financial statements in conformity with generally accepted accounting principles in the United States of America (“U.S. GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of expenses during the reporting periods.

Making estimates requires management to exercise judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ significantly from those estimates.

#### **Cash and cash equivalents**

Cash and cash equivalents include short-term investments with original maturities of 90 days or less at the date of purchase. The recorded value of our cash and cash equivalents approximates their fair value.

#### **Revenue recognition**

Revenue is recognized when the Company transfers control of the product to the customer and the 14-day acceptance period has expired, or acceptance has been received from the customer. Revenue is measured as the amount of consideration the Company expects to receive in exchange for transferring control of vehicles, parts, and accessories. Consideration that is received in advance of the transfer of goods are recorded as customer deposits until delivery has occurred or the customer cancels their order and the consideration is returned to the customer. Sales and other taxes the Company collects concurrent with revenue-producing activities are excluded from revenue. If a right of return exists, the Company adjusts revenue for the estimated effect of returns. Until the Company develop sales history, we will estimate expected returns based on industry data for sales returns as a percent of sales, type of product, and a projection of this experience into the future. Our sales do not have a financing component.

*Sales promotions and incentives.* The Company provides for estimated sales promotions and incentives, which are recognized as a component of sales in measuring the amount of consideration the Company expects to receive in exchange for transferring goods or providing services. Examples of sales promotion and incentive programs include distributor fees and volume incentives. Sales promotions and incentives are estimated based on contracts with distributors. The Company records these amounts as a liability in the balance sheet until they are ultimately paid. Adjustments to sales promotions and incentives accruals are made as actual usage becomes known to properly estimate the amounts necessary to generate consumer demand based on market conditions as of the balance sheet date.

*Shipping and handling charges and costs.* The Company records shipping and handling charged to the customer and related shipping costs as a component of cost of sales when control has transferred to the customer.

#### **Product warranties**

The Company provides a one-year warranty on vehicles, and a two-year warranty on the battery pack. The Company accrues warranty reserves at the time a vehicle is delivered to the customer. Warranty reserves include the Company's best estimate of the projected cost to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact our evaluation of historical data. The Company reviews its reserves quarterly to ensure that its accruals are adequate in meeting expected future warranty obligations and will adjust estimates as needed. Factors that could have an impact on the warranty reserve include the following: changes in manufacturing quality, shifts in product mix, changes in warranty coverage periods, product recalls and changes in sales volume. Warranty expense is recorded as a component of cost of revenues in the statement of operations. The portion of the warranty provision which is expected to be incurred within 12 months from the balance sheet date will be classified as current, while the remaining amount will be classified as long-term liabilities.

#### **Inventory**

Inventory costs include material, labor and manufacturing overhead costs, including depreciation expense associated with the manufacture and distribution of the Company's products. Inventories are stated at the lower of cost (first-in, first-out method) or net realizable value.

#### **Property, plant and equipment**

Property, plant and equipment are valued at cost. Additions are capitalized and maintenance and repairs are charged to expense as incurred. Gains and losses on dispositions of equipment are reflected in operations. Depreciation is provided using the straight-line method over the estimated useful lives of the assets as follows:

Category	Estimated Useful Lives
Machinery, tooling and equipment	3-7 years
Vehicles	5 years
Computers and software	3 years

#### **Long-lived assets**

The Company's long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the historical cost carrying value of an asset may no longer be appropriate. The Company assesses recoverability of the asset by comparing the undiscounted future net cash flows expected to result from the asset to its carrying value. If the carrying value exceeds the undiscounted future net cash flows of the asset, an impairment loss is measured and recognized. An impairment loss is measured as the difference between the net book value and the fair value of the long-lived asset.

#### **Leases**

Right-of-use ("ROU") assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the lease commencement date based on the estimated present value of lease payments over the lease term. Leases with an initial term of 12 months or less are not recorded on the balance sheet; the Company recognizes lease expense for these leases on a straight-line basis over the lease term. The Company does not separate non-lease components from the lease components to which they relate, and instead accounts for each separate lease and non-lease component associated with that lease component as a single lease component

ASC 842 defines initial direct costs as only the incremental costs of signing a lease. Initial direct costs related to leasing that are not incremental are expensed as general and administrative expense in our statements of operations.

The Company's operating lease agreements primarily consist of leased real estate and are included within ROU assets – operating leases and ROU lease liabilities – operating leases on the balance sheets. The Company's lease agreements may include options to extend the lease, which are not included in minimum lease payments unless they are reasonably certain to be exercised at lease commencement. The Company's leases do not provide an implicit rate, the Company uses its estimated incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

## Research and development expenses

The Company records research and development expenses in the period in which they are incurred as a component of product development expenses.

F-9

## Income taxes

Deferred taxes are determined utilizing the "asset and liability" method, whereby deferred tax asset and liability account balances are determined based on differences between financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company provides a valuation allowance, when it's more likely than not that deferred tax assets will not be realized in the foreseeable future. Deferred tax liabilities and assets are classified as current or non-current based on the underlying asset or liability or if not directly related to an asset or liability based on the expected reversal dates of the specific temporary differences.

## Fair value of financial instruments

The Company discloses fair value measurements for financial and non-financial assets and liabilities measured at fair value. Fair value is based on 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.

The accounting standard establishes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value into three broad levels, which are described below:

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Observable prices that are based on inputs not quoted on active markets but are corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

## Stock-based compensation

The Company has a stock-based incentive award plan for our employees and directors. The Company measures stock-based compensation at the estimated fair value on the grant date and recognizes the amortization of stock-based compensation expense on a straight-line basis over the requisite service period, or when it is probable criteria will be achieved for performance-based awards. Fair value is determined based on assumptions related to the fair value of the Company common stock, stock volatility and risk-free rate of return. The Company has elected to recognize forfeitures when realized.

## Recently issued accounting pronouncements

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740) ("ASU 2019-12"): Simplifying the Accounting for Income Taxes. The new standard eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences related to changes in ownership of equity method investments and foreign subsidiaries. The guidance also simplifies aspects of accounting for franchise taxes and enacted changes in tax laws or rates and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. For public business entities, it is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently evaluating the potential impact of this standard on its financial statements.

From time to time, new accounting pronouncements are issued by the Financial Accounting Standard Board ("FASB") or other standard setting bodies that the Company adopts as of the specified effective date. The Company does not believe that the impact of recently issued standards that are not yet effective will have a material impact on the Company's financial position or results of operations upon adoption.

F-10

## NOTE 3 – LONG – LIVED ASSETS

### Property and equipment

Property and equipment consist of the following:

	June 30, 2021	December 31, 2020
Machinery, tooling and equipment	\$ 384,668	\$ 215,995
Vehicles	134,144	73,202
Fixtures & furniture	50,925	—
Leasehold improvements	17,124	—
Computers	78,879	18,112
	665,740	307,309
Less: Accumulated depreciation	(52,291)	(2,038)
Total property, plant and equipment	\$ 613,449	\$ 305,271

Depreciation expense for the three and six months ended June 30, 2021 was \$47,527 and \$60,850, respectively. There was no depreciation expense for the period from February 21, 2020 (inception) through June 30, 2020.

### Intangible assets

During 2020, the Company acquired certain domain names for \$17,438. The domain names are being amortized over an estimated useful life of 15 years. Amortization expense for the three and six months ended June 30, 2021 was \$1,275 and \$3,005. There was no amortization expense for the period from February 21, 2020 (inception) through June



30, 2020.

#### NOTE 4 – NOTES PAYABLE

In December 2020, the Company entered into a financing arrangement for \$75,702 with an interest rate of 8.64% for a vehicle. The Company will make monthly payments of \$1,211 over 72 months. In April 2021, the Company entered into a financing arrangement for \$30,942 with an interest rate of 7.64% for a vehicle. The Company will make monthly payments of \$753 over 48 months.

The following table provides the maturities of these notes payable as of June 30, 2021:

Remainder of 2021	\$	11,842
2022		23,685
2023		23,685
2024		23,685
2025		17,664
2026 and thereafter		14,654
Total future payments		115,215
Less: Interest		(21,528)
Total notes payable		93,687
Less current portion		(16,511)
Long-term notes payable	\$	77,176

F-11

#### Note 5 - Related Party Transactions

During the period from February 21, 2020 (inception) through December 31, 2020, the Company entered into notes payable agreement with a company controlled by a founder and director of the Company which were secured by all assets of the Company, for cash proceeds of \$75,000. The notes were due October 1, 2020 and were repaid in full as of December 31, 2020. The Company also received cash proceeds of \$5,000 from a company controlled by the Company's Chairman and founding stockholder which was unsecured, due on demand and non-interest bearing. The amount was repaid in full prior to December 31, 2020.

A related party paid expenses of \$63,083 on behalf of the Company. These advances were unsecured, and due on demand. The Company repaid \$63,083 plus interest of \$7,624 during the period from February 21, 2020 (inception) through December 31, 2020.

On October 1, 2020, the Company entered into an agreement with a consultant to serve as Chief Operating Officer and to manage the Company's product development efforts. The consultant provided statements of work for the various projects to be executed and charged the Company hourly rates for his services. The Company also agreed to compensate a company owned by the consultant and his spouse \$5,560 per month for the use of a warehouse and office space on a month-to-month basis. Subsequent to December 31, 2020, the Company amended the agreement to increase the rental cost to \$11,200 per month, with a 90-day cancellation provision. In May 2021, the consultant became a salaried employee of the Company. As of June 30, 2021, the Company continues to rent the warehouse and office space under the same terms.

In November 2020, the Company entered into an operating lease with an entity controlled by two of the Company's founders for its future headquarters and production facility in Liberty Hill, Texas. The lease has a lease term of 5 years, and monthly payments ranging from approximately \$15,000 per month to \$17,000 per month over the lease term. In February 2021, the Company entered into an amendment of the lease related to its future headquarters to expand the leased premises. The Company paid an additional security deposit of \$139,230 and additional prepaid rent of \$315,588. The total minimum lease payments under the amended lease total approximately \$3,930,170. Monthly payments for the initial lease and the amended agreement begin at the time a certificate of occupancy is received by the landlord, which is expected in the third quarter of 2021.

#### NOTE 6 – STOCKHOLDERS' EQUITY

The Company is authorized to issue up to 100,000,000 shares of common stock with a par value of \$0.00001. In addition, the Company is authorized to issue 5,000,000 shares of preferred stock with a par value of \$0.00001. The specific rights of the preferred stock, when so designated, shall be determined by the board of directors.

##### *Common stock*

During the period ending December 31, 2020, the Company sold 1,625,000 shares of common stock to founders for cash proceeds of \$10,833. The Company also issued 312,500 shares of common stock to an individual for services and recognized \$2,088 of expense related to this grant.

##### *SAFE Agreements*

During the period ended December 31, 2020, the Company entered into SAFE agreements (Simple Agreement for Future Equity) with investors through an exchange for cash investments totaling \$2,000,000. Upon a future equity financing, the SAFE agreements would convert into the same securities in that equity financing at the lower of the price per share of the funding, or a price per share based on a \$5 million company valuation using a fully diluted common stock basis. The SAFE agreements had no interest rate or maturity date, and the SAFE investors had no voting right prior to conversion. The SAFE agreements were recorded as a liability of \$2,000,000 as of December 31, 2020. In January 2021, upon closing of the Series A preferred stock offering discussed below, the amount invested under these SAFE agreements were converted into 424,269 shares of Series A Preferred Stock.

In January 2021, the Company completed a WeFunder SAFE offering which was convertible into Preferred Stock upon future financing events. The Company received gross proceeds of \$2,258,940 and paid expenses of \$53,500, reflected as costs of capital. In connection with the Series A Preferred stock offering as discussed below, the WeFunder SAFE investments were converted into 351,832 shares of Series A Preferred Stock.

F-12

##### *Preferred Stock*

In 2021, the Company designated 1,400,000 shares of preferred stock as Series A Preferred Stock. The Series A Preferred Stock has a par value of \$0.0001, has no voting rights, no dividends and each share will automatically convert into 2.5 shares of common stock of the Company at the time of the Company's initial public offering. In February 2021, the Company completed an offering of 415,287 shares of Series A Preferred Stock and received gross proceeds of \$2,669,978. The Company paid expenses of \$205,470 related to the offering including issuing to one financial broker dealer 79,750 shares of common stock and 79,750 fully vested warrants with a 10 year exercise term to purchase common stock with an exercise price of \$6.43.

In 2021, the Company designated 1,500,000 shares of preferred stock as Series B Preferred Stock, with a par value of \$0.00001 per share and a stated value of \$9.50 per share. The Series B Preferred Stock will receive dividends equivalent to any such dividends paid on common stock in the future, has no voting rights, and each share will automatically convert into 2.5 shares of common stock upon completion of the Company's initial public offering. In May 2021, the Company completed an offering of 1,105,827 shares of Series B Preferred Stock and received gross proceeds \$10,505,357. The Company paid expenses of \$890,026 related to the offering, including issuing to two financial broker dealers 123,296 shares of common stock and 197,272 fully vested warrants to purchase common stock with a 10 year exercise term and an exercise price of \$3.80.

#### Warrants

The common stock warrants issued prior to January 1, 2021 have an exercise price of \$0.004 per share, and an exercise term of 10 years, and vest over periods of up to one year. The Company estimated the fair value of the warrants using the fair value of its common stock based on the most recent fundraising at \$4.71 per share. The Company expects to recognize additional compensation expense of \$33,682 related to these warrants over their remaining vesting period.

During the three and six months ended June 30, 2021, the Company recognized expense of \$24,965 and \$13,123,141, respectively, related to common stock warrants. There was no expense recognized for any period presented for 2020 as no warrants were outstanding as of June 30, 2020.

During 2020, the two Company founders, whom are both members of the board directors of the Company and one of which is the Chairman of the Board, each entered into an anti-dilution warrant with the Company. In the event of their ownership of the Company's fully diluted capitalization being less than 25% or 18.75%, each individual will receive common stock warrants with an exercise price of \$0.01 to purchase sufficient shares to return them to those ownership percentages. The warrants were fully vested upon grant and have an exercise period of 10 years from the date of grant. As of December 31, 2020, no warrants were owed to the two founders.

In March 2021, the Company agreed to exchange the two anti-dilution warrants that were issued to Company founders for a total of 11,000,000 warrants to purchase shares of common stock at an exercise price of \$0.98 for a period of 10 years. In connection with this exchange, the Company amended its existing consulting agreements with the founders, to allow for the payment of compensation totaling \$30,000,000 in the event that the Company's market capitalization exceeds \$300,000,000 for 21 consecutive trading days. The Company will have the option to settle the amount by issuing shares of common stock based on the closing price of the Company's stock at the start of the 21-day period. In addition to this payment, each of the two founders will continue to receive a cash payment equal to 1% of the gross sale price in the event of a change of control of the Company with a sale price of at least \$100,000,000. In connection with the exchange, the Company recognized expense of \$13,031,989 for the estimated fair value of the warrants on a Black-Scholes option pricing model utilizing the following assumptions: 1) volatility of 106% based on a peer group of companies; 2) risk-free rate of 1.67%; 3) dividend rate of 0.0%; and 4) an expected term of 10 years.

F-13

The following is the activity related to common stock warrants during the six months ended June 30, 2021:

	Shares	Common Stock Warrants		Intrinsic Value
		Weighted Average Exercise Price	Weighted average Remaining Life in years	
Outstanding at January 1, 2021	151,590	\$ 0.004	9.17	
Granted	11,277,022	1.04	9.60	
Cancelled	—	—	—	
Expired	—	—	—	
Exercised	—	—	—	
Outstanding at June 30, 2021	11,428,612	\$ 1.03	9.59	\$ 5,384,452
Exercisable at June 30, 2021	11,466,112	\$ 1.03	9.59	\$ 5,384,452

#### NOTE 7 – STOCK-BASED COMPENSATION

In January 2021, the Company's board of directors adopted the Volcon, Inc. 2021 Stock Plan, (the "2021 Plan"). The 2021 Plan is a stock-based compensation plan that provides for discretionary grants of stock options, stock awards, and restricted stock unit awards to employees, members of the board of directors and consultants (including restricted stock units issued prior to the adoption of the plan as further discussed below). The Company has reserved a total of 3,000,000 shares of the Company's common stock for issuance under the 2021 Plan, which may be adjusted for changes in capitalization and certain corporate transactions. To the extent that an award, if forfeitable, expires, terminates or lapses, or an award is otherwise settled in cash without the delivery of shares of common stock to the participant, then any unpaid shares subject to the award will be available for future grant or issuance under the 2021 Plan. Shares available for issuance under the 2021 Plan as of June 30, 2021 were 1,176,875. Shares vest according to each agreement and as long as the employee remains employed with the Company or the consultant continues to provide services in accordance with the terms of the agreement. The Company has granted awards with time-based vesting and performance-based vesting features.

#### Restricted Stock Units

Beginning in October 2020, the Company entered into various agreements with employees where the Company agreed to award a total of 637,500 shares of restricted stock units which vest equally over a period of three years. The Company estimated the fair value of the shares of common stock using the estimated fair value of its common stock based on the most recent fundraising at \$4.71 per share. During the three and six months ended June 30, 2021, the Company recognized expense of \$100,088 and \$200,175, respectively, related to these restricted stock awards. The Company expects to recognize additional compensation expense of \$942,000 related to these restricted stock units assuming all awards will vest.

The following is the restricted stock unit activity for the six months ended June 30, 2021:

	Restricted Stock Units
Outstanding January 1, 2021	637,500

Granted	—
Vested	—
Cancelled	—
Outstanding June 30, 2021	<u>637,500</u>

F-14

In January 2021, the Board of Directors authorized 250,000 common shares to be reserved under the 2021 Plan for issuance to employees upon achieving multiple performance milestones. The allocation of the number of shares to be awarded was to be determined upon achievement of all the milestones. As of June 30, 2021, not all of the performance milestones were met. In July 2021, the Board of Directors approved a grant of 162,507 shares since some of the performance milestones were met.

#### Stock Options

The following is the common stock options to employees and consultants for services during the six months ended June 30, 2021:

	Common Stock Options			
	Shares	Weighted Average Exercise Price	Weighted average Remaining Life in years	Intrinsic Value
Outstanding at January 1, 2021	—	\$ —	—	—
Granted	1,185,625	1.00	9.76	—
Cancelled	—	—	—	—
Exercised	—	—	—	—
Outstanding at June 30, 2021	<u>1,185,625</u>	<u>\$ 1.00</u>	<u>9.76</u>	<u>\$ 535,903</u>
Exercisable at June 30, 2021	<u>625</u>	<u>\$ 1.00</u>	<u>9.76</u>	<u>\$ 283</u>

The Company valued the options using an estimated fair value of the shares of common stock between \$2.46 – \$3.63, volatility of 105% based on peer companies, risk free interest rate of 0.85%, no dividends and an estimated life of 5 years. During the three and six months ended June 30, 2021 the Company recognized expense of \$78,663 and \$83,278, respectively, related to these common stock options. The Company expects to recognize additional compensation expense of \$1,387,875 related to these common stock options assuming all awards vest.

Total stock-based compensation recorded for the three and six months ended June 30, 2021 for all stock based compensation awards, including warrants, has been recorded as follows:

	Three Months Ended June 30, 2021	Six Months Ended June 30, 2021
Sales and Marketing	\$ 24,176	\$ 52,856
Product Development	50,307	128,678
General and Administrative	13,128,395	13,225,060
Total	<u>\$ 13,202,878</u>	<u>\$ 13,406,594</u>

#### NOTE 8 –LOSS PER COMMON SHARE

The basic net loss per common share is calculated by dividing the Company's net loss available to common shareholders by the weighted average number of common shares during the year. The diluted net loss per common share is calculated by dividing the Company's net loss available to common shareholders by the diluted weighted average number of common shares outstanding during the year. The diluted weighted average number of common shares outstanding is the basic weighted number of common shares adjusted for any potentially dilutive debt or equity. Common shares consisting of common stock warrants, stock options and restricted stock units totaling 13,289,237 and Series A and Series B preferred stock of 1,191,38 and 1,105,827, respectively, convertible into 5,743,036 shares of common stock as of June 30, 2021 and any potential shares issuable under the anti-dilution warrants discussed above were excluded from the calculation of diluted net loss per share due to their antidilutive effect. There were no dilutive instruments outstanding as of June 30, 2021 and there were no common shares outstanding as of June 30, 2020.

F-15

	Three months ended June 30, 2021	Six months ended June 30, 2021
Numerator:		
Net loss	\$ (4,135,599)	\$ (19,455,285)
Denominator:		
Denominator for basic and diluted net loss per common share - weighted average of common shares	2,065,198	2,028,818
Basic and diluted net loss per common share	\$ (2.00)	\$ (9.59)

#### NOTE 9 – INCOME TAXES

Deferred taxes are determined by applying the provisions of enacted tax laws and rates for the jurisdictions in which the Company operates to the estimated future tax effects of the differences between the tax basis of assets and liabilities and their reported amounts in the Company's financial statements. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that the related tax benefits will not be realized.

The main reconciling items between the statutory tax rate of the Company and the effective tax rate are the non-recognition of the benefits from accumulated net operating losses carryforward due to the uncertainty of the realization of such tax benefits.

	Three months ended June 30, 2021	Three months ended June 30, 2020	Six months ended June 30, 2021	February 21, 2020 (inception) to June 30, 2020
Expected federal income tax benefit at statutory rate	\$ (868,500)	\$ (13,200)	\$ (4,085,600)	\$ (15,100)
Stock based compensation	42,800		2,815,400	
Nondeductible expenses	700		900	
Change in valuation allowance	825,000	13,200	1,269,300	15,100
Income tax benefit	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

Significant components of the Company's deferred tax assets are as follows:

	June 30, 2021	December 31, 2020
Net operating losses	\$ 1,511,500	\$ 242,000
Valuation allowance	(1,511,500)	(242,000)
Net deferred tax asset	<u>\$ —</u>	<u>\$ —</u>

Management currently believes that since the Company has a history of losses it is more likely than not that the deferred tax regarding the loss carry forwards and other temporary differences will not be realized in the foreseeable future. The Company believes that carryforward limitations will be applied to the historical net operating losses due to the recent change of control transition. The Company's cumulative net operating loss carry forward of approximately \$7,197,000 as of June 30, 2021 may be limited in future years depending on future taxable income in any given fiscal year.

#### F-16

The Company has recorded no liability for income taxes associated with unrecognized tax benefits at the date of adoption and has not recorded any liability associated with unrecognized tax benefits. Accordingly, the Company has not recorded any interest or penalty in regard to any unrecognized benefit.

#### NOTE 10 – LEASES

The Company did not have any leases during the period from February 21, 2020 (inception) to June 30, 2020. The components of lease cost for operating leases for the three and six months ended June 30, 2021 were as follows:

	Three Months Ended June 30, 2021	Six months Ended June 30, 2020
<b>Lease Cost</b>		
Operating lease cost	\$ 93,994	\$ 131,019
Short-term lease cost	55,438	88,248
Variable lease cost	—	—
Sublease income	—	—
Total lease cost	<u>\$ 149,432</u>	<u>\$ 219,267</u>

Supplemental cash flow information related to leases for the six months ended June 30, 2021 was as follows:

	June 30, 2020
<b>Other Lease Information</b>	
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 121,933

The following table summarizes the lease-related assets and liabilities recorded on the balance sheet at June 30, 2021 and December 31, 2020:

Lease Position	June 30, 2021	December 31, 2020
Operating Leases		
Operating lease right-of-use assets	\$ 1,777,849	\$ 842,357
Right of use liability operating lease short term	\$ 221,646	\$ 141,943
Right of use liability operating lease long term	1,502,757	614,414
Total operating lease liabilities	<u>\$ 1,724,403</u>	<u>\$ 756,357</u>

The Company utilizes the incremental borrowing rate in determining the present value of lease payments unless the implicit rate is readily determinable. The Company recognized an initial right of use asset and lease liability of \$ \$1,066,511 for leases entered into in the six months ended June 30, 2021.

Lease Term and Discount Rate	June 30, 2021
Weighted-average remaining lease term (years)	
Operating leases	4.9
Weighted-average discount rate	
Operating leases	5.5%

The following table provides the maturities of lease liabilities at June 30, 2021:

	<b>Operating Leases</b>
<b>Maturity of Lease Liabilities at June 30, 2021</b>	
Remainder of 2021	\$ 128,502
2022	986,743
2023	1,045,541
2024	1,000,551
2025	970,874
2026 and thereafter	822,894
Total future undiscounted lease payments	\$ 4,955,105
Less: Interest	(596,144)
Present value of lease liabilities	<u>\$ 4,358,961</u>

Note that amounts above include future payments for a lease related to a facility to be constructed in Liberty Hill, Texas by an entity associated with the Company's founders (see Note 5)

#### **NOTE 11— SUBSEQUENT EVENTS**

In July 2021, the Company's CEO resigned effective July 30, 2021. The share-based awards of 187,500 restricted stock units and 187,500 stock options awarded to the CEO were forfeited and will be returned to the shares available for issuance under the 2021 Plan. The Company made an offer to an individual to replace the CEO and the offer was accepted and the new CEO will begin employment with the Company effective August 23, 2021. The offer includes a base salary of \$230,000, an annual bonus of up to \$172,500 based on goals set by the Company's board of directors, and 450,000 stock options that vest one third annually, a 10-year term and an exercise price of \$3.00.

On August 4, 2021, the Company entered into a new lease for manufacturing and office space in Round Rock, Texas. The lease term is for five years with an expected commencement date of September 1, 2021. The Company paid a security deposit of \$80,000 upon execution of the lease. Total lease payments for the five-year term are approximately \$1,024,000 which includes rent plus the Company's pro rata share of taxes, insurance and common area maintenance costs.

On September 10, 2021, the Company entered into an agreement with a lender to issue a 6% promissory note of \$2.0 million. The promissory note bears interest at 6% and is due at the earlier of one year from issuance or immediately upon completion of an initial public offering of the Company's common stock. The Company also agreed to issue 266,666 shares of common stock to the lender.

F-18

#### **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors of  
Volcon, Inc.

##### ***Opinion on the Financial Statements***

We have audited the accompanying balance sheet of Volcon, Inc. (the "Company") as of December 31, 2020, and the related statements of operations, stockholders' equity, and cash flows for the period from February 21, 2020 (inception) through December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the results of its operations and its cash flows for the period from February 21, 2020 (inception) through December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

##### ***Going Concern Matter***

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations and has a net capital deficiency that raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

##### ***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 audit. 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 audit in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. 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 audit 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 audit 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 audit 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 audit provides a reasonable basis for our opinion.

##### ***Critical Audit Matters***

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgements. We determined that there are no critical audit matters.

F-19

**VOLCON, INC.  
BALANCE SHEET**

	<u>December 31, 2020</u>
<b>ASSETS</b>	
Current assets:	
Cash	\$ 536,082
Prepaid expenses and other current assets	102,789
<b>Total current assets</b>	<u>638,871</u>
Long term assets:	
Property and equipment, net	305,271
Intangible assets - domain names, net	16,954
Other long-term assets	50,560
Right of use asset - operating lease	842,357
<b>Total assets</b>	<u>\$ 1,854,013</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>	
Current liabilities:	
Accounts payable and accrued liabilities	\$ 115,444
Current portion of notes payable	8,873
Right of use operating lease liability, short term	141,943
Customer deposits	55,865
SAFE liability	2,000,000
<b>Total current liabilities</b>	<u>2,322,125</u>
Notes payable, net of discount and current portion	59,329
Right of use operating lease liability, long term	614,414
<b>Total liabilities</b>	<u>2,995,868</u>
<b>COMMITMENTS AND CONTINGENCIES</b>	
<b>Stockholders' deficit:</b>	
Preferred stock; \$0.00001 par value, 5,000,000 shares authorized, 0 shares issued and outstanding	—
Common stock; \$0.00001 par value, 100,000,000 shares authorized, 1,937,500 shares issued and outstanding	8
Additional paid-in capital	232,550
Accumulated deficit	(1,374,413)
<b>Total stockholders' deficit</b>	<u>(1,141,855)</u>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' DEFICIT</b>	<u>\$ 1,854,013</u>

*The accompanying notes are an integral part of these financial statements.*

F-20

**VOLCON, INC.  
CONSOLIDATED STATEMENT OF OPERATIONS  
FOR THE PERIOD FEBRUARY 21, 2020 (INCEPTION) TO DECEMBER 31, 2020**

	<u>2020</u>
Operating expenses:	
Sales and marketing	\$ 125,752
Product development	407,760
Selling, general and administrative expenses	833,277
<b>Total operating expenses</b>	<u>1,366,789</u>
Loss from operations	<u>(1,366,789)</u>

Interest expense	7,624
Total other expense	7,624
Loss before provision for income taxes	(1,374,413)
Provision for income taxes	—
Net loss	<u>\$ (1,374,413)</u>
Net loss per common share – basic and diluted	<u>\$ (2.28)</u>
Weighted average common shares outstanding – basic and diluted	<u>604,100</u>

*The accompanying notes are an integral part of these financial statements.*

F-21

**VOLCON, INC.**  
**STATEMENTS OF CHANGES IN SHAREHOLDERS' DEFICIT**  
**FOR THE PERIOD FROM FEBRUARY 21, 2020 (INCEPTION) TO DECEMBER 31, 2020**

	Common stock		Additional	Accumulated	Total
	Number of	Amount	paid-in	deficit	
	Shares		capital		
<b>Balance at February 21, 2020</b>	—	\$ —	\$ —	\$ —	\$ —
Issuance of founders shares for cash	1,625,000	7	10,826	—	10,833
Stock-based compensation	312,500	1	221,724	—	221,725
Net loss	—	—	—	(1,374,413)	(1,374,413)
<b>Balance at December 31, 2020</b>	<u>1,937,500</u>	<u>\$ 8</u>	<u>\$ 232,550</u>	<u>\$ (1,374,413)</u>	<u>\$ (1,141,855)</u>

*The accompanying notes are an integral part of these financial statements.*

F-22

**VOLCON, INC.**  
**CONSOLIDATED STATEMENT OF CASH FLOWS**  
**FOR THE PERIOD FROM FEBRUARY 21, 2020 (INCEPTION) TO DECEMBER 31, 2020**

	2020
<b>Cash flow from operating activities:</b>	
Net loss	\$ (1,374,413)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>	
Depreciation and amortization	2,522
Stock-based compensation	221,725
<b>Changes in operating assets and liabilities:</b>	
Prepaid assets and other current assets	(102,789)
Other assets	(50,560)
Right of use asset - operating lease	12,084
Accounts payable and accrued liabilities	178,527
Right of use liabilities - operating lease	(98,084)
Deferred revenue	55,865
<b>Net cash provided by (used in) operating activities</b>	<u>(1,155,123)</u>
<b>Cash flow from investing activities:</b>	
Purchase of property and equipment	(231,607)
Purchase of intangible assets	(17,438)
<b>Net cash used by investing activities</b>	<u>(249,045)</u>
<b>Cash flow from financing activities:</b>	
Proceeds from SAFE liability	2,000,000
Proceeds from related party notes payable	80,000
Repayment of related party notes payable	(143,083)
Repayment of notes payable	(7,500)
Proceeds from equity issuance	10,833
<b>Net cash provided by financing activities</b>	<u>1,940,250</u>

<b>NET CHANGE IN CASH</b>	536,082
<b>CASH AT BEGINNING OF PERIOD</b>	—
<b>CASH AT END OF PERIOD</b>	<u>\$ 536,082</u>
<b>Supplemental disclosure of cash flow information:</b>	
Cash paid for interest	<u>\$ 7,624</u>
Cash paid for income taxes	<u>\$ —</u>
<b>Non-cash transactions</b>	
Recognition of initial Right of use asset - operating lease	<u>\$ 854,441</u>
Acquisition of property and equipment with note payable	<u>\$ 75,702</u>
Noncash increase in related party notes payable	<u>\$ 63,083</u>

*The accompanying notes are an integral part of these financial statements.*

F-23

## VOLCON, INC. NOTES TO FINANCIAL STATEMENTS

### NOTE 1 – ORGANIZATION, NATURE OF OPERATIONS AND GOING CONCERN

#### *Organization and Nature of Operations*

Volcon, Inc. (“Volcon”) was formed on February 21, 2020 as a Delaware Corporation, under the name Frog EPowersports, Inc. The Company was renamed Volcon on October 1, 2020. Volcon is developer and manufacturer of all-electric off road powersport vehicles.

#### *Going Concern*

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. The Company has recurring losses and generated negative cash flows from operations since inception. Due to these conditions, it raised substantial doubt about its ability to continue as a going concern. Management intends to finance operating costs over the next twelve months with loans or the sale of equity. The consolidated financial statements do not include any adjustments that may result should the Company be unable to continue as a going concern.

#### *Impact of COVID-19*

The outbreak of the 2019 novel coronavirus disease (“COVID-19”), which was declared a global pandemic by the World Health Organization on March 11, 2020, and the related responses by public health and governmental authorities to contain and combat its outbreak and spread, has severely impacted the U.S. and world economies. Economic recessions, including those brought on by the COVID-19 outbreak may have a negative effect on the demand for the Company’s products and the Company’s operating results. The range of possible impacts on the Company’s business from the coronavirus pandemic could include: (i) changing demand for the Company’s products; and (ii) potential disruption to the Company’s supply chain and distribution network.

### NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The significant accounting policies followed in the preparation of the consolidated financial statements are as follows:

#### **Basis of presentation**

The basis of accounting applied is United States generally accepted accounting principles (US GAAP). The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts, transactions and balances have been eliminated in consolidation.

#### **Use of estimates**

The preparation of the financial statements in conformity with generally accepted accounting principles in the United States of America (“U.S. GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of expenses during the reporting periods.

Making estimates requires management to exercise judgment. It is at least reasonably possible that the estimate of the effect of a condition, situation or set of circumstances that existed at the date of the financial statements, which management considered in formulating its estimate, could change in the near term due to one or more future confirming events. Accordingly, actual results could differ significantly from those estimates.

#### **Cash and cash equivalents**

Cash and cash equivalents include short-term investments with original maturities of 90 days or less at the date of purchase. The recorded value of our cash and cash equivalents approximates their fair value.

F-24

#### **Accounts receivable**

Accounts receivable are comprised of unsecured amounts due from customers. The Company carries its accounts receivable at their face amounts less an allowance for bad debts. The allowance for bad debts is recognized based on management’s estimate of likely losses per year, based on past experience and review of customer profiles and the aging of receivable balances. As of December 31, 2020, the allowance for bad debts was \$0.

#### **Revenue recognition**



Revenue is recognized when we transfer control of the product to the customer. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring control of our vehicles, parts and accessories. Consideration that is received in advance of the transfer of goods is deferred until delivery has occurred. Sales and other taxes we collect concurrent with revenue-producing activities are excluded from revenue. If a right of return exists, we adjust revenue for the estimated effect of returns. Until we develop sales history, we will estimate expected returns based on industry data for sales returns as a percent of sales, type of product, and a projection of this experience into the future. Our sales do not have a financing component.

*Sales promotions and incentives.* We provide for estimated sales promotion and incentive expenses, which are recognized as a component of sales in measuring the amount of consideration we expect to receive in exchange for transferring goods or providing services. Examples of sales promotion and incentive programs include distributor fees and volume incentives. Sales promotion and incentive expenses are estimated based on current programs for each product line. We record these amounts as a liability in the balance sheet until they are ultimately paid. Adjustments to sales promotions and incentives accruals are made as actual usage becomes known in order to properly estimate the amounts necessary to generate consumer demand based on market conditions as of the balance sheet date.

*Shipping and handling charges and costs.* We record shipping and handling charged to the customer and related shipping costs as a component of cost of sales when control has transferred to the customer.

#### **Product warranties**

The Company provides a one-year warranty on vehicles, and a two-year warranty on the battery pack. The Company accrues warranty reserves at the time a vehicle is delivered to the customer. Warranty reserves include the Company's best estimate of the projected cost to repair or to replace any items under warranty, based on actual warranty experience as it becomes available and other known factors that may impact our evaluation of historical data. The Company reviews its reserves quarterly to ensure that its accruals are adequate in meeting expected future warranty obligations, and will adjust estimates as needed. Factors that could have an impact on the warranty reserve include the following: changes in manufacturing quality, shifts in product mix, changes in warranty coverage periods, product recalls and changes in sales volume. Warranty expense is recorded as a component of cost of revenues in the statement of operations. The portion of the warranty provision which is expected to be incurred within 12 months from the balance sheet date will be classified as current, while the remaining amount will be classified as long-term liabilities.

#### **Inventory**

Inventory costs include material, labor and manufacturing overhead costs, including depreciation expense associated with the manufacture and distribution of the Company's products. Inventories are stated at the lower of cost (first-in, first-out method) or net realizable value.

#### **Property and equipment**

Property and equipment are valued at cost. Additions are capitalized and maintenance and repairs are charged to expense as incurred. Gains and losses on dispositions of equipment are reflected in operations. Depreciation is provided using the straight-line method over the estimated useful lives of the assets as follows:

Category	Estimated Useful Lives
Machinery, tooling and equipment	3-7 years
Vehicles	5-7 years
Computers and software	3 years

F-25

#### **Intangible assets and long-lived assets**

The Company's intangible asset recognizes an acquired intangible asset apart from goodwill whenever the intangible asset arises from contractual or other legal rights, or when it can be separated or divided from the acquired entity and sold, transferred, licensed, rented or exchanged, either individually or in combination with a related contract, asset or liability. Such intangibles are amortized over their useful lives. Impairment losses are recognized if the carrying amount of an intangible asset subject to amortization is not recoverable from expected future cash flows and its carrying amount exceeds its fair value.

The Company's long-lived assets, including intangibles, are reviewed for impairment whenever events or changes in circumstances indicate that the historical cost carrying value of an asset may no longer be appropriate. The Company assesses recoverability of the asset by comparing the undiscounted future net cash flows expected to result from the asset to its carrying value. If the carrying value exceeds the undiscounted future net cash flows of the asset, an impairment loss is measured and recognized. An impairment loss is measured as the difference between the net book value and the fair value of the long-lived asset.

#### **Leases**

The Company leases certain facilities. Leases with an initial term of 12 months or less are not recorded on the balance sheet; the Company recognizes lease expense for these leases on a straight-line basis over the lease term. The Company does not separate non-lease components from the lease components to which they relate, and instead accounts for each separate lease and non-lease component associated with that lease component as a single lease component for all underlying asset classes. As most of the Company's leases do not provide an implicit rate, the Company uses its estimated incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments.

#### **Selling, general and administrative expenses**

Selling, general and administrative expenses include advertising and marketing costs which are expensed as incurred. Also included in selling, general and administrative expenses are software development costs and professional fees.

#### **Product development expenses**

The Company records product development expenses in the period in which they are incurred as a component of operating expenses.

#### **Income taxes**

Deferred taxes are determined utilizing the "asset and liability" method, whereby deferred tax asset and liability account balances are determined based on differences between financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company provides a valuation allowance, when it's more likely than not that deferred tax assets will not be realized in the foreseeable future. .

The impact of an uncertain income tax position on the income tax return is recognized at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. Interest and penalties on income taxes will

be classified as a component of the provisions for income taxes.

#### **Fair value of financial instruments**

The Company discloses fair value measurements for financial and non-financial assets and liabilities measured at fair value. Fair value is based on 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.

The accounting standard establishes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value into three broad levels, which are described below:

F-26

Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Observable prices that are based on inputs not quoted on active markets, but are corroborated by market data.

Level 3: Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

#### **Stock-based compensation**

The Company measures the total amount of employee stock-based compensation expense for a grant based on the grant date fair value of each award and recognizes the stock-based compensation expense on a straight-line basis over the requisite service period for each separately vesting tranche of an award. Stock-based compensation is based on unvested outstanding awards. The Company has elected to recognize forfeitures when realized.

#### **Recently issued accounting pronouncements**

In December 2019, the FASB issued ASU No. 2019-12, Income Taxes (Topic 740) ("ASU 2019-12"): Simplifying the Accounting for Income Taxes. The new standard eliminates certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences related to changes in ownership of equity method investments and foreign subsidiaries. The guidance also simplifies aspects of accounting for franchise taxes and enacted changes in tax laws or rates, and clarifies the accounting for transactions that result in a step-up in the tax basis of goodwill. For public business entities, it is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently evaluating the potential impact of this standard on its financial statements.

In June 2020, the FASB issued ASU No. 2020-06, Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40). This standard eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. It also amends the accounting for certain contracts in an entity's own equity that are currently accounted for as derivatives because of specific settlement provisions. In addition, the new guidance modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted EPS computation. For public business entities, it is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years using the fully retrospective or modified retrospective method. Early adoption is permitted but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company is currently evaluating the potential impact of this standard on its financial statements.

From time to time, new accounting pronouncements are issued by the Financial Accounting Standard Board ("FASB") or other standard setting bodies that the Company adopts as of the specified effective date. The Company does not believe that the impact of recently issued standards that are not yet effective will have a material impact on the Company's financial position or results of operations upon adoption.

#### **NOTE 3 – LONG – LIVED ASSETS**

##### ***Property and equipment***

Property and equipment at December 31, 2020 consisted of the following:

Machinery, tooling and equipment	\$	215,995
Vehicles		73,202
Computers and software		18,112
		<u>307,309</u>
Less: accumulated depreciation		<u>(2,038)</u>
Total property, plant and equipment	\$	<u>305,271</u>

Depreciation expense for the period from February 21, 2020 (inception) through December 31, 2020 was \$2,038.

F-27

##### ***Intangible assets***

The Company acquired certain domain names for \$17,438. The domains are being amortized over an estimated useful life of 15 years. Amortization expense for the period from February 21, 2020 (inception) through December 31, 2020 was \$484.

#### **NOTE 4 – NOTES PAYABLE**

The Company entered into a financing arrangement for a vehicle with a value of \$75,702 and an interest rate of 8.64%. The Company will make monthly payments of \$1,211 over 72 months. The Company owes \$68,202 under this note payable as of December 31, 2020.

##### ***Notes Payable – Related Parties***

During the period from February 21, 2020 (inception) through December 31, 2020, the Company entered into notes payable agreement with a company controlled by a founder and Director of the Company which were secured by all assets of the Company, for cash proceeds of \$75,000. The notes were due October 1, 2020 and were repaid in full. The

Company also received cash proceeds of \$5,000 from a company controlled by the Company's Chairman and founding stockholder which was unsecured, due on demand and non-interest bearing. The amount was repaid in full prior to December 31, 2020.

A related party paid expenses of \$63,083 on behalf of the Company. These advances were unsecured, and due on demand. The Company repaid \$63,083 plus interest of \$7,624 during the period from February 21, 2020 (inception) through December 31, 2020.

## NOTE 5 – STOCKHOLDERS' EQUITY

On July 27, 2021, the Company's board of directors approved a common stock dividend of 1.5 shares per share of common stock. All outstanding common stock, warrants, options, restricted stock unit amounts, and related per share prices, have been adjusted in the financial statements as of December 31, 2020 and for the period February 21, 2020 (inception) to December 31, 2020 to reflect this stock dividend. Series A and Series B preferred stock will convert to common stock on a 1 to 2.5 ratio due to this stock dividend.

The Company is currently authorized to issue up to 100,000,000 shares of common stock with a par value of \$0.00001. In addition, the Company is authorized to issue 5,000,000 shares of preferred stock with a par value of \$0.00001. The specific rights of the preferred stock, when so designated, shall be determined by the board of directors.

### SAFE Agreements

During the period from February 21, 2020 (inception) through December 31, 2020, the Company entered into SAFE agreements (Simple Agreement for Future Equity) with investors through an exchange for cash investments totaling \$2,000,000. Upon a future equity financing, the SAFE agreements will convert into the same securities in that equity financing at the lower of the price per share of the funding, or a price per share based on a \$5 million company valuation using a fully diluted common stock basis. The SAFE agreements have no interest rate or maturity date and the SAFE investors have no voting right prior to conversion. The SAFE agreements were recorded as a liability of \$2,000,000 as of December 31, 2020. In January 2021, upon closing of the preferred stock offering, the amount invested under the SAFE agreements automatically converted into 424,269 shares of Series A Preferred Stock.

### Common stock

During the period ending December 31, 2020, the Company sold 1,650,000 shares of common stock to founders for cash proceeds of \$10,833. The Company also issued 312,500 shares of stock for services and recognized \$2,088 of expense related to this grant.

During the period from February 21, 2020 (inception) through December 31, 2020, the Company entered into various agreements with employees where the Company agreed to award a total of 562,500 shares of common stock which vest equally over a period of three years. The awards will be issued when the shares vest. During the period from February 21, 2020 (inception) through December 31, 2020, the Company recognized expense of \$58,875 related to these common stock awards. The Company estimated the fair value of the shares of common stock using the estimated fair value of its common stock based on the most recent fundraising at \$1.88 per share. The Company also agreed to issue an additional 75,000 shares of common stock to an employee whose service began in 2021. The Company expects to recognize additional compensation expense of \$1,142,175 related to these common stock awards assuming all awards vest.

F-28

### Warrants

The Company issued common stock warrants to consultants for services during the period from February 21, 2020 (inception) through December 31, 2020 as follows:

	Common Stock Warrants		
	Shares	Weighted Average Exercise Price	Weighted average Remaining Life in years
Outstanding at February 21, 2020	-	\$ -	-
Granted	151,590	0.004	10.00
Cancelled	-	-	-
Expired	-	-	-
Exercised	-	-	-
Outstanding at December 31, 2020	151,590	\$ 0.004	9.67
Exercisable at December 31, 2020	151,590	\$ 0.004	9.67

During the period from February 21, 2020 (inception) through December 31, 2020, the Company recognized expense of \$160,762 related to these stock warrants. The common stock warrants have an exercise price of \$0.004 per share, and an exercise term of 10 years, and vest over periods of up to one year. The outstanding and exercisable common stock warrants had an estimated intrinsic value of \$284,989. The Company estimated the fair value of the warrants using the fair value of its common stock based on the most recent fundraising at \$1.88 per share. The Company expects to recognize additional compensation expense of \$124,834 related to these warrants over their remaining vesting period.

Additionally, two of the Company's founders, whom are both directors and one of which is the Chairman of the Board, each entered into an anti-dilution warrant with the Company. In the event of their ownership of the Company's fully diluted capitalization being less than 25% or 18.75%, each individual will receive common stock warrants with an exercise price of \$0.0041 to purchase sufficient shares to return them to those ownership percentages. The warrants were fully vested upon grant and have an exercise period of 10 years from the date of grant. As of December 31, 2020, no warrants were owed to the two founders. As discussed below, subsequent to December 31, 2020, the anti-dilution warrants were exchanged for a fixed number of warrants.

## NOTE 6 – COMMITMENTS AND CONTINGENCIES

On October 1, 2020, the Company entered into an agreement with a consultant to serve as Chief Operating Officer and to manage the Company's product development efforts. The consultant will provide statements of work for the various projects it will execute as compensation, and charge the Company hourly rates for its service for annual periods to be renewed by mutual agreement. The Company also agreed to compensate the consultant \$5,560 per month for the use of its warehouse and office space on a month to month basis. Subsequent to December 31, 2020, the Company amended the agreement to increase the rental cost to \$11,200 per month, with a 90 day cancellation provision.

On December 21, 2020, the Company entered into a consulting agreement with a registered foreign broker dealer for fundraising services. The Company agreed to pay up to 10% of any gross proceeds through capital raises from non-US investors introduced by the consultant. The consultant would also receive up to 10% of the number of securities purchased by such investors in the form of warrants to purchase shares of the Company's common stock at an exercise price of based on the completed offering, exercisable for a period of five years. The consultant will also receive restricted common shares equal to 10% of the securities issued in the offering. No funds were received under this agreement prior to December 31, 2020.

## Employment Agreements

On October 5, 2020, the Company, entered into an employment agreement with Andrew Leisner to serve as its Chief Executive Officer. The Employment Agreement provides for an initial annual base salary of \$225,000 and an annual cash bonus of \$75,000 if certain milestone are met and a monthly stipend of \$1,500. Mr. Leisner also received 187,500 shares of common stock vesting annually over three years as disclosed above.

F-29

## NOTE 7 – INCOME (LOSS) PER COMMON SHARE

The basic net loss per common share is calculated by dividing the Company's net loss available to common shareholders by the weighted average number of common shares during the year. The diluted net loss per common share is calculated by dividing the Company's net loss available to common shareholders by the diluted weighted average number of common shares outstanding during the year. The diluted weighted average number of common shares outstanding is the basic weighted number of common shares adjusted for any potentially dilutive debt or equity. Common shares consisting of 151,590 shares issuable under common stock warrants and any potential shares issuable under the anti-dilution warrants discussed above were excluded from the calculation of diluted net loss per share due to their antidilutive effect. There were no dilutive instruments outstanding as of December 31, 2020.

	Period from February 21, 2020 (inception) through December 31, 2020
Numerator:	
Net loss	\$ (1,374,413)
Denominator:	
Denominator for basic and diluted net loss per common share - weighted average of common shares	604,100
Basic and diluted net loss per common share attributed to stockholders	\$ (2.28)

## NOTE 8 – INCOME TAXES

Deferred taxes are determined by applying the provisions of enacted tax laws and rates for the jurisdictions in which the Company operates to the estimated future tax effects of the differences between the tax basis of assets and liabilities and their reported amounts in the Company's financial statements. A valuation allowance is established to reduce deferred tax assets if it is more likely than not that the related tax benefits will not be realized.

	Period from February 21, 2020 (inception) through December 31, 2020
Expected federal income tax benefit at statutory rate	\$ (288,600)
Nondeductible expenses	46,600
Change in valuation allowance	242,000
Income tax benefit	\$ –

Significant components of the Company's deferred tax assets are as follows:

	As of December 31, 2020
Deferred tax asset before valuation allowance	242,000
Valuation allowance	(242,000)
Net deferred tax asset	\$ –

F-30

Management currently believes that since the Company has a history of losses it is more likely than not that the deferred tax regarding the loss carry forwards and other temporary differences will not be realized in the foreseeable future. The Company believes that carryforward limitations will be applied to the historical net operating losses due to the recent change of control transition. The Company's cumulative net operating loss carry forward of approximately \$1,153,000 that may be limited in future years depending on future taxable income in any given fiscal year.

The Company has recorded no liability for income taxes associated with unrecognized tax benefits at the date of adoption and has not recorded any liability associated with unrecognized tax benefits during 2020. Accordingly, the Company has not recorded any interest or penalty in regard to any unrecognized benefit.

The main reconciling items between the statutory tax rate of the Company and the effective tax rate are the non-recognition of the benefits from accumulated net operating losses carryforward due to the uncertainty of the realization of such tax benefits.

## NOTE 9 – LEASES

The Company entered into an operating lease with an entity controlled by two of the Company's founders for its future headquarters and production facility in Liberty Hill, Texas. The lease has a lease term of 5 years, and monthly payments ranging from approximately \$15,000 per month to \$17,000 per month over the lease term. For purposes of

calculating operating lease liabilities, lease terms may be deemed to include options to extend the lease when it is reasonably certain that the Company will exercise those options. In February 2021, the Company entered into an amendment to this lease to expand the leased premises. The Company paid an additional security deposit of \$139,230 and additional prepaid rent of \$315,588. The total minimum lease payments under the amended lease total approximately \$3,930,170.

The components of lease cost for operating leases for the period from February 21, 2020 (inception) through December 31, 2020 were as follows:

<b>Lease Cost</b>	
Operating lease cost	\$ 16,000
Short-term lease cost	11,120
Variable lease cost	—
Sublease income	—
Total lease cost	<u>\$ 27,120</u>

Supplemental cash flow information related to leases was as follows:

	Year Ended December 31, 2020
<b>Other Lease Information</b>	
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 102,000

The following table summarizes the lease-related assets and liabilities recorded on the balance sheet at December 31, 2020:

<b>Lease Position</b>	
Operating Leases	
Operating lease right-of-use assets	\$ 842,357
Right of use liability operating lease short term	\$ 141,943
Right of use liability operating lease long term	614,414
Total operating lease liabilities	<u>\$ 756,357</u>

F-31

The Company utilizes the incremental borrowing rate in determining the present value of lease payments unless the implicit rate is readily determinable. The Company recognized an initial right of use asset and lease liability of \$854,441.

<b>Lease Term and Discount Rate</b>	December 31, 2020
Weighted-average remaining lease term (years)	
Operating leases	4.8
Weighted-average discount rate	
Operating leases	5.5%

The following table provides the maturities of lease liabilities at December 31, 2020:

	Operating Leases
2021	\$ 180,000
2022	186,000
2023	192,000
2024	198,000
2025	102,000
2026 and thereafter	—
Total future undiscounted lease payments	<u>\$ 858,000</u>
Less: Interest	<u>(101,643)</u>
Present value of lease liabilities	<u>\$ 756,357</u>

At December 31, 2020, the Company had no additional leases which had not yet commenced.

#### NOTE 10— SUBSEQUENT EVENTS

On January 5, 2021, the Company created Volcon ePowersports, LLC, a Delaware wholly-owned subsidiary of the Company.

In February 2021, the Company designed 1,100,000 shares of Series A Preferred Stock. The Series A Preferred Stock has a par value of \$0.0001, has no voting rights, no dividends and each share automatically converts into 2.5 shares of common stock of the Company at the time of the Company's initial public Offering. In March 2021, the Company increased the authorized shares of Series A Preferred Stock to 1,400,000.

In January 2021, the Board of Directors allocated 250,000 restricted stock units to be issued to certain employees upon reaching certain performance milestones.

In January 2021 the Company completed a WeFunder SAFE offering which is convertible into Preferred Stock upon future financing events. The Company received gross proceeds of \$2,258,940 and paid expenses of \$53,500, reflected as costs of capital. In connection with the Regulation D Series A Preferred stock offering as discussed below, the WeFunder SAFE investments were converted into 351,832 shares of Series A Preferred Stock.

In February 2021, the Company completed a Regulation D offering of its Series A Preferred Stock. The Company received gross proceeds of \$2,669,978 and issued 415,287 shares of Series A Preferred Stock. The Company paid expenses of \$205,470 related to the offering, reflected as costs of capital, and issued 79,750 common shares and 79,750 warrants with an exercise price of \$2.57 to broker dealers. This equity financing resulted in the SAFE investments of \$2 million as of December 31, 2020 converting into 424,269 shares of Series A Preferred Stock.

In February 2021, Volcon ePowersports, LLC also entered into a new lease in Denver, Colorado for a retail showroom, service and warehouse space. The lease term is for five

years with an expected commencement date of May 1, 2021, with two additional five-year term options available to the Company. The Company has a one-time option to terminate the lease after three years. The Company prepaid approximately \$105,000 of rental payments and paid a security deposit of \$53,377 upon execution of the lease. Total lease payments for the initial five-year term are approximately \$940,000.

---

F-32

---

In March 2021, the Company designated 1,500,000 shares of Series B Preferred Stock, with a par value of \$0.00001 per share and a stated value of \$9.50 per share. The Series B Preferred Stock will receive dividends equivalent to any such dividends paid on common stock in the future, has no voting rights, and will automatically convert into an equivalent amount of common shares upon completion of the Company's initial public offering. In March 2021, the Board of Directors approved the sale of up to \$10,000,000 of Series B Preferred stock at \$9.50 per share. As of April 28, 2021, the Company has received gross proceeds of approximately \$6,400,000 related to the sale of 677,333 shares of Series B Preferred Stock. The sale of Series B preferred stock is ongoing.

In March 2021, the Company agreed to exchange the two anti-dilution warrants that were issued to Company founders for a total of 11,000,000 warrants to purchase shares of common stock at an exercise price of \$0.98 for a period of 10 years. In connection with this exchange, the Company amended its existing consulting agreements with the founders, to allow for the payment of compensation totaling \$30,000,000 in the event that the Company's market capitalization exceeds \$300,000,000 for 21 consecutive trading days. The Company will have the option to settle the amount by issuing shares of common stock based on the closing price of the Company's stock at the start of the 21 day period. In addition to this payment, each of the two founders will continue to receive a cash payment equal to 1% of the gross sale price in the event of a change of control of the Company with a sale price of at least \$100,000,000.

On March 22, 2021, the Company entered into a new lease for office space with a term of three years beginning April 1, 2021. Total lease payments over the term are approximately \$295,000.

---

F-33

---

---

**Shares**

**Volcon, Inc.**

**Common Stock**

---

**Aegis Capital Corp.**

---

Through and including \_\_\_\_\_, 2021 (the 25<sup>th</sup> 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.

---

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the estimated costs and expenses to be incurred in connection with the issuance and distribution of the securities of Volcon, Inc. (the "Registrant") which are registered under this Registration Statement on Form S-1 (this "Registration Statement"), other than underwriting discounts and commissions. All amounts are estimates except the Securities and Exchange Commission registration fee and the Financial Industry Regulatory Authority, Inc. filing fee.

The following expenses will be borne solely by the Registrant:

	Amount to be Paid
SEC Registration fee	
Financial Industry Regulatory Authority, Inc. filing fee	
NASDAQ Listing fees	
Printing and engraving expenses	
Legal fees and expenses	

Accounting fees and expenses	
Transfer Agent's fees	
Miscellaneous fees and expenses	
Total	

#### Item 14. Indemnification of Directors and Officers.

Pursuant to Section 145 of the Delaware General Corporation Law (the "DGCL"), a corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than a derivative action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding referenced above, or in defense of any claim, issue or matter therein, a corporation is required by the DGCL to indemnify such person for actual and reasonable expenses incurred in connection therewith. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon in the case of a current officer or director, receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to be so indemnified.

The DGCL provides that the indemnification described above shall not be deemed exclusive of other indemnification that may be granted by a corporation pursuant to its bylaws, disinterested directors' vote, stockholders' vote and agreement or otherwise.

#### II-1

Section 102(b)(7) of the DGCL enables a corporation, in its certificate of incorporation or an amendment thereto, to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the directors' fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The Registrant's certificate of incorporation provides for such limitations on liability for its directors.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above. In connection with this offering, the Registrant will obtain liability insurance for its directors and officers. Such insurance would be available to its directors and officers in accordance with its terms.

The Registrant's certificate of incorporation requires the Registrant to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "covered person") who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she is or was a director, officer or member of a committee of the Registrant, or, while a director or officer of the Registrant, is or was serving at the request of the Registrant as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with a proceeding.

In addition, under the Registrant's certificate of incorporation, in certain circumstances, the Registrant shall pay the expenses (including attorneys' fees) incurred by a covered person in defending a proceeding in advance of the final disposition of such proceeding; provided, however, that the Registrant shall not be required to advance any expenses to a person against whom the Registrant directly brings an action, suit or proceeding alleging that such person (1) committed an act or omission not in good faith or (2) committed an act of intentional misconduct or a knowing violation of law. Additionally, an advancement of expenses incurred by a covered person shall be made only upon delivery to the Registrant of an undertaking, by or on behalf of such covered person, 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 or otherwise in accordance with Delaware law that such covered person is not entitled to be indemnified for such expenses.

In addition, the Registrant has entered into indemnification agreements with its directors and executive officers that provide for additional indemnification protections, which form of agreement has been filed as an exhibit to this registration statement.

#### Item 15. Recent Sales of Unregistered Securities.

Except as set forth below, in the three years preceding the filing of this Registration Statement, the Registrant has not issued any securities that were not registered under the Securities Act:

On September 21, 2020, the Company issued its founding shareholders an aggregate of 775,000.

On August 28, 2020, the Company entered into consulting agreements with Pink Possum, LLC ("Pink Possum"), an entity controlled by Mr. Okonsky, and Highbridge Consultants, LLC ("Highbridge"), an entity controlled by Mr. James. In consideration for entering into the consulting agreements, the Company issued the two entities ten-year warrants to purchase common stock at an exercise price of \$0.01 per share. The number of shares of common stock issuable pursuant to the warrants was based on the number of shares of our common stock outstanding at the time of exercise and provided that Pink Possum and Highbridge would receive 18.75% and 25%, respectively, of our shares of common stock outstanding at the time of exercise on a fully diluted basis. On March 26, 2021, Pink Possum and Highbridge entered into amendments to the consulting agreements agreeing to exchange the original warrants for new ten-year warrants to purchase 1,900,000 and 2,500,000 shares, respectively, of common stock at an exercise price of \$2.46.

In September 2020, the Company issued five-year warrants to purchase an aggregate of 60,636 shares of common stock at an exercise price of \$0.01 per share to consultants.

From September 2020 to October 2020, the Company issued \$2,000,000 of SAFE securities (the “SAFE I securities”) to investors in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder. From November 2020 to December 2020, the Company completed an offering pursuant to Regulation CF of the Securities Act pursuant to which it issued \$1,070,000 in January 2021 of a new class SAFE securities (the “SAFE II securities”) to investors. From November 2020 to December 2020, the Company completed an offering of SAFE II securities to investors in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, pursuant to which it issued \$1,188,940 of SAFE II securities in January 2021.

Between January and April 2021, the Company sold 415,287 shares of Series A preferred stock at \$6.43 per share and issued 776,101 shares of Series A preferred stock upon the conversion of the SAFE I securities and SAFE II securities and 1,105,827 shares of Series B preferred stock at \$9.50 per share in a private placement. The issuances were made in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

On September 10, 2021, the Company entered into an agreement with a lender for a 6% promissory note of \$2 million. The promissory note has a maturity date of one year from inception or immediately upon the completion of this offering. For providing the above promissory note, the Company agreed to issue 266,666 shares of our common stock and agreed to pay \$35,000 of the placement agent’s and investor’s legal costs and paid a 6% commission to the placement agent, who is the underwriter of this offering. The issuances were made in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act.

#### Item 16. Exhibits and Financial Statement Schedules.

(a) **Exhibits:** Reference is made to the Exhibit Index following the signature pages hereto, which Exhibit Index is hereby incorporated into this Item.

(b) **Consolidated Financial Statement Schedules:** All schedules are omitted because the required information is inapplicable or the information is presented in the financial statements and the related notes.

#### Item 17. Undertakings

The undersigned hereby undertakes:

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is subject to Rule 430C (§ 230.430C of this chapter), each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§ 230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (§ 230.424 of this chapter);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this Registration Statement, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 hereunder, 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 of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(c) The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall 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 of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

---

II-4

---

### SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Austin, Texas, on September 10, 2021.

VOLCON, INC.  
(Registrant)

By: /s/ Jordan Davis  
Jordan Davis  
Chief Executive Officer

### POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Jordan Davis or Greg Endo as attorney-in-fact and agent, with full power of substitution and re-substitution, to sign on his or her behalf, individually and in any and all capacities, including the capacities stated below, any and all amendments (including post-effective amendments) to this Registration Statement and any registration statements filed by the registrant pursuant to Rule 462(b) of the Securities Act of 1933, as amended, relating thereto and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities and on the dates indicated:

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Jordan Davis</u> Jordan Davis	Chief Executive Officer (Principal Executive Officer)	September 10, 2021
<u>/s/ Greg Endo</u> Greg Endo	Chief Financial Officer (Principal Financial and Accounting Officer)	September 10, 2021
<u>/s/ Christian Okonsky</u> Christian Okonsky	Director and Chief Technology Officer	September 10, 2021
<u>/s/ Adrian James</u> Adrian James	Director	September 10, 2021
<u>/s/ Jonathan P. Foster</u> Jonathan P. Foster	Director	September 10, 2021
<u>/s/ John Kim</u> John Kim	Director	September 10, 2021
<u>/s/ Karin-Joyce Tjon</u> Karin-Joyce Tjon	Director	September 10, 2021

---

### EXHIBIT INDEX

Exhibit Number	Description
1.1	<a href="#">Form of Underwriting Agreement</a>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Volcon, Inc. (to be adopted prior to the offering)</a>
3.2	<a href="#">Amended and Restated Bylaws of Volcon, Inc.</a>
4.1	<a href="#">Form of common stock</a>
4.2	<a href="#">Form of Warrant issued to Pink Possum, LLC and Highbridge Consulting, LLC</a>
4.3	<a href="#">Form of Underwriter Warrant</a>

4.4	<a href="#"><u>Form of 6% promissory note</u></a>
5.1	<a href="#"><u>Opinion of Schiff Hardin LLP</u></a>
10.1	<a href="#"><u>2021 Stock Plan of Volcon, Inc., as amended</u></a>
10.2	<a href="#"><u>Consulting Agreement, as amended, between Volcon, Inc. and Pink Possum, LLC</u></a>
10.3	<a href="#"><u>Consulting Agreement, as amended, between Volcon, Inc. and Highbridge Consulting, LLC</u></a>
10.4	<a href="#"><u>Lease Agreement dated November 20, 2020, as amended between Volcon, Inc. and Alexander EV Park, LLC</u></a>
10.5	<a href="#"><u>Employment Agreement between Volcon, Inc. and Greg Endo dated June 7, 2021</u></a>
10.6	<a href="#"><u>Sublease Agreement dated June 1, 2021 between Volcon, Inc. and Sustainability Initiatives, LLC</u></a>
10.7	<a href="#"><u>Employment Agreement between Volcon, Inc. and Bruce Riggs dated June 16, 2021</u></a>
10.8	<a href="#"><u>Employment Agreement between Volcon, Inc. and Jordan Davis dated August 5, 2021</u></a>
10.9	<a href="#"><u>Form of Note Purchase Agreement dated September 10, 2021</u></a>
21.1	<a href="#"><u>List of subsidiaries</u></a>
23.1	<a href="#"><u>Consent of MaloneBailey LLP</u></a>
23.2	Consent of Schiff Hardin LLP (included in <a href="#"><u>Exhibit 5.1</u></a> )
24.1	Power of Attorney (included on signature page)

## Underwriting Agreement

[PRICING DATE], 2021

Aegis Capital Corp.  
 As Representative of the several Underwriters  
 named in Schedule I hereto  
 c/o Aegis Capital Corp.  
 810 7th Avenue,  
 18th Floor  
 New York, NY 10019

Ladies and Gentlemen:

Volcon, Inc., a Delaware corporation (the “**Company**”), agrees, subject to the terms and conditions in this agreement (this “**Agreement**”), to issue and sell to the several underwriters listed in Schedule I hereto (collectively, the “**Underwriters**”) an aggregate of [●] shares of common stock (the “**Firm Shares**”), par value \$0.00001 per share, of the Company (the “**Common Stock**”). At the option of the Underwriters, the Company agrees, subject to the terms and conditions herein, to issue and sell up to an aggregate of [●] additional shares of Common Stock representing seven and one-half percent (7.5%) of the Firm Shares sold in the offering (the “**Option Shares**”). The Firm Shares and the Option Shares are herein referred to collectively as the “**Shares**”. The respective number of Shares to be purchased by each Underwriter is set forth opposite its name in Schedule I hereto. Aegis Capital Corp. has agreed to act as the representative (the “**Representative**”) of the several Underwriters in connection with the offering and sale of the Shares.

## Definitions

“**Affiliate**” has the meaning set forth in Rule 405 under the Securities Act.

“**Applicable Time**” means [[TIME] [a.m./p.m.] ET on the date hereof.

“**Bona Fide Electronic Road Show**” means a “bona fide electronic road show” (as defined in Rule 433(h)(5) under the Securities Act) that the Company has made available without restriction by “graphic means” (as defined in Rule 405 under the Securities Act) to any person.

“**Business day**” means a day on which the Nasdaq is open for trading and on which banks in New York are open for business and not permitted by law or executive order to be closed.

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

“**Emerging Growth Company**” means an “emerging growth company” (as defined in Section 2(a) of the Securities Act).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Final Prospectus**” means the prospectus in the form first filed with the Commission pursuant to and within the time limits described in Rule 424(b) under the Securities Act.

“**Free Writing Prospectus**” has the meaning set forth in Rule 405 under the Securities Act.

“**Investment Company Act**” means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

---

“**Issuer Free Writing Prospectus**” means an “issuer free writing prospectus” (as defined in Rule 433(h)(1) under the Securities Act).

“**Preliminary Prospectus**” means any preliminary prospectus included in the Registration Statement prior to the time at which the Commission declared the Registration Statement effective.

“**Pricing Disclosure Package**” means the Pricing Prospectus collectively with the documents and pricing information set forth in Schedule II hereto.

“**Pricing Prospectus**” means the Preliminary Prospectus included in the Registration Statement at the time at which the Commission declared the Registration Statement effective.

“**Prospectus Delivery Period**” means such period of time after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters a prospectus relating to the Shares is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Shares by any Underwriter or dealer.

“**Registration Statement**” means (a) the registration statement on Form S-1 (File No. [●]), including a prospectus, registering the offer and sale of the Shares under the Securities Act as amended at the time the Commission declared it effective, including each of the exhibits, financial statements and schedules thereto, (b) any Rule 430A Information, and (c) any Rule 462(b) Registration Statement.

“**Rule 430A Information**” means the information deemed, pursuant to Rule 430A under the Securities Act, to be part of the Registration Statement at the time the Commission declared the Registration Statement effective.

“**Rule 462(b) Registration Statement**” means an abbreviated registration statement to register the offer and sale of additional shares of Common Stock pursuant to Rule 462(b) under the Securities Act.

“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Testing-the-Waters Communication**” means any oral or Written Communication with potential investors undertaken in reliance on Section 5(d) of under the Securities Act.

“Written Communication” has the meaning set forth in Rule 405 under the Securities Act.

“Written Testing-the-Waters Communications” means any Testing-the-Waters Communication that is a Written Communication.

1. Representations and Warranties of the Company.

The Company hereby represents and warrants to, and agrees with, each Underwriter that:

(a) Registration Statement.

(i) The Company has prepared and filed the Registration Statement with the Commission under the Securities Act. The Commission has declared the Registration Statement effective under the Securities Act and the Company has not as of the date of this Agreement filed a post-effective amendment to the Registration Statement. The Commission has not issued any order suspending the effectiveness of the Registration Statement or any order preventing or suspending the use of the Registration Statement, the Final Prospectus, any Preliminary Prospectus, any Issuer Free Writing Prospectus or any Testing-the-Waters Communication, and no proceedings for such purpose or pursuant to Section 8A of the Securities Act have been initiated, are pending before or, to the Company’s knowledge, threatened by the Commission.

---

2

(ii) The Registration Statement, at the time it became effective, did not contain, and any post-effective amendment thereto, as of the effective date of such amendment, will not contain, any 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 that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter through the Representative expressly for use in the Registration Statement (including any post-effective amendment thereto), the Pricing Disclosure Package, the Final Prospectus (including any amendments or supplements thereto), any Preliminary Prospectus, any Issuer Free Writing Prospectus or any Testing-the-Waters Communication, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described in Section 8(c) hereof (collectively, the “*Underwriter Information*”).

(iii) Each of the Registration Statement and any post-effective amendment thereto, at the time it became effective and at the date hereof, complied and will comply in all material respects with the Securities Act.

(b) Pricing Disclosure Package. The Pricing Disclosure Package, as of the Applicable Time, did not, and as of the Closing Date (as defined below) and as of any Additional Closing Date (as defined below), as the case may be, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with the Underwriter Information.

(c) Final Prospectus.

(i) Each of the Final Prospectus and any amendments or supplements thereto, as of its date, as of the time it is filed with the Commission pursuant to Rule 424(b) under the Securities Act, as of the Closing Date and as of any Additional Closing Date, as the case may be, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with the Underwriter Information.

(ii) Each of the Final Prospectus and any amendments or supplements thereto, at the time it is filed with the Commission pursuant to Rule 424(b) under the Securities Act, as of the Closing Date and as of any Additional Closing Date, as the case may be, will comply in all material respects with the Securities Act.

(d) Preliminary Prospectuses.

(i) Each Preliminary Prospectus, as of the time it was filed with the Commission pursuant to Rule 424(a) under the Securities Act, if any, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with the Underwriter Information.

(ii) Each Preliminary Prospectus, at the time it was filed with the Commission pursuant to Rule 424(a) under the Securities Act, if any, complied in all material respects with the Securities Act.

(e) Issuer Free Writing Prospectuses.

(i) Each Issuer Free Writing Prospectus, when considered together with the Preliminary Prospectus accompanying, or delivered prior to the delivery of, such Issuer Free Writing Prospectus, did not, as of the date of such Issuer Free Writing Prospectus, and will not, as of the Closing Date and as of any Additional Closing Date, as the case may be, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with the Underwriter Information.

---

3

(ii) Each Issuer Free Writing Prospectus, at the time of filing with the Commission, complied or will comply in all material respects with the Securities Act.

(iii) The Company has filed, or will file, with the Commission, within the time period specified in Rule 433(d) under the Securities Act, any Free Writing Prospectus it is required to file pursuant to Rule 433(d) under the Securities Act. The Company has made available any Bona Fide Electronic Road Show used by it in compliance with Rule 433(d)(8)(ii) under the Securities Act such that no filing of any “road show” (as defined in Rule 433(h) under the Securities Act) (“*Road Show*”) is required in connection with the offering of the Shares.

(iv) Except for the Issuer Free Writing Prospectuses, if any, set forth in Schedule II hereto and electronic road shows, if any, each furnished to

the Representative before first use, the Company has not used, authorized the use of, referred to or participated in the planning for use of, and will not, without the prior consent of the Representative, use, authorize the use of, refer to or participate in the planning for use of, any Free Writing Prospectus.

(f) Testing-the-Waters Communications.

(i) The Company has not (x) alone engaged in any Testing-the-Waters Communication and (y) authorized anyone to engage in Testing-the-Waters Communications.

(g) No Other Disclosure Materials. Other than the Registration Statement, the Pricing Disclosure Package, and the Final Prospectus, the Company (including its agents and representatives, other than the Underwriters, as to which no representation or warranty is given) has not, directly or indirectly, distributed, prepared, used, authorized, approved or referred to, and will not distribute, prepare, use, authorize, approve or refer to, any offering material in connection with the offering and sale of the Shares.

(h) Ineligible Issuer. At the time of filing of the registration statement on Form S-1 (File No. [●]) registering the offer and sale of the Shares submitted to the Commission on [DATE], 2021 and any amendment thereto and at the date hereof, the Company was not and is not an “ineligible issuer” (as defined in Rule 405 under the Securities Act).

(i) Emerging Growth Company. From the time of the initial confidential submission of the registration statement relating to the Shares to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an Emerging Growth Company.

(j) Due Authorization. The Company has full right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the Representative’s Warrant Agreement, and the consummation by it of the transactions contemplated hereby and thereby has been duly and validly taken.

(k) Underwriting Agreement. This Agreement and the Representative’s Warrant Agreement have been duly authorized, executed and delivered by the Company and each, assuming the due authorization, execution and delivery by the other parties hereto, constitutes a valid and legally binding agreement of the Company, enforceable in accordance with its terms, except as (i) the enforcement hereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles (whether considered in a proceeding at law or in equity) relating to enforceability and (ii) rights to indemnification and contribution hereunder may be limited by applicable law and public policy considerations.

---

4

(l) No Material Adverse Change. Except as otherwise disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus (in each case exclusive of any amendment or supplement thereto), since the date of the most recent financial statements included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus: (i) there has been no material adverse change, or any development that could result in a material adverse change, in or affecting the condition (financial or otherwise), earnings, business, properties, management, financial position, stockholders’ equity, or results of operations, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity; (ii) there has been no change in the capital stock (other than (A) the issuance of shares of Common Stock upon the exercise or settlement (including any “net” or “cashless” exercises or settlements) of stock options, restricted share units or warrants described as outstanding, (B) the grant of options and awards under existing equity incentive plans, or (C) the repurchase of shares of Common Stock by the Company, which were issued pursuant to the early exercise of stock options by option holders and are subject to repurchase by the Company, in each case, as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus), or material change in the short-term debt or long-term debt of the Company or any of its subsidiaries, considered as one entity; and (iii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent (whether or not in the ordinary course of business); nor entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries, considered as one entity; and (iv) there has been no dividend or distribution of any kind declared, set aside for payment, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries of the Company, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(m) Organization and Good Standing of the Company and its Subsidiaries. The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority (corporate and other) necessary to own, lease or hold their respective properties and to conduct the businesses in which they are engaged as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, except where the failure to be in good standing, to be so qualified or to have such power or authority could not, individually or in the aggregate, have a material adverse effect on the condition (financial or otherwise), earnings, business, properties, management, financial position, stockholders’ equity, or results of operations of the Company and its subsidiaries, considered as one entity, or adversely affect the performance by the Company of its obligations under this Agreement (a “**Material Adverse Effect**”).

(n) Capitalization. The capitalization of the Company is as set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus under the heading “Capitalization”. All of the outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable. The Shares and the Representative’s Securities have been duly authorized and, when issued and paid for as contemplated herein, will be validly issued, fully paid and non-assessable; the holders thereof are not and will not be subject to personal liability by reason of being such holders; the Shares and the Representative’s Securities are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company; and all corporate action required to be taken for the authorization, issuance and sale of the Shares and the Representative’s Securities has been duly and validly taken. When paid for and issued in accordance with the Representative’s Warrant Agreement, the underlying shares will be validly issued, fully paid and non-assessable; the holders thereof are not and will not be subject to personal liability by reason of being such holders; the underlying shares are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company; and all corporate action required to be taken for the authorization, issuance and sale of the Representative’s Warrant Agreement has been duly and validly taken. None of the outstanding shares of capital stock of the Company were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to acquire, or instruments convertible into or exchangeable or exercisable for, any shares of capital stock of, or other equity interest in, the Company or any of its subsidiaries. All of the outstanding shares of capital stock of, or other equity interest in, each of the Company’s subsidiaries (i) have been duly authorized and validly issued, (ii) are fully paid and non-assessable (except as such non-assessability may be affected by Sections 18-303, 18-607 and 18-803 of the Delaware Limited Liability Company Act) and (iii) are owned by the Company, directly or through the Company’s subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, charge, claim or restriction on voting or transfer (collectively, “**Liens**”).

(o) Stock Plans. With respect to the stock options (the “*Stock Options*”) granted pursuant to the stock-based compensation plans of the Company and its subsidiaries (the “*Company Stock Plans*”), (i) each Stock Option intended to qualify as an “incentive stock option” under Section 422 of the Internal Revenue Code of 1986, as amended (the “*Code*”), so qualifies, (ii) each grant of a Stock Option was duly authorized by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any), to the Company’s knowledge, was duly executed and delivered by each party thereto, (iii) each such grant was made in all material respects in accordance with the terms of the Company Stock Plans, and (iv) each such grant was properly accounted for in accordance with generally accepted accounting principles as applied in the United States (“*GAAP*”) in the financial statements (including the related notes) of the Company.

(p) No Violation or Default. Neither the Company nor any of its subsidiaries is: (i) in violation of its charter, by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any indenture, mortgage, deed of trust, loan agreement, contract, undertaking 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 property, right or asset of the Company or any of its subsidiaries is subject; or (iii) in violation of any law or statute applicable to the Company or any of its subsidiaries or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority having jurisdiction over the Company or any of its subsidiaries, or any of their respective properties or assets, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect.

(q) No Conflicts. None of (i) the execution, delivery and performance of this Agreement by the Company, (ii) the issuance, sale and delivery of the Firm Shares or the Option Shares, (iii) the application of the proceeds of the offering as described under “Use of Proceeds” in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, or (iv) the consummation of the transactions contemplated herein will: (x) result in any violation of the terms or provisions of the charter, by-laws or similar organizational documents of the Company or any of its subsidiaries; (y) conflict with, result in a breach or violation of, or require the approval of stockholders, members or partners or any approval or consent of any persons under, any of the terms or provisions of, constitute a default under, result in the termination, modification, or acceleration of, or result in the creation or imposition of any lien, charge or encumbrance upon any property, right or asset of the Company or any of its subsidiaries pursuant to, any indenture, mortgage, deed of trust, loan agreement, note agreement, contract, undertaking or other agreement, obligation, condition, covenant 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 property, right or asset of the Company or any of its subsidiaries is subject; or (z) result in the violation of any law, statute, judgment, order, rule, decree or regulation applicable to the Company or any of its subsidiaries of any court, arbitrator, governmental or regulatory authority, agency or body having jurisdiction over the Company or any of its subsidiaries or any of their respective properties or assets.

(r) No Consents Required. No consent, approval, authorization, order, filing, registration, license or qualification of or with any court, arbitrator, or governmental or regulatory authority, agency, or body is required for (i) the execution, delivery and performance by the Company of this Agreement; (ii) the issuance, sale and delivery of the Firm Shares and the Option Shares; or (iii) the consummation of the transactions contemplated herein, except for such consents, approvals, authorizations, orders, filings, registrations or qualifications as (x) have already been obtained or made and are still in full force and effect, (y) may be required by FINRA, and (z) may be required under applicable state securities laws in connection with the purchase, distribution and resale of the Firm Shares and the Option Shares by the Underwriters.

(s) Independent Accountants. MaloneBailey, LLP, which expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) and supporting schedules included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, is an independent registered public accounting firm with respect to the Company and its subsidiaries within the meaning of the rules and regulations of the Commission and the Public Company Accounting Oversight Board and as required by the Securities Act.

(t) Financial Statements and Other Financial Data. The financial statements (including the related notes thereto), together with the supporting schedules, included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus comply in all material respects with the applicable requirements of the Securities Act and present fairly the consolidated financial position of the entities to which they relate as of and at the dates indicated and the results of their operations and cash flows for the periods specified. Such financial statements, notes and schedules have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved, except as may be expressly stated in the notes thereto. The financial data set forth in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus under the captions “Capitalization” present fairly the information set forth therein on a basis consistent with that of the audited financial statements included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus.

(u) Statistical and Market-Related Data. The statistical and market-related data included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus are based on or derived from sources that the Company believes to be accurate and reliable in all material respects.

(v) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) included in the Registration Statement, the Pricing Disclosure Package or the Final Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(w) Legal Proceedings. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, (i) there are no legal, governmental or regulatory investigations, actions, demands, claims, suits, arbitrations, inquiries or proceedings (collectively, “*Actions*”) pending to which the Company or any of its subsidiaries is or may be a party or to which any property, right or asset of the Company or any of its subsidiaries is or may be the subject that, individually or in the aggregate, if determined adversely to the Company or any of its subsidiaries, could have a Material Adverse Effect; and (ii) to the knowledge of the Company, no such Actions are threatened or contemplated by any governmental or regulatory authority or by others.

(x) Labor Disputes. No labor disturbance by or dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is threatened or contemplated that could, individually or in the aggregate, have a Material Adverse Effect.

(y) Intellectual Property Rights. (i) The Company and its subsidiaries own or have the right to use all patents, patent applications, trademarks, service marks, trade names, and other source indicators and registrations and applications for registration thereof, domain name registrations, copyrights and registrations and applications for registration thereof, technology and know-how, trade secrets, and all other intellectual property and related proprietary rights (collectively, “*Intellectual Property Rights*”) necessary to conduct their respective businesses; (ii) other than as disclosed in the Prospectus, neither the Company nor any of its subsidiaries has received any notice of infringement, misappropriation or other conflict with (and neither the Company nor any of its subsidiaries is otherwise aware of any infringement, misappropriation or other conflict with) the Intellectual Property Rights of any other person, except for such infringement, misappropriation or other conflict as could not have a Material Adverse Effect; and (iii) to the knowledge of the Company, the Intellectual Property Rights of the Company and its subsidiaries are not being infringed, misappropriated or otherwise violated by any person.

(z) Licenses and Permits. (i) The Company and its subsidiaries possess such valid and current certificates, authorizations, approvals, licenses and permits (collectively, “*Authorizations*”) issued by, and have made all declarations, amendments, supplements and filings with, the appropriate state, federal or foreign regulatory agencies or bodies necessary to own, lease and operate their respective properties and to conduct their respective businesses as set forth in the Registration

Statement, the Pricing Disclosure Package and the Final Prospectus; (ii) all such Authorizations are valid and in full force and effect and the Company and its subsidiaries are in compliance with the terms and conditions of all such Authorizations; and (iii) neither the Company nor any of its subsidiaries has received notice of any revocation, termination or modification of, or non-compliance with, any such Authorization or has any reason to believe that any such Authorization will not be renewed in the ordinary course, except where, in the case of clauses (i), (ii) and (iii), the failure to possess, make or obtain such Authorizations (by possession, declaration or filing) could not, individually or in the aggregate, have a Material Adverse Effect.

(aa) Title to Property. Neither the Company nor any of its subsidiaries own any real property. The Company and its subsidiaries have good and marketable title in fee simple to, or have valid and enforceable rights to lease or otherwise use, all items of personal property (other than with respect to Intellectual Property Rights, which is addressed exclusively in Section 1(y)) that are material to the respective businesses of the Company and its subsidiaries, in each case, free and clear of all liens, encumbrances, claims, and defects and imperfections of title, except such liens, encumbrances, claims, defects and imperfections as (i) are disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, or (ii) do not materially affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company and its subsidiaries. The Company and its subsidiaries have good and marketable title in fee simple to, or have valid and enforceable rights to lease or otherwise use, all items of real and personal property that are material to the respective businesses of the Company and its subsidiaries, in each case, free and clear of all liens, encumbrances, claims and defects and imperfections of title, except such liens, encumbrances, claims, defects and imperfections as (i) are disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, or (ii) do not materially affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company and its subsidiaries. All items of real and personal property held under lease by the Company and its subsidiaries are held under valid, subsisting and enforceable leases, with such exceptions as do not materially interfere with the use made or proposed to be made of such property by the Company and its subsidiaries.

(bb) Taxes. The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed through the date hereof or have timely requested extensions thereof and have paid all taxes required to be paid thereon (except as currently being contested in good faith and for which reserves required by GAAP have been created in the financial statements of the Company). The charges, accruals and reserves in respect of any income and other tax liability in the financial statements of the Company referred to in Section 1(t) are adequate, in accordance with GAAP principles, to meet any assessments for any taxes of the Company accruing through the end of the last period specified in such financial statements.

(cc) Investment Company Act. Neither the Company nor any of its subsidiaries is or, after giving effect to the offer and sale of the Firm Shares and the Option Shares and the application of the proceeds therefrom as described under “Use of Proceeds” in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, will be required to register as an “investment company” (as defined in the Investment Company Act).

(dd) Insurance. The Company and its subsidiaries are insured by recognized, financially sound institutions in such amounts, with such deductibles and covering such losses and risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is prudent and customary for companies engaged in similar businesses in similar industries. All insurance policies and fidelity or surety bonds insuring the Company and its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies in all material respects; neither the Company nor any of its subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required to be made in order to continue such insurance; and neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for. There are no claims by the Company or any of its subsidiaries under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not have a Material Adverse Effect.

(ee) No Stabilization or Manipulation. None of the Company, its Affiliates or any person acting on its or any of their behalf (other than the Underwriters, as to which no representation or warranty is given) has taken, directly or indirectly, any action designed to or that has constituted or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any securities of the Company. The Company acknowledges that the Representative may engage in passive market making transactions in the Common Stock on the Nasdaq Capital Market (the “*Exchange*”) in accordance with Regulation M under the Exchange Act (“*Regulation M*”).

(ff) Compliance with the Sarbanes-Oxley Act. The Company and, to the knowledge of the Company, its officers and directors, in their capacities as such, are and have been in compliance with all applicable provisions of the Sarbanes-Oxley Act.

(gg) Accounting Controls. The Company and its subsidiaries maintain systems of “internal control over financial reporting” (as defined in Rule 13a-15(f) of the Exchange Act) that comply with the requirements of the Exchange Act and have been designed by, or under the supervision of, their principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company and its subsidiaries maintain internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Other than as disclosed in the Registration Statement, the Company’s internal control over financial reporting is effective and the Company is not aware of any other material weaknesses in its internal control over financial reporting (whether or not remediated). Since the date of the most recent balance sheet included in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, (x) the Company’s auditors and the audit committee of the board of directors of the Company have not been advised of (A) any new significant deficiencies or material weaknesses in the design or operation of the internal control over financial reporting of the Company and its subsidiaries which could adversely affect the Company’s ability to record, process, summarize, and report financial data; or (B) any fraud, whether or not material, that involves management or other employees who have a role in the internal control over financial reporting of the Company or its subsidiaries; and (y) there have been no significant changes in the internal control over financial reporting of the Company or its subsidiaries or in other factors that could significantly affect, such internal control over financial reporting, including any corrective actions with regard to significant deficiencies or material weaknesses, since the respective dates as of which information is given in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus.

(hh) Disclosure Controls and Procedures. The Company and its subsidiaries have established and maintain 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 are designed to ensure that information required to be disclosed by the Company and its subsidiaries in the reports they file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission’s rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company’s management as appropriate to allow timely decisions regarding required disclosure; and such disclosure controls and procedures are effective to perform the functions for which they were established.

(ii) Margin Rules. Neither the issuance, sale and delivery of the Firm Shares and the Option Shares nor the application of the proceeds thereof by the Company, in each case, as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(jj) Compliance with Environmental Laws. The Company and each of its subsidiaries (i) are, and at all times prior hereto were, in compliance with all Environmental Laws (as defined below) applicable to such entity, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses; and (ii) have not received notice or otherwise have knowledge of any actual or alleged violation of Environmental Laws, or of any actual or potential liability for or other obligation concerning the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants. And, except as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, (x) there are no proceedings that are pending, or known to be contemplated, against the Company or any of its subsidiaries under Environmental Laws, other than such proceedings regarding which it is reasonably believed that no monetary sanctions of \$100,000 or more will be imposed; (y) none of the Company or any of its subsidiaries is aware of any issues regarding compliance with Environmental Laws, including any pending or proposed Environmental Laws, or liabilities or other obligations under Environmental Laws or concerning hazardous or toxic substances or wastes, pollutants or contaminants, that could reasonably be expected to have a material effect on the capital expenditures, earnings or competitive position of the Company and its subsidiaries; and (z) none of the Company or any of its subsidiaries anticipates material capital expenditures relating to Environmental Laws.

---

9

As used herein, the term “**Environmental Laws**” means any laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including, without limitation, any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety, the environment, or natural resources, or to the use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants.

(kk) ERISA.

Each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Security Act of 1974, as amended (“**ERISA**”)) for which the Company or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Code) would have any liability (each, a “**Plan**”) complies in form with the requirements of all applicable statutes, rules and regulations including ERISA and the Code, and has been maintained and administered in substantial compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) with respect to each Plan subject to Title IV of ERISA or Section 302 of ERISA or Section 412 and 430 of the Code (A) no “reportable event” (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably expected to occur, (B) no failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 and 430 of the Code), whether or not waived, has occurred or is reasonably expected to occur, (C) the fair market value of the assets under each Plan (excluding for these purposes accrued but unpaid contributions) exceeds the present value of all benefits accrued under such Plan (determined based on those assumptions used to fund such Plan) and (D) neither the Company or any member of its Controlled Group has incurred, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including a “multiemployer plan”, within the meaning of Section 4001(a)(3) of ERISA); (iii) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; and (iv) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions to which a statutory or administrative prohibited transaction exemption applies.

(ll) Related Party Transactions. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, no relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders, other Affiliates, customers or suppliers of the Company or any of its subsidiaries, on the other hand, that would be required by the Securities Act to be described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus.

(mm) No Unlawful Contributions or Other Payments. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, Affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government or regulatory official or employee; (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or (iv) violated or is in violation of any provision of (y) the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), or (z) any non-U.S. anti-bribery or anti-corruption statute or regulation. The Company and its subsidiaries have instituted and maintain and enforce policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws.

(nn) Compliance with Anti-Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with all applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the applicable anti-money laundering statutes of all jurisdictions where the Company or any of its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the “**Anti-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 Anti-Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

---

10

(oo) Compliance with OFAC. Neither the Company nor 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 an individual or entity (an “**OFAC Person**”), or is owned or controlled by an OFAC Person, that is currently the subject or target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”) or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, Her Majesty’s Treasury, 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 the target of Sanctions, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria (each, a “**Sanctioned Country**”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other OFAC Person (i) to fund or facilitate any activities of or business with any OFAC Person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any OFAC Person (including any OFAC Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. Since the Company’s inception, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any OFAC Person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.



(pp) No Registration Rights. Except as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, there are no contracts, agreements or understandings between the Company or any of its subsidiaries, on the one hand, and any person, on the other hand, granting such person any rights to require the Company or any of its subsidiaries to file a registration statement under the Securities Act with respect to any securities of the Company or any of its subsidiaries owned or to be owned by such person or to require the Company or any of its subsidiaries to include such securities in any securities to be registered pursuant to any registration statement to be filed by the Company or any of its subsidiaries under the Securities Act.

(qq) Subsidiaries. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Registration Statement. The subsidiaries of the Company listed in Schedule III hereto are the only “significant subsidiaries” (as defined under Rule 1.02(w) of Regulation S-X under the Securities Act) of the Company (the “**Significant Subsidiaries**”).

(rr) No Restrictions on Subsidiaries. No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary’s capital stock or similar ownership interest, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary’s properties or assets to the Company or any other subsidiary of the Company.

(ss) No Broker’s Fees. Except as disclosed in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Firm Shares or the Option Shares.

(tt) Exchange Listing. Subject to notice of issuance, the Shares have been approved for listing on the Exchange.

Any certificate signed by an officer of the Company and delivered to the Underwriters or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to the Underwriters as to the matters set forth therein.

## 2. Representations and Warranties of the Underwriters.

Each Underwriter, severally and not jointly, represents and warrants to, and agrees with, the Company:

(a) No Testing-the-Waters Communications. Such Underwriter has not (i) alone engaged in any Testing-the-Waters Communication and (ii) authorized anyone to engage in Testing-the-Waters Communications. Such Underwriter has not distributed, or authorized anyone else to distribute, any Written Testing-the-Waters Communications.

11

## 3. Purchase and Resale.

(a) Agreements to Sell and Purchase. On the basis of the representations, warranties and covenants herein and subject to the conditions herein and any adjustments made in accordance with Section **Error! Reference source not found.** and 13 hereof,

(i) The Company agrees to issue and sell the Firm Shares to the several Underwriters; and

(ii) The Underwriters agree, severally and not jointly, to purchase from the Company the number of Firm Shares set forth opposite such Underwriter’s name in Schedule I hereto, subject to such adjustments among the Underwriters as the Representative in its sole discretion shall make to eliminate any sales or purchases of fractional Shares.

(iii) The purchase price per Firm Share to be paid by the several Underwriters to the Company shall be \$[PURCHASE PRICE] per share (the “**Purchase Price**”). The Firm Shares are to be offered initially to the public at the offering price set forth on the cover page of the Final Prospectus.

(iv) Payment for the Firm Shares (the “**Firm Shares Payment**”) shall be made by wire transfer in immediately available funds to the accounts specified by the Company to the Representative at the offices of Kaufman & Canoles, P.C. at [10:00] [a.m.], ET, on [DATE], 2021 or at such other place on the same or such other date and time, not later than the fifth business day thereafter, as the Representative and the Company may agree upon in writing (the “**Closing Date**”). The Firm Shares Payment shall be made against delivery of the Firm Shares to be purchased on the Closing Date to the Representative for the respective accounts of the several Underwriters, with any transfer taxes, stamp duties and other similar taxes payable in connection with the sale of the Firm Shares duly paid by the Company. Delivery of the Firm Shares shall be made through the facilities of DTC, unless the Representative shall otherwise instruct.

(b) Over-Allotment Option. On the basis of the representations, warranties and covenants herein and subject to the conditions herein,

(i) the Underwriters shall have the option to purchase, severally and not jointly, in whole or in part, the Option Shares from the Company (the “**Over-Allotment Option**”), in each case, at a price per share equal to the Purchase Price less 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 Option Shares (the “**Over-Allotment Option Purchase Price**”);

(ii) upon an exercise of the Over-Allotment Option and subject to the terms and conditions herein, the Company agrees to issue and sell the Option Shares to the several Underwriters;

(iii) The Underwriters may exercise the Over-Allotment Option at any time in whole, or from time to time in part, on or before the forty-fifth (45th) day following the date of the Final Prospectus, by written notice from the Representative to the Company (the “**Over-Allotment Exercise Notice**”). The Underwriters must give the Over-Allotment Exercise Notice to the Company at least two business days prior to the Closing Date or the applicable Additional Closing Date, as the case may be. The Representative may cancel any exercise of the Over-Allotment Option at any time prior to the Closing Date or the applicable Additional Closing Date, as the case may be, by giving written notice of such cancellation to the Company.

(iv) The Over-Allotment Exercise Notice shall set forth:

(A) the aggregate number of Option Shares as to which the Over-Allotment Option is being exercised;

(B) the Over-Allotment Option Purchase Price;

(C) the names and denominations in which the Option Shares are to be registered; and

(D) the applicable Additional Closing Date, which may be the same date and time as the Closing Date but shall not be earlier than the Closing Date nor later than the tenth (10th) full business day after the date of the Over-Allotment Exercise Notice.

(v) Payment for the Option Shares (the “**Option Shares Payment**”) shall be made by wire transfer in immediately available funds to the accounts specified by the Company to the Representative at the offices of Kaufman & Canoles, P.C. at [10:00] [a.m.] ET on the date specified in the corresponding Over-Allotment Exercise Notice, or at such other place on the same or such other date and time, not later than the fifth business day thereafter, as the Representative and the Company may agree upon in writing (an “**Additional Closing Date**”). The Option Shares Payment shall be made against delivery to the Representative for the respective accounts of the several Underwriters of the Option Shares to be purchased on any Additional Closing Date, with any transfer taxes, stamp duties and other similar taxes payable in connection with the sale of the Option Shares duly paid by the Company. Delivery of the Option Shares shall be made through the facilities of DTC unless the Representative shall otherwise instruct.

(vi) As additional compensation for the Representative’s services, the Company shall issue to the Representative or its designees at the closing of the Offering warrants (the “**Representative’s Warrant**”) to purchase that number of shares of the Company’s common stock equal to 5.0% of the aggregate number of ordinary shares sold in the Offering. The Representative’s Warrant will be exercisable at any time and from time to time, in whole or in part, during the period commencing six months from the closing of the Offering and ending four years and six months thereafter, at a price per share equal to 125.0% of the offering price per share of common stock at the Offering. The Representative’s Warrant and the shares issuable upon exercise thereof are sometimes hereinafter referred to collectively as the “**Representative’s Securities**.” The Representative understands and agrees that there are restrictions pursuant to FINRA Rule 5110 against transferring the Representative’s Warrant and the underlying shares during the 180-day period after the date hereof and by its acceptance thereof shall agree that it and its respective designees, if any, will not, sell, transfer, assign, pledge or hypothecate their respective Representative’s Securities, or any portion thereof, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of such securities for a period of 180 days following the date hereof to anyone other than (A) an Underwriter or a selected dealer in connection with the Offering, or (B) a bona fide officer or partner of one of the Representative or of any such Underwriter or selected dealer; and only if any such transferee agrees to the foregoing lock-up restrictions. Delivery of the executed Representative’s Warrant Agreement shall be made on the Closing Date and the Representative’s Warrant shall be issued in the name or names and in such authorized denominations as the Representative may request.

(c) **Public Offering.** The Company understands that the Underwriters intend to make a public offering of the Shares as soon after the effectiveness of this Agreement as in the judgment of the Representative is advisable, and initially to offer the Shares on the terms set forth in the Final Prospectus. The Company acknowledges and agrees that the Underwriters may offer and sell Shares to or through any Affiliate of an Underwriter.

4. **Covenants of the Company.** The Company hereby covenants and agrees with each Underwriter as follows:

(a) **Filings with the Commission.** The Company will:

- (i) prepare and file the Final Prospectus (in a form approved by the Representative and containing the Rule 430A Information) with the Commission in accordance with and within the time periods specified by Rules 424(b) and 430A under the Securities Act;
- (ii) file any Issuer Free Writing Prospectus with the Commission to the extent required by Rule 433 under the Securities Act; and
- (iii) file with the Commission such reports as may be required by Rule 463 under the Securities Act.

(b) **Notice to the Representative.** The Company will advise the Representative promptly, and confirm such advice in writing:

- (i) when the Registration Statement has become effective;
- (ii) when the Final Prospectus has been filed with the Commission;

- (iii) when any amendment to the Registration Statement has been filed or becomes effective;
- (iv) when any Rule 462(b) Registration Statement has been filed with the Commission;
- (v) when any supplement to the Final Prospectus, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication or any amendment to the Final Prospectus has been filed or distributed;

(vi) of (x) any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Final Prospectus, (y) the receipt of any comments from the Commission relating to the Registration Statement or (z) any other request by the Commission for any additional information, including, but not limited to, any request for information concerning any Testing-the-Waters Communication;

(vii) of (x) the issuance by the Commission of any order suspending the effectiveness of the Registration Statement or preventing or suspending the use of the Registration Statement, the Pricing Disclosure Package, the Final Prospectus, any Preliminary Prospectus, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication or (y) the initiation or, to the knowledge of the Company, threatening of any proceeding for that purpose or pursuant to Section 8A of the Securities Act;

(viii) of the occurrence of any event or development within the Prospectus Delivery Period as a result of which, the Final Prospectus, the Pricing Disclosure Package, any Issuer Free Writing Prospectus or any Written Testing-the-Waters Communication as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Final Prospectus, the Pricing Disclosure Package, any such Issuer Free Writing Prospectus or any such Written Testing-the-Waters Communication is delivered to a purchaser, not misleading;

(ix) of the issuance by any governmental or regulatory authority or any order preventing or suspending the use of any of the Registration Statement, the Pricing Disclosure Package, the Final Prospectus, any Preliminary Prospectus, any Issuer Free Writing Prospectus or any Testing-the-Waters Communication or the initiation or threatening for that purpose; and

(x) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Shares for offer and sale in any jurisdiction or the initiation or, to the knowledge of the Company, threatening of any proceeding for such purpose.

(c) Reserved.

(d) Ongoing Compliance.

(i) If during the Prospectus Delivery Period:

(A) any event or development shall occur or condition shall exist as a result of which the Final Prospectus as then amended or supplemented would 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 existing when the Final Prospectus is delivered to a purchaser, not misleading, the Company will, as soon as reasonably possible, notify the Underwriters thereof and forthwith prepare and, subject to Section 4(e) hereof, file with the Commission and furnish, at its own expense, to the Underwriters and to such dealers as the Representative may designate such amendments or supplements to the Final Prospectus as may be necessary so that the statements in the Final Prospectus as so amended or supplemented will not, in the light of the circumstances existing when the Final Prospectus is delivered to a purchaser, be misleading; or

(B) it is necessary to amend or supplement the Final Prospectus to comply with applicable law, the Company will, as soon as reasonably possible, notify the Underwriters thereof and forthwith prepare and, subject to Section 4(e) hereof, file with the Commission and furnish, at its own expense, to the Underwriters and to such dealers as the Representative may designate such amendments or supplements to the Final Prospectus as may be necessary so that the Final Prospectus will comply with applicable law; and

---

14

(ii) if at any time prior to the Closing Date or any Additional Closing Date, as the case may be:

(A) any event or development shall occur or condition shall exist as a result of which the Pricing Disclosure Package as then amended or supplemented would 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 existing when the Pricing Disclosure Package is delivered to a purchaser, not misleading, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to Section 4(e) hereof, file with the Commission (to the extent required) and furnish, at its own expense, to the Underwriters and to such dealers as the Representative may designate such amendments or supplements to the Pricing Disclosure Package as may be necessary so that the statements in the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances existing when the Pricing Disclosure Package is delivered to a purchaser, be misleading; or

(B) it is necessary to amend or supplement the Pricing Disclosure Package to comply with applicable law, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to Section 4(e) hereof, file with the Commission (to the extent required) and furnish, at its own expense, to the Underwriters and to such dealers as the Representative may designate such amendments or supplements to the Pricing Disclosure Package as may be necessary so that the Pricing Disclosure Package will comply with applicable law.

(e) Amendments, Supplements and Issuer Free Writing Prospectuses. Before (i) using, authorizing, approving, referring to, distributing or filing any Issuer Free Writing Prospectus, (ii) filing (x) any Rule 462(b) Registration Statement or (y) any amendment or supplement to the Registration Statement or the Final Prospectus, or (iii) distributing any amendment or supplement to the Pricing Disclosure Package or the Final Prospectus, the Company will furnish to the Representative and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, Rule 462(b) Registration Statement or other amendment or supplement for review and will not use, authorize, refer to, distribute or file any such Issuer Free Writing Prospectus or Rule 462(b) Registration Statement, or file or distribute any such proposed amendment or supplement (A) to which the Representative objects in a timely manner and (B) which is not in compliance with the Securities Act. The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Securities Act.

(f) Delivery of Copies. The Company will, upon request of the Representative, deliver, without charge, (i) to the Representative, three signed copies of the Registration Statement as originally filed and each amendment thereto, in each case, including all exhibits and consents filed therewith; and (ii) to each Underwriter (A) a conformed copy of the Registration Statement as originally filed and each amendment thereto (without exhibits and consents) and (B) during the Prospectus Delivery Period, as many copies of the Final Prospectus (including all amendments and supplements thereto and each Issuer Free Writing Prospectus) as the Representative may reasonably request.

(g) Emerging Growth Company Status. The Company will promptly notify the Representative 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 Securities Act and (ii) completion of the Lock-Up Period (as defined below).

(h) Blue Sky Compliance. The Company will use its best efforts, with the Underwriters' cooperation, if necessary, to qualify or register (or to obtain exemptions from qualifying or registering) the Shares and the Representative's Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representative shall reasonably request and will use its reasonable best efforts, with the Underwriters' cooperation, if necessary, to continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Shares and the Representative's Securities; provided that the Company shall not be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(i) Earning Statement. The Company will make generally available to its security holders and the Representative as soon as practicable an earning statement that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act covering a period of at least 12 months beginning with the first fiscal quarter of the Company occurring after the "effective date" (as defined in Rule 158 under the Securities Act) of the Registration Statement; provided that the Company will be deemed to have furnished such statement to its security holders and the Representative to the extent it is filed on the Commission's Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

---

15

(j) Use of Proceeds. The Company shall apply the net proceeds from the sale of the Firm Shares and the Option Shares in the manner described under the caption "Use of Proceeds" in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus.

(k) Clear Market.

(i) For a period of 90 days after the date of the Final Prospectus (the "Lock-Up Period"), the Company will not (x) 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, or file with the Commission a registration statement under the Securities Act relating to, any shares of Common

Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, or (y) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (x) or (y) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, without the prior written consent of the Representative.

(ii) The restrictions contained in Section 4(k)(i) hereof shall not apply to: (A) the Shares, (B) any shares of Common Stock issued under Company Stock Plans or warrants issued by the Company, in each case, described as outstanding in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, (C) any options and other awards granted under a Company Stock Plan as described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus, (D) the filing by the Company of any registration statement on Form S-8 or a successor form thereto relating to a Company Stock Plan described in the Registration Statement, the Pricing Disclosure Package and the Final Prospectus and (E) shares of Common Stock or other securities issued in connection with a transaction with an unaffiliated third party that includes a bona fide commercial relationship (including joint ventures, marketing or distribution arrangements, collaboration agreements or intellectual property license agreements) or any acquisition of assets or acquisition of not less than a majority or controlling portion of the equity of another entity; provided that (x) the aggregate number of shares of Common Stock issued pursuant to clause (E) shall not exceed five percent (5%) of the total number of outstanding shares of Common Stock immediately following the issuance and sale of the Firm Shares pursuant hereto and (y) the recipient of any such shares of Common Stock or other securities issued or granted pursuant to clauses (B), (C) and (E) during the Lock-Up Period shall enter into an agreement substantially in the form of Exhibit A hereto.

(iii) If the Representative, in its sole discretion, agrees to release or waive the restrictions set forth in any Lock-Up Agreement and provides the Company with notice of the impending release or waiver substantially in the form of Exhibit B hereto at least three business days before the effective date of the release or waiver, then the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit C hereto through a major news service at least two business days before the effective date of the release or waiver.

(l) No Stabilization or Manipulation. None of the Company, its Affiliates or any person acting on its or any of their behalf (other than the Underwriters, as to which no covenant is given) will take, directly or indirectly, any action designed to or that constitutes or that could reasonably be expected to cause or result in the stabilization or manipulation of the price of any securities of the Company. The Company acknowledges that the Representative may engage in passive market making transactions in the Common Stock on the Exchange in accordance with Regulation M.

(m) Investment Company Act. The Company shall not invest, or otherwise use the proceeds received by the Company from the sale of the Firm Shares or the Option Shares in such a manner as would require the Company or any of its subsidiaries to register as an "investment company" (as defined in the Investment Company Act) under the Investment Company Act.

(n) Transfer Agent. For the period of two years from the date of this Agreement, the Company shall engage and maintain, at its expense, a registrar and transfer agent for the Common Stock.

---

16

(o) Reports. For the period of two years from the date of this Agreement, the Company will furnish to the Representative, as soon as they are available, copies of all reports or other communications (financial or other) furnished to holders of the Shares, and copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange or automatic quotation system; provided that the Company will be deemed to have furnished such reports and financial statements to the Representative to the extent they are filed on EDGAR.

(p) Right of First Refusal. The Company agrees that, if, for the period ending nine (9) months from the Closing Date, the Company or any of its subsidiaries: (i) decides to finance or refinance any indebtedness, the Representative (or any affiliate designated by the Representative) shall have the right to act as sole book-runner, sole manager, sole placement agent or sole agent with respect to such financing or refinancing; or (ii) decides to raise funds by means of a public offering (including at-the-market facility) or a private placement or any other capital raising financing of equity, equity-linked or debt securities, the Representative (or any affiliate designated by the Representative) shall have the right to act as sole book-running manager, sole underwriter or sole placement agent for such financing. If the Representative or one of its affiliates decides to accept such engagement, the agreement governing such engagement (each a "Subsequent Transaction Agreement") will contain, among other things, provisions for customary fees for transactions of similar size and nature, but in no event will the fees be less than those outlined herein, and the provisions of this Agreement, including indemnification, which appropriate to such transaction. Notwithstanding the foregoing, the decision to accept the Company's engagement under this Section 4(p) shall be made by the Representative or one of its affiliates, by a written notice to the Company, within ten (10) days of the receipt of the Company's notification of its financing needs.

5. Covenants of the Underwriters. Each Underwriter, severally and not jointly, hereby covenants and agrees with the Company as follows:

(a) Underwriter Free Writing Prospectus. Such Underwriter has not used, authorized the use of, referred to or participated in the planning for use of, and will not use, authorize the use of, refer to or participate in the planning for use of, any Free Writing Prospectus (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (i) a Free Writing Prospectus that contains no "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act ("Issuer Information") that was not included in the Pricing Prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed in Schedule II hereto or prepared pursuant to Section 1(c)(iv) or Section 4(e) hereof (including any electronic road show), or (iii) any Free Writing Prospectus prepared by such Underwriter and approved by the Company in advance in writing.

(b) Section 8A Proceedings. Such Underwriter is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering of the Shares and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period.

6. Payment of Expenses.

(a) Company Expenses. The Company hereby agrees to pay on the Closing Date all expenses incident to the performance of the obligations of the Company under this Agreement including, but not limited to: (a) all filing fees and expenses relating to the registration of the Shares with the Commission; (b) all filing fees and expenses associated with the review of the offering of the Shares by FINRA; (c) all fees and expenses relating to the listing of the Shares on the Exchange (to the extent relevant) and on such other stock exchanges as the Company and the Representative together determine; (d) all fees, expenses and disbursements relating to background checks of the Company's officers and directors; (e) all fees, expenses and disbursements relating to the registration or qualification of the Shares as the Representative may reasonably designate; (f) all fees, expenses and disbursements relating to the registration, qualification or exemption of the Securities under the securities laws of such foreign jurisdictions as the Representative may reasonably designate; (g) the costs of all mailing and printing of the underwriting documents, the Registration Statement, Pricing Disclosure Package, the Final Prospectus, any Preliminary Prospectus, any Issuer Free Writing Prospectus or any Testing-the-Waters Communication and all amendments, supplements and exhibits thereto as the Underwriters may reasonably deem necessary; (h) the costs and expenses of the public relations firm referred to in the engagement letter between the Company and the Representative; (i) the costs of preparing, printing and delivering certificates representing the Shares; (j) fees and expenses of the transfer agent for the shares of Common Stock; (k) stock transfer and/or stamp taxes, if any, payable upon the transfer of securities from the Company to the Underwriters; (l) the fees and expenses of the Company's accountants; (m) the "road show" expenses and the reasonable fees and expenses of the Company's legal counsel and other agents and representatives and fees and expenses of the Underwriters' counsel. The total amount payable pursuant to (d) and (m) to the Underwriters shall not to exceed \$100,000. The Representative may deduct from the net proceeds of the Offering payable to the Company

(b) Non-accountable Expenses. On the Closing Date, the Company shall pay to the Representative, by deduction from the net proceeds of the Offering a non-accountable expense allowance equal to one percent (1.0%) of the gross proceeds received by the Company from the sale of the Firm Shares) less the Advance (as defined below), provided, however, that in the event that the Offering is terminated, the Company agrees to reimburse the Underwriters pursuant to Section 6(d) hereof.

(c) Underwriter Expenses. Except to the extent otherwise provided in this Section 6 or Section 8 hereof, the Underwriters will pay all of their own costs and expenses, including the fees and expenses of their counsel, any stock transfer taxes on resale of any of the Shares held by them, and any advertising expenses connected with any offers they may make.

(d) Company Reimbursement. The provisions of this Section 6 shall not affect any agreement that the Company may make for the sharing of such costs and expenses.

7. Conditions of the Obligations of the Underwriters. The obligations of the several Underwriters to purchase the Firm Shares as provided herein on the Closing Date or the Option Shares as provided herein on any Additional Closing Date, as the case may be, shall be subject to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

(a) Registration Compliance; No Stop Order.

(i) The Registration Statement and any post-effective amendment thereto shall have become effective, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto shall be in effect, and no proceeding for such purpose or pursuant to Section 8A of the Securities Act shall be pending before or threatened by the Commission.

(ii) The Company shall have filed the Final Prospectus and each Issuer Free Writing Prospectus with the Commission in accordance with and within the time periods prescribed by Section 4(a) hereof.

(iii) The Company shall have (A) disclosed to the Representative all requests by the Commission for additional information relating to the offer and sale of the Shares and (B) complied with such requests to the reasonable satisfaction of the Representative.

(b) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct on the date hereof and on and as of the Closing Date or any Additional Closing Date, as the case may be; and the statements of the Company and its officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date or any Additional Closing Date, as the case may be.

(c) Accountants' Comfort Letters. On the date of this Agreement and on the Closing Date or any Additional Closing Date, as the case may be, MaloneBailey, LLP shall have furnished to the Representative, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Underwriters, in form and substance reasonably satisfactory to the Representative, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in each of the Registration Statement, the Pricing Disclosure Package and the Final Prospectus; provided that the letter delivered on the Closing Date or any Additional Closing Date, as the case may be, shall use a "cut-off" date no more than two business days prior to the Closing Date or such Additional Closing Date, as the case may be.

(d) Reserved.

(e) No Material Adverse Change. No event or condition of a type described in Section 1(l) hereof shall have occurred or shall exist, which event or condition is not described in each of the Pricing Disclosure Package and the Final Prospectus (in each case, exclusive of any amendment or supplement thereto), the effect of which in the judgment of the Representative makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date or any Additional Closing Date, as the case may be, in the manner and on the terms contemplated by this Agreement, the Pricing Disclosure Package and the Final Prospectus (in each case, exclusive of any amendment or supplement thereto).

(f) Opinion and Negative Assurance Letter of Counsel to the Company. Schiff Hardin LLP, counsel to the Company, shall have furnished to the Representative, at the request of the Company, its (i) written opinion, addressed to the Underwriters and dated the Closing Date or any Additional Closing Date, as the case may be, and (ii) negative assurance letter, addressed to the Underwriters and dated the Closing Date or any Additional Closing Date, as the case may be, in each case, substantially in the form attached hereto as Exhibit E.

(g) Officer's Certificate. The Representative shall have received on and as of the Closing Date or any Additional Closing Date, as the case may be, a certificate of an executive officer of the Company who has specific knowledge of the Company's financial matters and is satisfactory to the Representative, (i) confirming that such officer has carefully reviewed the Registration Statement, the Pricing Disclosure Package, the Final Prospectus, each Issuer Free Writing Prospectus and each Written Testing-the-Waters Communication and, to the knowledge of such officer, the representations set forth in Sections 1(a)(ii), 1(b), 1(c)(i), 1(d)(i), 1(e)(i) 1(f)(ii) and 1(i) hereof are true and correct on and as of the Closing Date or any Additional Closing Date, as the case may be; (ii) to the effect set forth in clause (i) of Section 1(l) and Section 7(a) hereof; and (iii) confirming that all of the other representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date or any Additional Closing Date, as the case may be, and that the Company has complied with all agreements and covenants and satisfied all other conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or any Additional Closing Date, as the case may be.

(h) No Legal Impediment to Issuance and Sale. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or any Additional Closing Date, as the case may be, prevent the issuance, sale or delivery of the Firm Shares or the Option Shares by the Company; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or any Additional Closing Date, as the case may be, prevent the issuance, sale or delivery of the Firm Shares or the Option Shares.

(i) Good Standing. The Representative shall have received on and as of the Closing Date and any Additional Closing Date, as the case may be, satisfactory evidence of the good standing of the Company in its jurisdiction of organization and its good standing in such other jurisdictions as the Representative may reasonably request, in each case, in writing from the appropriate governmental authorities of such jurisdictions.

(j) Lock-Up Agreements. The Lock-Up Agreements executed by the officers, directors and certain equityholders of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to the Representative on or before the date hereof, shall be in full force and effect on the Closing Date or any Additional Closing Date, as the case may be.

(k) Representative's Warrant Agreement. The Representative's Warrant Agreement, substantially in the form of Exhibit F hereto, executed by the officers of the Company, delivered to the Representative on or before the date hereof, shall be in full force and effect on the Closing Date or any Additional Closing Date, as the case may be.

(l) Exchange Listing. On the Closing Date or any Additional Closing Date, as the case may be, the Shares shall have been approved for listing on the Exchange, subject to notice of issuance.

(m) Additional Documents. On or prior to the Closing Date or any Additional Closing Date, as the case may be, the Underwriters and their counsel shall have received such information, certificates and other additional documents from the Company as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Shares as contemplated herein or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the covenants, closing conditions or other obligations, contained in this Agreement.

All opinions, letters, certificates and other documents delivered pursuant to this Agreement will be deemed to be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to counsel for the Underwriters.

If any condition specified in this Section 7 is not satisfied when and as required to be satisfied, this Agreement and all obligations of the Underwriters hereunder may be terminated by the Representative by notice to the Company at any time on or prior to the Closing Date or any Additional Closing Date, as the case may be, which termination shall be without liability on the part of any party to any other party, except that the Company shall continue to be liable for the payment of expenses under Section 6 and Section 11 hereof and except that the provisions of Section 8 and Section 9 hereof shall at all times be effective and shall survive any such termination.

## 8. Indemnification.

(a) Indemnification of the Underwriters by the Company. The Company agrees to indemnify and hold harmless each Underwriter, its Affiliates, directors, officers, employees and agents and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, all reasonable legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), the Final Prospectus (or any amendment or supplement thereto), any Preliminary Prospectus, any Issuer Information, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication or any Road Show, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case, except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with the Underwriter Information. The indemnity agreement set forth in this Section 8(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Indemnification of the Company by the Underwriters. Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, each officer who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, all reasonable legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, to the same extent as the indemnity set forth in Section 8(a) hereof; provided, however, that each Underwriter shall be liable only to the extent that any untrue statement or omission or alleged untrue statement or omission was made in the Registration Statement (or any amendment or supplement thereto), any Pricing Disclosure Package (including any Pricing Disclosure Package that has subsequently been amended), the Final Prospectus (or any amendment or supplement thereto), any Preliminary Prospectus, any Issuer Information, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication or any Road Show in reliance upon, and in conformity with, the Underwriter Information relating to such Underwriter. The indemnity agreement set forth in this Section 8(d) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) Notifications and Other Indemnification Procedures. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to any of the preceding subsections of this Section 8, such person (the "**Indemnified Person**") shall promptly notify the person against whom such indemnification may be sought (the "**Indemnifying Person**") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under any of the preceding subsections of this Section 8 except to the extent that it has been materially prejudiced by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under any of the preceding subsections of this Section 8. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person in such proceeding and shall pay the reasonable and documented fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person 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 Person; or (iv) 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. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be paid or reimbursed as they are incurred. Any such separate firm for (i) any Underwriter, its Affiliates, directors, officers, employees and agents and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall be designated in writing by the Representative; and (ii) the Company, its directors, its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall be designated in writing by the Company.

(d) Settlements. The Indemnifying Person under this Section 8 shall not be liable for any settlement of any proceeding effected without its written consent, which consent may not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify the Indemnified Person from and against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested an Indemnifying Person to reimburse the Indemnified Person for any reasonably incurred and documented fees and expenses of counsel as contemplated by this Section 8, the Indemnifying Person agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such Indemnifying Person of the aforesaid request, (ii) such Indemnifying Person shall not have reimbursed the Indemnified Person in accordance with such request, or shall not have disputed in good faith the Indemnified Person's entitlement to such reimbursement, prior to the date of such settlement and (iii) such Indemnified Person shall have given the Indemnifying Person at least 45 days' prior notice of its intention to settle. No Indemnifying Person shall, without the prior written consent of the Indemnified Person effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any Indemnified Person is or could have been a party and indemnity was or could have been sought hereunder by such Indemnified Person, unless such settlement, compromise or consent (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from and against all liability on claims that are the subject matter of such action, suit or proceeding and (y) does not include any statements as to or any findings of fault, culpability or failure to act by or on behalf of any Indemnified Person.

9. Contribution. To the extent the indemnification provided for in Section 8 hereof is unavailable to or insufficient to hold harmless an Indemnified Person in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each Indemnifying Person, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the aggregate amount paid or payable by such Indemnified Person, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Shares pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions that resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Shares pursuant to this Agreement (before deducting expenses) received by the Company, on the one hand, and the total underwriting discounts and commissions received by the Underwriters, on the other hand, in each case as set forth in the table on the cover of the Final Prospectus bear to the aggregate initial offering price of the Shares. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 8 hereof, all reasonable legal or other fees or expenses incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 8 hereof with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 9; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 8 hereof for purposes of indemnification.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 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 in this Section 9.

Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the amount by which the total discounts and commissions received by such Underwriter in connection with the Shares distributed by it exceeds the amount of any damages such Underwriter has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11 of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 9 are several, and not joint, in proportion to their respective commitments as set forth opposite their names in Schedule I hereto.

For purposes of this Section 9, each director, officer, employee and agent of an Underwriter and each person, if any, who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Underwriter, and each director and officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company with the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, shall have the same rights to contribution as the Company.

The remedies provided for in Section 8 and Section 9 hereof are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity.

10. Termination. Prior to the delivery of and payment for the Shares on the Closing Date or any Additional Closing Date, as the case may be, this Agreement may be terminated by the Representative in the absolute discretion of the Representative by notice given to the Company if after the execution and delivery of this Agreement: (i) trading or quotation of any securities issued or guaranteed by the Company shall have been suspended or materially limited on any securities exchange, quotation system or in the over-the-counter market; (ii) trading in securities generally on any of the New York Stock Exchange, the Nasdaq Global Market or the over-the-counter market shall have been suspended or materially limited; (iii) a general banking moratorium on commercial banking activities shall have been declared by federal or New York state authorities; (iv) there shall have occurred a material disruption in commercial banking or securities settlement, payment or clearance services in the United States; (v) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in general economic, financial or political conditions in the United States or internationally, as in the judgment of the Representative is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Shares on the Closing Date or any Additional Closing Date, as the case may be, in the manner and on the terms described in the Pricing Disclosure Package or to enforce contracts for the sale of securities; or (vi) the Company or any of its subsidiaries shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representative may interfere materially with the conduct of the business and operations of the Company and its subsidiaries, considered as one entity, regardless of whether or not such loss shall have been insured.

Any termination pursuant to this Section 10 shall be without liability on the part of: (x) the Company to the Underwriters, except that the Company shall continue to be liable for the payment of expenses under Section 6; (y) any Underwriter to the Company; or (z) any party hereto to any other party except that the provisions of Section 8 and Section 9 hereof shall at all times be effective and shall survive any such termination.

11. Reimbursement of the Underwriters' Expenses. If (a) the Company fails to deliver the Shares to the Underwriters for any reason at the Closing Date or any Additional Closing Date, as the case may be, in accordance with this Agreement or (b) the Underwriters decline to purchase the Shares for any reason permitted under this Agreement, then the Company agrees to reimburse the Underwriters for all reasonable out-of-pocket costs and expenses (including the reasonable and documented fees and expenses of counsel to the Underwriters) incurred by the Underwriters in connection with this Agreement and the applicable offering contemplated hereby not to exceed \$50,000.

12. Representations and Indemnities to Survive Delivery. The respective indemnities, rights of contribution, agreements, representations, warranties and other

statements of the Company and the several Underwriters set forth in or made pursuant to this Agreement or made by or on behalf of the Company or the Underwriters pursuant to this Agreement or any certificate delivered pursuant hereto shall remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter, the Company or any of their respective officers or directors or any controlling person, as the case may be, and shall survive delivery of and payment for the Shares sold hereunder and any termination of this Agreement.

13. Defaulting Underwriters.

(a) If, on the Closing Date or any Additional Closing Date, as the case may be, any Underwriter defaults on its obligation to purchase the Shares that it has agreed to purchase hereunder on such date, the non-defaulting Underwriters may in their discretion arrange for the purchase of such Shares by other persons satisfactory to the Company on the terms contained in this Agreement. If, within 48 hours after any such default by any Underwriter, the non-defaulting Underwriters do not arrange for the purchase of such Shares, then the Company shall be entitled to a further period of 48 hours within which to arrange for other persons satisfactory to the non-defaulting Underwriters to purchase such Shares on such terms. If, pursuant to the preceding two sentences, other persons become obligated or agree to purchase the Shares of a defaulting Underwriter, either the non-defaulting Underwriters or the Company may postpone the Closing Date or any Additional Closing Date, as the case may be, for up to seven business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Underwriters may be necessary in the Registration Statement, Pricing Disclosure Package, the Final Prospectus or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Registration Statement, Pricing Disclosure Package or the Final Prospectus necessary to effect any such changes. As used in this Agreement, the term "Underwriter" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule I hereto that, pursuant to this Section (a), purchases Shares that a defaulting Underwriter agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters as provided in Section 13(a) hereof, the aggregate number of such Shares that remains unpurchased on the Closing Date or any Additional Closing Date, as the case may be, does not exceed 10% of the aggregate number of all the Shares to be purchased on such date, then the Company shall have the right to require each non-defaulting Underwriter to purchase the number of Shares that such Underwriter agreed to purchase hereunder on such date plus such Underwriter's pro rata share (based on the number of Shares that such Underwriter agreed to purchase hereunder on such date) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; provided that in no event shall the number of Shares that any Underwriter has agreed to purchase on such date pursuant to this Agreement be increased pursuant to this Section (a) by an amount in excess of 10% of such principal amount without the written consent of such Underwriter.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters as provided in Section 13(a) hereof, the aggregate number of such Shares that remains unpurchased on the Closing Date or any Additional Closing Date, as the case may be, exceeds 10% of the aggregate of all the Shares to be purchased on such date, or if the Company shall not exercise the right described in Section 13(b) hereof, then this Agreement or, with respect to any Additional Closing Date, the obligation of the Underwriters to purchase Shares on such Additional Closing Date shall terminate without liability on the part of the non-defaulting Underwriters. Any termination of this Agreement pursuant to this Section 13(c) shall be without liability on the part of the Company, except that the Company shall continue to be liable for the payment of expenses under Section 6 and Section 11 hereof and except that the provisions of Section 8 and Section 9 hereof shall at all times be effective and shall survive any such termination.

(d) Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have to the Company or any non-defaulting Underwriter for damages caused by its default.

14. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) when delivered by hand (with written confirmation of receipt), (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (iii) on the date sent by facsimile (with confirmation of transmission) or email of a PDF document if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or (iv) on the third day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 14):

If to the Underwriters:

Aegis Capital Corp.  
810 7th Avenue  
18th Floor  
New York, NY 10019  
Email Address: [●]  
Attention: [●]

with a copy to:

Kaufman & Canoles, P.C.  
Two James Center  
1021 East Cary Street, Suite 1400  
Richmond, Va. 23219  
Email: awbasch@kaufcan.com  
jwilliston@kaufcan.com  
Attention: Anthony W. Basch  
J. Britton Williston

If to the Company:

Volcon, Inc.  
2590 Oakmont Drive, Suite 520  
Round Rock, TX 78665  
Email: greg@volcon.com  
Attention: Greg Endo

with a copy to:

Schiff Hardin LLP  
100 N. 18th Street  
Suite 300  
Philadelphia, PA 19103  
Email: CPavri@schiffhardin.com  
Attention: Cavas S. Pavri



Any party hereto may change the address or facsimile number for receipt of communications by giving written notice to the others in accordance with this Section 14.

15. Successors. This Agreement shall inure solely to the benefit of and be binding upon the Underwriters, the Company and the other indemnified parties referred to in Section 8 and Section 9 hereof, and in each case their respective successors. Nothing in this Agreement is intended, or shall be construed, to give any other person or entity any legal or equitable right, benefit, remedy or claim under, or in respect of or by virtue of, this Agreement or any provision contained herein. The term "successors," as used herein, shall not include any purchaser of the Shares from any Underwriter merely by reason of such purchase.

16. Authority of the Representative. Any action by the Underwriters hereunder may be taken by the Representative on behalf of the Underwriters, and any such action taken by the Representative shall be binding upon the Underwriters.

17. Partial Unenforceability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

18. Governing Law. This Agreement and any claim, controversy or dispute arising under or related to this Agreement, whether sounding in contract, tort or statute, shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state (including its statute of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York.

---

24

19. Consent to Jurisdiction. No legal suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby (each, a "Related Proceeding") may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts (collectively, the "Specified Courts") shall have jurisdiction over the adjudication of any Related Proceeding, and the parties to this Agreement hereby irrevocably consent to the exclusive jurisdiction the Specified Courts and personal service of process with respect thereto. The parties to this Agreement hereby irrevocably waive any objection to the laying of venue of any Related Proceeding in the Specified Courts and irrevocably waive and agree not to plead or claim in any Specified Court that any Related Proceeding brought in any Specified Court has been brought in an inconvenient forum.

20. Waiver of Jury Trial. The parties to this Agreement hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any Related Proceeding.

21. No Fiduciary Relationship. The Company acknowledges and agrees that: (i) the purchase and sale of the Shares pursuant to this Agreement, including the determination of the offering price of the Shares and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company or its Affiliates, stockholders, members, partners, creditors or employees or any other party; (iii) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Agreement; (iv) the several Underwriters and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and the several Underwriters have no obligation to disclose any of such interests by virtue of any fiduciary or advisory relationship; and (v) the Underwriters have not provided any legal, accounting, regulatory or tax advice in any jurisdiction with respect to the offering contemplated hereby, and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate. The Company waives and releases, to the full extent permitted by applicable law, any claims it may have against the Underwriters arising from an alleged breach of fiduciary duty in connection with the offering of the Shares or any matters leading up to the offering of the Shares.

22. Compliance with the USA Patriot Act. 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, which information may include the name and address of its clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

23. Entire Agreement. This Agreement, together with any contemporaneous written agreements and any prior written agreements (to the extent not superseded by this Agreement) that relate to the offering of the Shares, represents the entire agreement among the Company and the Underwriters with respect to the preparation of the Registration Statement, the Pricing Disclosure Package, the Final Prospectus, each Preliminary Prospectus, each Issuer Free Writing Prospectus, each Testing-the-Waters Communication and each Road Show, the purchase and sale of the Shares and the conduct of the offering contemplated hereby.

24. Amendments or Waivers. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by all the parties hereto. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after the waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise of any other right, remedy, power or privilege.

25. Section Headings. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

---

25

26. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered via facsimile, email (including PDF or any electronic signature complying with the U.S. federal E-SIGN Act of 2000) 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.

27. Recognition of the U.S. Special Resolution Regimes

(a) In the event that any Underwriter that is a Covered Entity (as defined below) 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 (as defined below) 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 (as defined below) of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights (as defined below) 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.

[SIGNATURE PAGE FOLLOWS]

26

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

Volcon, Inc.

By: \_\_\_\_\_  
Name: Greg Endo  
Title: Chief Financial Officer

Confirmed and accepted as of the date first above written:

Aegis Capital Corp.

*Acting on behalf of itself and as a Representative of the several Underwriters*

By: \_\_\_\_\_  
Name: [●]  
Title: [●]

27

## SCHEDULE I

### Underwriters

<u>Underwriter</u>	<u>Number of Firm Shares to Be Purchased</u>	<u>Number of Option Shares to Be Purchased if the Maximum Over-Allotment Option Is Exercised</u>
Aegis Capital Corp.	[NUMBER]	[NUMBER]
[UNDERWRITER NAME]	[NUMBER]	[NUMBER]
[UNDERWRITER NAME]	[NUMBER]	[NUMBER]
[UNDERWRITER NAME]	[NUMBER]	[NUMBER]
<b>Total:</b>	[NUMBER]	[NUMBER]

28

## SCHEDULE II

### Pricing Disclosure Package

29

## SCHEDULE III

### Subsidiaries

Subsidiary	Jurisdiction of Organization
Volcon ePowersports, LLC	Delaware
Volcon ePowersports, LLC	Colorado

30

## EXHIBIT A

### Form of Lock-Up Agreement

\_\_\_\_\_, 2021

Aegis Capital Corp.  
810 Seventh Avenue, 18th Floor  
New York, NY 10019

As Representative of the several Underwriters named on Schedule 1 to the Underwriting Agreement referenced below

Ladies and Gentlemen:

The undersigned understands that Aegis Capital Corp. (the “**Representative**”), proposes to enter into an Underwriting Agreement (the “**Underwriting Agreement**”) with Volcon, Inc., a Delaware corporation (the “**Company**”), providing for the public offering (the “**Public Offering**”) of shares of common stock, par value \$0.0001 per share, of the Company (the “**Common Shares**”).

To induce the Representative to continue its efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of the Representative, the undersigned will not, during the period commencing on the date hereof and ending ninety (90) days after the effective date of the Registration Statement on Form S-1 relating to the Public Offering (the “**Lock-Up Period**”), (1) offer, pledge, sell, contract to sell, grant, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Shares or any securities convertible into or exercisable or exchangeable for Common Shares, whether now owned or hereafter acquired by the undersigned or with respect to which the undersigned has or hereafter acquires the power of disposition (collectively, the “**Lock-Up Securities**”); (2) 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 Lock-Up Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to the registration of any Lock-Up Securities; or (4) publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap, hedge or other arrangement relating to any Lock-Up Securities. Notwithstanding the foregoing, and subject to the conditions below, the undersigned may transfer Lock-Up Securities without the prior written consent of the Representative in connection with (a) transactions relating to Lock-Up Securities acquired in open market transactions after the completion of the Public Offering; provided that no filing under Section 13 or Section 16(a) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or other public announcement shall be required or shall be voluntarily made in connection with subsequent sales of Lock-Up Securities acquired in such open market transactions; (b) transfers of Lock-Up Securities as a *bona fide* gift, by will or intestacy or to a family member or trust for the benefit of the undersigned (for purposes of this lock-up agreement, “family member” means any relationship by blood, marriage or adoption, not more remote than first cousin); (c) transfers of Lock-Up Securities to a charity or educational institution; (d) if the undersigned is a corporation, partnership, limited liability company or other business entity, (i) any transfers of Lock-Up Securities to another corporation, partnership or other business entity that controls, is controlled by or is under common control with the undersigned or (ii) distributions of Lock-Up Securities to members, partners, stockholders, subsidiaries or affiliates (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned; (e) if the undersigned is a trust, to a trustee or beneficiary of the trust; provided that in the case of any transfer pursuant to the foregoing clauses (b), (c) (d) or (e), (i) any such transfer shall not involve a disposition for value, (ii) each transferee shall sign and deliver to the Representative a lock-up agreement substantially in the form of this lock-up agreement and (iii) no filing under Section 13 or Section 16(a) of the Exchange Act or other public announcement shall be required or shall be voluntarily made during the Lock-Up Period; (f) the receipt by the undersigned from the Company of Common Shares upon the vesting of restricted stock awards or stock units or upon the exercise of options to purchase the Company’s Common Shares issued under an equity incentive plan of the Company or an employment arrangement described in the Pricing Prospectus (as defined in the Underwriting Agreement) (the “**Plan Shares**”) or the transfer or withholding of Common Shares or any securities convertible into Common Shares to the Company upon a vesting event of the Company’s securities or upon the exercise of options to purchase the Company’s securities, in each case on a “cashless” or “net exercise” basis or to cover tax obligations of the undersigned in connection with such vesting or exercise, provided that if the undersigned is required to file a report under Section 13 or Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of Common Shares during the Lock-Up Period, the undersigned shall include a statement in such schedule or report to the effect that the purpose of such transfer was to cover tax withholding obligations of the undersigned in connection with such vesting or exercise and, provided further, that the Plan Shares shall be subject to the terms of this lock-up agreement; (g) the transfer of Lock-Up Securities pursuant to agreements described in the Pricing Prospectus under which the Company has the option to repurchase such securities or a right of first refusal with respect to the transfer of such securities, provided that if the undersigned is required to file a report under Section 13 or Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of Common Shares during the Lock-Up Period, the undersigned shall include a statement in such schedule or report describing the purpose of the transaction; (h) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Lock-Up Securities, provided that (i) such plan does not provide for the transfer of Lock-Up Securities during the Lock-Up Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such public announcement or filing shall include a statement to the effect that no transfer of Lock-Up Securities may be made under such plan during the Lock-Up Period; (i) the

transfer of Lock-Up Securities that occurs by operation of law, such as pursuant to a qualified domestic order or in connection with a divorce settlement, provided that the transferee agrees to sign and deliver a lock-up agreement substantially in the form of this lock-up agreement for the balance of the Lock-Up Period, and provided further, that any filing under Section 13 or Section 16(a) of the Exchange Act that is required to be made during the Lock-Up Period as a result of such transfer shall include a statement that such transfer has occurred by operation of law; and (j) the transfer of Lock- Up Securities pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to all holders of the Common Shares involving a change of control (as defined below) of the Company after the closing of the Public Offering and approved by the Company's board of directors; provided that in the event that the tender offer, merger, consolidation or other such transaction is not completed, the Lock-Up Securities owned by the undersigned shall remain subject to the restrictions contained in this lock-up agreement. For purposes of clause (j) above, "change of control" shall mean the consummation of any bona fide third party tender offer, merger, amalgamation, consolidation or other similar transaction the result of which is that any "person" (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, becomes the beneficial owner (as defined in Rules 13d-3 and 13d- 5 of the Exchange Act) of a majority of total voting power of the voting stock of the Company. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's Lock-Up Securities except in compliance with this lock-up agreement.

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing restrictions shall be equally applicable to any issuer-directed or "friends and family" securities that the undersigned may purchase in the Public Offering; (ii) the Representative agrees that, at least three (3) business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of Lock-Up Securities, the Representative will notify the Company of the impending release or waiver; and (iii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two (2) business days before the effective date of the release or waiver. Any release or waiver granted by the Representative hereunder to any such officer or director shall only be effective two (2) business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer of Lock-Up Securities not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this lock-up agreement to the extent and for the duration that such terms remain in effect at the time of such transfer.

The undersigned understands that the Company and the Representative are relying upon this lock-up agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this lock-up agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

The undersigned understands that, if the Underwriting Agreement is not executed by September 14, 2020 or if the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Shares to be sold thereunder, then this lock-up agreement shall be void and of no further force or effect.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Representative.

Very truly yours,

(Name - Please Print)

(Signature)

(Name of Signatory, in the case of entities - Please Print)

(Title of Signatory, in the case of entities - Please Print)

Address:

**EXHIBIT B**

**Form of Lock-Up Waiver**

**EXHIBIT C**

**Form of Lock-Up Waiver Press Release**

[Date]

[COMPANY] (the “Company”) announced today that Aegis Capital Corp., acting as representative for the underwriters in the Company’s recent public offering 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 [Date], and the shares may be sold on or after such date.

**This press release is not an offer or sale of the securities in the United States or in any other jurisdiction where such offer or sale is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act of 1933, as amended.**

---

34

**EXHIBIT D**

**Certificate of the Company’s Chief Financial Officer**

---

35

**EXHIBIT E**

**Opinion and Negative Assurance Letter of Counsel to the Company**

---

36

**EXHIBIT F**

**Form of Representative’s Warrant Agreement**

---

37

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
VOLCON, INC.**

\_\_\_\_\_, 2021

Volcon, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is “Volcon, Inc.” The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 21, 2020 (the “**Original Certificate**”).
2. The Original Certificate was amended and restated by an Amended and Restated Certificate of Incorporation (the “**Amended and Restated Certificate**”), filed with the Secretary of State of the State of Delaware on October 1, 2020.
3. This Second Amended and Restated Certificate of Incorporation (the “**Second Amended and Restated Certificate**”), which both restates and amends the provisions of the Amended and Restated Certificate, has been approved by the Board of Directors of the Corporation (the “**Board of Directors**”) in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the “**DGCL**”) and has been adopted by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.
4. This Second Amended and Restated Certificate shall become effective on the date of filing with the Secretary of State of Delaware.
5. The text of the certificate of incorporation of the Corporation, as heretofore amended, is hereby amended and restated by this Second and Amended Restated Certificate to read in its entirety as set forth in EXHIBIT A attached hereto.

Volcon, Inc., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

1

**EXHIBIT A**

**ARTICLE I.  
NAME**

The name of the corporation is Volcon, Inc. (the “**Corporation**”).

**ARTICLE II.  
REGISTERED AGENT**

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

**ARTICLE III.  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL. In addition to the powers and privileges conferred upon the Corporation by law and those incidental thereto, the Corporation shall possess and may exercise all the powers and privileges that are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

**ARTICLE IV.  
CAPITALIZATION**

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock, each with a par value of \$0.00001 per share, which the Corporation is authorized to issue is 105,000,000 shares, consisting of (a) 100,000,000 shares of common stock (the “**Common Stock**”), and (b) 5,000,000 shares of preferred stock (the “**Preferred Stock**”).

Section 4.2 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 are as follows:

(a) **COMMON STOCK.**

(i) General. The voting, dividend, liquidation, and other rights and powers of the Common Stock are subject to and qualified by the rights, powers and preferences of any series of Preferred Stock as may be designated by the Board of Directors of the Corporation (the “**Board of Directors**”) and outstanding from time to time.

(ii) Voting. Except as otherwise provided herein or expressly required by law, each holder of Common Stock, as such, shall be entitled to vote on each matter submitted to a vote of stockholders and shall be entitled to one (1) vote for each share of Common Stock held of record by such holder as of the record date for determining stockholders entitled to vote on such matter. Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Second and Amended Restated Certificate (including any Certificate of Designation (as defined below)) that relates solely to the rights, powers, preferences (or the qualifications, limitations or restrictions thereof) or other terms of one or more outstanding series of Preferred Stock if the holders of

such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Second and Amended Restated Certificate (including any Certificate of Designation) or pursuant to the DGCL.

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

(iv) Dividends. Subject to applicable law and the rights and preferences of any holders of any outstanding series of Preferred Stock, the holders of Common Stock, as such, shall be entitled to the payment of dividends on the Common Stock when, as and if declared by the Board of Directors in accordance with applicable law.

(v) Liquidation. Subject to the rights and preferences of any holders of any shares of any outstanding series of Preferred Stock, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding Common Stock pro rata in accordance with the number of shares of Common Stock held by each such holder.

(b) PREFERRED STOCK

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

(ii) Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designation relating thereto in accordance with the DGCL (a "Certificate of Designation"), to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series as shall be stated and expressed in such resolutions (which shares so subtracted shall become authorized, unissued, and undesignated shares of the Preferred Stock), all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the creation and issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law and this Second and Amended Restated Certificate (including any Certificate of Designation). Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Second and Amended Restated Certificate (including any Certificate of Designation).

(iii) The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

**ARTICLE V.  
BOARD OF DIRECTORS**

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authority expressly conferred upon the Board of Directors by statute, this Second Amended and Restated Certificate or the Bylaws of the Corporation ("Bylaws"), the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Second Amended and Restated Certificate and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board of Directors that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term. For the management of the business and for the conduct of the affairs of the Corporation it is further provided that:

(a) The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors. Each director shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation, disqualification or removal. Directors need not be residents of the state of incorporation or stockholders of the Corporation. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide. No decrease in the number of directors shall shorten the term of any incumbent director.

(b) Except as otherwise expressly provided by the DGCL or this Second and Amended Restated Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.3 Newly Created Directorships and Vacancies. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, except as otherwise provided by law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, retirement, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall be filled exclusively by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director (other than any directors elected by the separate vote of one or more outstanding series of Preferred Stock), and shall not be filled by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office until the expiration of the term to which such director shall have been appointed or until his or her earlier death, resignation, retirement, disqualification, or removal.

Section 5.4 Preferred Stock – Directors. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Second Amended and Restated Certificate (including any Certificate of Designation). Notwithstanding anything to the contrary in this Article V, the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 5.2(a) of this Article V, and the total number of directors constituting the whole Board of Directors shall be automatically adjusted accordingly. Except as otherwise provided in the Certificate of Designation(s) in respect of one or more series of Preferred Stock, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such Certificate of Designation(s), the terms of office of all such additional directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or

removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

Section 5.5 Quorum. A quorum for the transaction of business by the directors shall be set forth in the Bylaws.

## ARTICLE VI. BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal Bylaws of the Corporation. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Second Amended and Restated Certificate (including any Certificate of Designation in respect of one or more series of Preferred Stock) or the Bylaws of the Corporation, the adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of at least a majority the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors.

---

4

## ARTICLE VII. MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Meetings. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders of the Corporation, and shall not be taken by written consent in lieu of a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of any series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Certificate of Designation relating to such series of Preferred Stock, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant series of Preferred Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with the applicable provisions of the DGCL. Subject to the special rights of the holders of one or more series of Preferred Stock, special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, at any time only by or at the direction of the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer or President, and shall not be called by any other person or persons.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of other business proposed to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

## ARTICLE VIII. LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Director Liability. No director of the Corporation shall have any personal liability to the Corporation or its stockholders for monetary damages for any 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 hereafter may be amended. Any amendment, repeal or modification of this Article VIII, or the adoption of any provision of the Restated Certificate inconsistent with this Article VIII, shall not adversely affect any right or protection of a director of the Corporation with respect to any act or omission occurring prior to such amendment, repeal, modification or adoption. If the DGCL is amended after approval by the stockholders of this Article VIII 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 DGCL as so amended.

Section 8.2 Indemnification and Expenses. The Corporation shall have the power to provide rights to indemnification and advancement of expenses to its current and former officers, directors, employees and agents and to any person who 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.

## ARTICLE IX. EXCLUSIVE FORUM FOR CERTAIN LAWSUITS

Section 9.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery (the “*Chancery Court*”) of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or to the Corporation’s stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the DGCL or the bylaws of the Corporation or this Second and Amended Restated Certificate (as either may be amended from time to time) or (iv) any action, suit or proceeding asserting a claim against the Corporation governed by the internal affairs doctrine; and (b) subject to the preceding provisions of this Article IX, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of clause (a) of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a “*Foreign Action*”) in the name of any stockholder, such stockholder shall be deemed to have consented

---

5

to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of the immediately preceding sentence and (y) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder. If any action the subject matter of which is within the scope of clause (b) of the immediately preceding sentence is filed in a court other than the federal district courts of the United States of America (a “*Foreign Securities Act Action*”) in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the federal district courts of the United States of America in connection with any action brought in any such court to enforce clause (b) (a “*Securities Act Enforcement Action*”), and (ii) having service of process made upon such stockholder in any such Securities Act Enforcement Action by service upon such stockholder’s counsel in the Foreign Securities Act Action as agent for such stockholder.

Section 9.2 Consent to Jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article IX. Notwithstanding the foregoing, the provisions of this Article IX shall not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

Section 9.3 Severability. If any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article IX (including, without limitation, each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal



or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX.

*[Signature Page Follows]*

---

6

---

IN WITNESS WHEREOF, Volcon, Inc. has caused this Second Amended and Restated Certificate to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

**Volcon, Inc.**

By: /s/ Jordan Davis

Name: Jordan Davis

Title: Chief Executive Officer

*[Signature Page to Second Amended and Restated Certificate of Incorporation]*

---

7

---

## Amended and Restated Bylaws of

Volcon, Inc.

(a Delaware corporation)

## Table of Contents

	<u>Page</u>
Article I—Corporate Offices	1
1.1 Registered Office	1
1.2 Other Offices	1
Article II—Meetings of Stockholders	1
2.1 Place of Meetings	1
2.2 Annual Meeting	1
2.3 Special Meeting	1
2.4 Notice of Business to be Brought before a Meeting	1
2.5 Notice of Nominations for Election to the Board	4
2.6 Notice of Stockholders' Meetings	7
2.7 Quorum	7
2.8 Adjourned Meeting; Notice	7
2.9 Conduct of Business	8
2.10 Voting	8
2.11 Record Date for Stockholder Meetings and Other Purposes	8
2.12 Proxies	9
2.13 List of Stockholders Entitled to Vote	9
2.14 Inspectors of Election	9
Article III—Directors	10
3.1 Powers	10
3.2 Number of Directors	10
3.3 Election, Qualification and Term of Office of Directors	10
3.4 Resignation and Vacancies	10
3.5 Place of Meetings; Meetings by Telephone	10
3.6 Regular Meetings	11
3.7 Special Meetings; Notice	11
3.8 Quorum	11
3.9 Board Action without a Meeting	11
3.10 Fees and Compensation of Directors	12
Article IV—Committees	12
4.1 Committees of Directors	12
4.2 Committee Minutes	12
4.3 Meetings and Actions of Committees	12
4.4 Subcommittees.	12
Article V—Officers	13
5.1 Officers	13
5.2 Appointment of Officers	13
5.3 Subordinate Officers	13
5.4 Removal and Resignation of Officers	13
5.5 Vacancies in Offices	13
5.6 Representation of Shares of Other Corporations	13
5.7 Authority and Duties of Officers	14
5.8 Compensation.	14

Article VI—Records	14
--------------------	----

Article VII—General Matters	14
7.1 Execution of Corporate Contracts and Instruments	14
7.2 Stock Certificates	14
7.3 Lost Certificates	15
7.4 Shares Without Certificates	15
7.5 Construction; Definitions	15
7.6 Dividends	15
7.7 Fiscal Year	15
7.8 Seal	15
7.9 Transfer of Stock	15
7.10 Stock Transfer Agreements	16
7.11 Registered Stockholders	16
7.12 Waiver of Notice	16

Article VIII—Notice	16
8.1 Delivery of Notice; Notice by Electronic Transmission	16
Article IX—Indemnification	17
9.1 Indemnification of Directors and Officers	17
9.2 Indemnification of Others	17
9.3 Good Faith	17
9.4 Prepayment of Expenses	18
9.5 Determination; Claim	18
9.6 Non-Exclusivity of Rights	18
9.7 Insurance	18
9.8 Other Indemnification	18
9.9 Continuation of Indemnification	18
9.10 Amendment or Repeal; Interpretation	18
Article X—Amendments	19
Article XI—Forum Selection	19
Article XII—Definitions	20

**Amended and Restated Bylaws of  
Volcon, Inc.**

**Article I—Corporate Offices**

**1.1 Registered Office.**

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

**1.2 Other Offices.**

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

**Article II—Meetings of Stockholders**

**2.1 Place of Meetings.**

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

**2.2 Annual Meeting.**

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

**2.3 Special Meeting.**

Special meetings of the stockholders may be called only by such persons and only in such manner as set forth in the Certificate of Incorporation.

No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting. The Board may postpone, reschedule or cancel any previously scheduled special meeting of stockholders.

**2.4 Notice of Business to be Brought before a Meeting**

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

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; *provided, however*, that if no annual meeting was held in the preceding year, to be timely, a stockholder's notice must be so delivered, or mailed and received, not earlier than the close of business on the one hundred and twentieth (120<sup>th</sup>) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to such annual meeting or, if later, the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation; *provided, further*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, to be timely, a stockholder's notice must be so delivered, or mailed and received, not later than the ninetieth (90<sup>th</sup>) day prior to such annual meeting or, if later, the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

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

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

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

(B) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (F) a representation that such Proposing Person intends or is part of a group that intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (G) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) are referred to as "Disclosable Interests"); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws, the language of the proposed amendment), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) or person(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation or any other person or entity (including their names) in connection with the proposal of such business by such stockholder; and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; *provided, however*, that the disclosures required by this Section 2.4(c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

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

(d) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(e) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(f) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

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

## 2.5 Notice of Nominations for Election to the Board

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board or these bylaws, or (ii) by a stockholder present in person (A) who was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.5 as to such notice and nomination. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting or special meeting.

(b) (i) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (1) provide Timely Notice (as defined in Section 2.4) thereof in writing and in proper form to the Secretary of the Corporation, (2) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5.

(ii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (i) provide Timely Notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (ii) provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.5 and (iii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120<sup>th</sup>) day prior to such special meeting and not later than the ninetieth (90<sup>th</sup>) day prior to such special meeting or, if later, the tenth (10<sup>th</sup>) day following the day on which public disclosure (as defined in Section 2.4) of the date of such special meeting was first made.

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

(iv) In no event may a Nominating Person provide Timely Notice with respect to a greater number of director candidates than are subject to election by shareholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (i) the conclusion of the time period for Timely Notice, (ii) the date set forth in Section 2.5(b)(ii) or (iii) the tenth day following the date of public disclosure (as defined in Section 2.4) of such increase.

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

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

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

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

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

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

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

(f) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in Section 2.5 and the candidate for nomination, whether nominated by the Board or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board), to the Secretary of the Corporation at the principal executive offices of the Corporation, (i) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee and (ii) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed to the Corporation and (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

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

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

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

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

## 2.6 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with Section 8.1 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

## 2.7 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to recess the meeting or adjourn the meeting from time to time in the manner provided in Section 2.8 of these bylaws until a quorum is present or represented. At any recessed or adjourned meeting at which a quorum is present

or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

#### 2.8 Adjourned Meeting: Notice.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, 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 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 entitled to vote at such meeting as of the record date so fixed for notice of such adjourned meeting.

#### 2.9 Conduct of Business.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### 2.10 Voting.

Except as may be otherwise provided in the Certificate of Incorporation, these bylaws or the DGCL, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder.

Except as otherwise provided by the Certificate of Incorporation, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority in voting power of the votes cast (excluding abstentions and broker non-votes) on such matter.

#### 2.11 Record Date for Stockholder Meetings and Other Purposes.

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

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (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 adopts the resolution relating thereto.

#### 2.12 Proxies.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission which sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder.

#### 2.13 List of Stockholders Entitled to Vote

The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting *provided, however*, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) 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 (ii) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.13 or to vote in person or by proxy at any meeting of stockholders.

#### 2.14 Inspectors of Election.

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy.

---

9

---

Such inspectors shall:

- (i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;
- (ii) count all votes or ballots;
- (iii) count and tabulate all votes;
- (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and
- (v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein. The inspectors of election may appoint such persons to assist them in performing their duties as they determine.

### **Article III—Directors**

#### 3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

#### 3.2 Number of Directors.

Subject to the Certificate of Incorporation, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

#### 3.3 Election, Qualification and Term of Office of Directors.

Except as provided in Section 3.4 of these bylaws, and subject to the Certificate of Incorporation, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

#### 3.4 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in Section 3.3.

Unless otherwise provided in the Certificate of Incorporation or these bylaws, vacancies resulting from the death, resignation, disqualification or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

#### 3.5 Place of Meetings; Meetings by Telephone.

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

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



### 3.6 Regular Meetings.

Regular meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board 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, facsimile, telegraph or telex, or by electronic mail or other means of electronic transmission. No further notice shall be required for regular meetings of the Board.

### 3.7 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the Chief Executive Officer, the President, the Secretary of the Corporation or a majority of the total number of directors constituting the Board.

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

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile or electronic mail; or
- (iv) sent by other means of electronic transmission,

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

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

### 3.8 Quorum.

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

### 3.9 Board Action without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board.

### 3.10 Fees and Compensation of Directors.

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

## **Article IV—Committees**

### 4.1 Committees of Directors.

The Board may designate one (1) or more committees, each committee to consist, of one (1) or more of the directors of the Corporation. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

### 4.2 Committee Minutes.

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

### 4.3 Meetings and Actions of Committees.

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

- (i) Section 3.5 (place of meetings; meetings by telephone);

- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.9 (board action without a meeting); and
- (v) Section 7.12 (waiver of notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members *provided, however*, that:

- (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the Board or the chairperson of the applicable committee; and

(iii) the Board may adopt rules for the governance of any committee to override the provisions that would otherwise apply to the committee pursuant to this Section 4.3, *provided* that such rules do not violate the provisions of the Certificate of Incorporation or applicable law.

#### 4.4 Subcommittees.

Unless otherwise provided in the Certificate of Incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one (1) or more subcommittees, each subcommittee to consist of one (1) or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

### Article V—Officers

#### 5.1 Officers.

The officers of the Corporation shall include a Chief Executive Officer and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Secretary, a Treasurer, one (1) or more Vice Presidents, one (1) or more Assistant Vice Presidents, one (1) or more Assistant Treasurers, one (1) or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person. No officer need be a stockholder or director of the Corporation.

#### 5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws.

#### 5.3 Subordinate Officers.

The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

#### 5.4 Removal and Resignation of Officers.

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

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

#### 5.5 Vacancies in Offices.

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

#### 5.6 Representation of Shares of Other Corporations.

The Chairperson of the Board, the Chief Executive Officer, or the President of this Corporation, or any other person authorized by the Board, the Chief Executive Officer or the President, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares or voting securities of any other corporation or other person standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

#### 5.7 Authority and Duties of Officers.

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

#### 5.8 Compensation.

The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

## Article VI—Records

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

## Article VII—General Matters

### 7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

### 7.2 Stock Certificates.

The shares of the Corporation shall be represented by certificates or shall be uncertificated. 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 represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Chairperson or Vice Chairperson of the Board, the Chief Executive Officer, the President, the Chief Legal Officer, Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

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

### 7.3 Lost Certificates.

Except as provided in this Section 7.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

### 7.4 Shares Without Certificates

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

### 7.5 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

### 7.6 Dividends.

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

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

### 7.7 Fiscal Year.

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

### 7.8 Seal.

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

### 7.9 Transfer of Stock.

Shares of the stock of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the

#### 7.10 Stock Transfer Agreements.

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

#### 7.11 Registered Stockholders.

The Corporation:

(i) 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

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

#### 7.12 Waiver of Notice.

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

### **Article VIII—Notice**

#### 8.1 Delivery of Notice; Notice by Electronic Transmission

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provisions of the DGCL, the Certificate of Incorporation, or these bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (3) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. Notwithstanding the provisions of this paragraph, the Corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph.

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

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iii) if by any other form of electronic transmission, when directed to the stockholder.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (1) the Corporation is unable to deliver by such electronic transmission two (2) consecutive notices given by the Corporation and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however*, that the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

### **Article IX—Indemnification**

#### 9.1 Indemnification of Directors and Officers.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (a "covered person"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent allowed under the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnities in connection therewith, if he acted in good faith and in a manner he 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 conduct was unlawful. A covered person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnities in connection therewith. Notwithstanding the foregoing, except as otherwise provided in Section 9.4, the Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized in the specific case by the Board.

#### 9.2 Indemnification of Others.

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

#### 9.3 Good Faith.

The termination of any Proceeding by judgment order, settlement, conviction, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and further with respect to any criminal action proceeding, that the person had reasonable cause to believe that his conduct was unlawful.

---

17

#### 9.4 Prepayment of Expenses.

The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including, without limitation, attorneys' fees) incurred by any covered person, and may also pay the expenses incurred by any employee or agent of the Corporation, in defending any Proceeding in advance of its final disposition; *provided, however*, that such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article IX- or otherwise.

#### 9.5 Determination; Claim.

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

#### 9.6 Non-Exclusivity of Rights.

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

#### 9.7 Insurance.

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

#### 9.8 Other Indemnification.

The Corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person actually collects as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

#### 9.9 Continuation of Indemnification.

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

#### 9.10 Amendment or Repeal: Interpretation.

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

Any reference to an officer of the Corporation in this Article IX shall be deemed to refer exclusively to the Chief Executive Officer, the President and the Secretary of the Corporation, or other officer of the Corporation appointed by (x) the Board pursuant to Article V of these bylaws or (y) an officer to whom the Board has delegated the power to appoint officers pursuant to Article V of these bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors (or equivalent governing body) of such other entity pursuant to the certificate of incorporation and bylaws (or equivalent organizational documents) of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise has been given or has used the title of "Vice President" or any other title that could be construed to suggest or imply that such person is or may be an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall not result in such person being constituted as, or being deemed to be, an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for purposes of this Article IX.

#### **Article X—Amendments**

The Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; *provided, however*, that such action by stockholders shall require, in addition to any other vote required by the Certificate of Incorporation or applicable law, the affirmative vote of the holders of at least a majority of the voting power of all the then-outstanding shares of voting stock of the Corporation with the power to vote generally in an election of directors, voting together as a single class.

#### **Article XI—Forum Selection**

Unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative Proceeding brought on behalf of the Corporation, (ii) any Proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer or stockholder of the Corporation to the Corporation or to the Corporation's stockholders, (iii) any Proceeding arising pursuant to any provision of the DGCL or the Certificate of Incorporation or these bylaws (as either may be amended from time to time) or (iv) any Proceeding asserting a claim against the Corporation governed by the internal affairs doctrine; and (b) subject to the preceding provisions of this Article XI, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of clause (a) of the immediately preceding sentence is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of the immediately preceding sentence and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. If any action the subject matter of which is within the scope of clause (b) of the immediately preceding sentence is filed in a court other than the federal district courts of the United States of America (a "Foreign Securities Act Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the federal district courts of the United States of America in connection with any action brought in any such court to enforce clause (b) (a "Securities Act Enforcement Action"), and (ii) having service of process made upon such stockholder in any such Securities Act Enforcement Action by service upon such stockholder's counsel in the Foreign Securities Act Action as agent for such stockholder.

---

19

Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article XI. Notwithstanding the foregoing, the provisions of this Article XI shall not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

#### **Article XII—Definitions**

As used in these bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

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

An "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files and information).

An "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

The term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

[The Remainder of This Page Left Intentionally Blank]



NUMBER

NUMBER  
C-  
SHARES  
SEE REVERSE FOR CERTAIN  
DEFINITIONS  
CUSIP 92864V 103

**VOLCON, INC.**  
**INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE**  
**COMMON STOCK**

This Certifies that

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF THE PAR VALUE OF \$0.00001 EACH OF THE COMMON STOCK OF

**VOLCON, INC.**  
**(THE "CORPORATION")**

transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the seal of the Corporation and the facsimile signatures of its duly authorized officers.

Authorized Signatory

[Corporate Seal]  
Delaware

Authorized Signatory

Transfer Agent

**VOLCON, INC.**

The Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof of the Corporation and the qualifications, limitations, or restrictions of such preferences and/or rights. This certificate and the shares represented thereby are issued and shall be held subject to all the provisions of the Company's amended and restated certificate of incorporation and all amendments thereto and resolutions of the Board of Directors providing for the issue of securities (copies of which may be obtained from the secretary of the Corporation), to all of which the holder of this certificate by acceptance hereof assents. 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	
TEN ENT	— as tenants by the entireties			(Cust)	(Minor)
JT TEN	— as joint tenants with right of survivorship and not as tenants in common			under Uniform Gifts to Minors Act	
				(State)	

Additional abbreviations may also be used though not in the above list.

*For value received, hereby sells, assigns and transfers unto*

(PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER(S) OF ASSIGNEE(S))

(PLEASE PRINT OR TYPEWRITE NAME(S) AND ADDRESS(ES), INCLUDING ZIP CODE, OF ASSIGNEE(S))

Shares of the capital stock represented by the within Certificate, and hereby irrevocably constitutes and appoints

Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated:

NOTICE: THE SIGNATURE(S) 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:

By



---

THE SIGNATURE(S) MUST 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 17Ad-15 (OR ANY SUCCESSOR RULE).

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

## COMMON STOCK PURCHASE WARRANT

### VOLCON, INC.

Warrant Shares: \_\_\_\_\_

Initial Exercise Date: March 25, 2021

THIS SHARE PURCHASE WARRANT (the "Warrant") certifies that, for value received, \_\_\_\_\_ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the tenth anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from **Volcon, Inc.**, a Delaware corporation (the "Company"), up to \_\_\_\_\_ shares of Company common stock, par value \$0.001 (as subject to adjustment hereunder, the "Warrant Shares") of the Company (the "Shares"). The purchase price of one Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Commission" means the United States Securities and Exchange Commission.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Equivalents" means any securities of the Company which would entitle the holder thereof to acquire at any time Shares, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Shares.

"Trading Day" means a day on which the Shares are traded on a Trading Market.

"Trading Market" means any of the following markets or exchanges on which the Shares (or the securities of any Successor Entity) are listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

"Transfer Agent" means the transfer agent of the Company, or, if the Company does not have a transfer agent, the Company.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within two (2) Trading Days following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per Share under this Warrant shall be \$2.46, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If there is no effective registration statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both

executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Shares are then listed or quoted on a Trading Market, the bid price of the Shares for the time in question (or the nearest preceding date) on the Trading Market on which the Shares are then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Shares for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Shares are not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Shares are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share so reported, or (d) in all other cases, the fair market value of a Share as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

---

2

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Shares are then listed or quoted on a Trading Market, the daily volume weighted average price of the Shares for such date (or the nearest preceding date) on the Trading Market on which the Shares are then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Shares for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Shares are not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Shares are then reported in the “Pink Sheets” published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per Share so reported, or (d) in all other cases, the fair market value of a Share as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is two (2) Trading Days after the delivery to the Company of the Notice of Exercise (such date, the “Warrant Share Delivery Date”). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within two (2) Trading Days.

ii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iii. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

iv. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

v. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Shares or any other equity or equity equivalent securities payable in Shares (which, for avoidance of doubt, shall not include any Shares issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding Shares into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding Shares into a smaller number of shares or (iv) issues by reclassification of Shares any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of Shares (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of Shares outstanding immediately after such event, and the number of Shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Shares are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Shares, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Shares or any compulsory share exchange pursuant to which the Shares are effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Shares (not including any Shares held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder, the number of Shares of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of Shares for which this Warrant is exercisable immediately prior to such Fundamental Transaction. For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one Share in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Shares are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the Shares acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the Shares pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

c) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of Shares deemed to be issued and outstanding as of a given date shall be the sum of the number of Shares (excluding treasury shares, if any) issued and outstanding.

d) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

#### Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, provide to the Company an opinion of counsel selected by the Holder or transferee and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act.

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

#### Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of

such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Shares a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any Trading Market upon which the Shares may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof.

e) Jurisdiction. This Warrant shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without giving effect to conflict of laws principles thereof. The Company hereby agrees that any action, proceeding or claim against it arising out of, or relating in any way to this Warrant shall be brought and enforced in Travis County, Texas, or in the federal courts located therein, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

---

5

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notices, consents, waivers or other document or communications required or permitted to be given or delivered under the terms of this Warrant must be in writing and will be deemed to have been delivered: (i) upon receipt, if delivered personally; (ii) when sent, if sent by e-mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient) and (iii) if sent by overnight courier service, one (1) Trading Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. If notice is given by email, a copy of such notice shall be dispatched no later than the next business day by first class mail, postage prepaid. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Volcon, Inc  
3267 Bee Caves Road, 107-322  
Austin, TX 78746

If to a Holder, to its address or e-mail address set forth herein or on the books and records of the Company.

Or, in each of the above instances, to such other address or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party at least five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, or (B) provided by an overnight courier service, shall be rebuttable evidence of personal service in accordance with clause (i) or (iii) above, respectively. A copy of the e-mail transmission containing the time, date and recipient email address shall be rebuttable evidence of receipt by e-mail in accordance with clause (ii) above.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Shares or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

\*\*\*\*\*

(Signature Page Follows)

---

6

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**VOLCON, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

7

**NOTICE OF EXERCISE**

TO: **VOLCON, INC.**

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number (if eligible):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(4) Accredited Investor. The undersigned is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

Signature of Authorized Signatory of Investing Entity: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_  
(Please Print)

Phone Number: \_\_\_\_\_

Email Address:

---

---

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

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

## Common Stock Purchase Warrant

Volcon, Inc.

Warrant Shares: [●]

Initial Exercise Date: [●], 2021

Issue Date: [●], 2021

CUSIP: [●]

ISIN: [●]

THIS COMMON STOCK PURCHASE WARRANT (the “*Warrant*”) certifies that, for value received, [●] or its assigns (the “*Holder*”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the “*Initial Exercise Date*”) and on or prior to 5:00 p.m. (New York City time) on [●], 2026 (the “*Termination Date*”) but not thereafter, to subscribe for and purchase from Volcon, Inc., a Delaware corporation (the “*Company*”), up to [●] shares (as subject to adjustment hereunder, the “*Warrant Shares*”) of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

**Section 1. Definitions.** In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

“*Affiliate*” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“*Bid Price*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the shares of Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock is then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“*Board of Directors*” means the board of directors of the Company.

“*Business Day*” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

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

---

1

“*Common Stock*” means the common stock of the Company, \$0.00001 par value, and any other class of securities into which such securities may hereafter be reclassified or changed.

“*Common Stock Equivalents*” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“*Person*” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“*Registration Statement*” means the Company’s registration statement on Form S-1 (File No. 333-[●]).

“*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Subsidiary*” means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“*Trading Day*” means a day on which the Common Stock is traded on a Trading Market.

“*Trading Market*” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“*Transfer Agent*” means Continental Stock Transfer and Trust, the current transfer agent of the Company, with a mailing address of 1 State Street, 30th Floor | New York, NY 10004-1561, and any successor transfer agent of the Company.

“*Underwriting Agreement*” means the underwriting agreement, dated as of [], 2021 among the Company and Aegis Capital Corp. as representative of the underwriters named therein, as amended, modified or supplemented from time to time in accordance with its terms.

“*VWAP*” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the shares of Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock



is then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

**“Warrant Agent”** means the Transfer Agent and any successor warrant agent of the Company.

**“Warrants”** means this Warrant and other Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

## Section 2. Exercise.

a) **Exercise of Warrant.** Subject to the provisions of Section 2(e) herein, exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date, by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto as Annex A (the **“Notice of Exercise”**), provided, however that a Notice of Exercise shall only be deemed to have been delivered to the Company upon the delivery of the aggregate Exercise Price of the Warrant Shares specified in the applicable Notice of Exercise as specified in this Section 2(a). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer of immediately available funds or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 4:00 p.m. (New York City time) on the Trading Date prior to the Initial Exercise Date, which may be delivered at any time after the time of execution of the Purchase Agreement, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) **Exercise Price.** The exercise price per share of Common Stock under this Warrant shall be \$[●], subject to adjustment hereunder (the **“Exercise Price”**).

c) **Cashless Exercise.** If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

- (A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;
- (B) = the Exercise Price of this Warrant, as adjusted hereunder; and
- (X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

### d) Mechanics of Exercise.

i. **Delivery of Warrant Shares Upon Exercise.** The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder’s or its designee’s balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system (**“DWAC”**) if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the **“Warrant Share Delivery Date”**). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this

Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, “**Standard Settlement Period**” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. **Delivery of New Warrants Upon Exercise.** If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. **Rescission Rights.** If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

---

4

iv. **Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise.** In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases, Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a “**Buy-In**”), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. **No Fractional Shares or Scrip.** No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. **Charges, Taxes and Expenses.** Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Annex B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. **Closing of Books.** The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

---

5

e) **Holder’s Exercise Limitations.** The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder’s Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder’s Affiliates (such Persons, “**Attribution Parties**”)), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder’s determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of

this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The **"Beneficial Ownership Limitation"** shall be 4.99% (or, upon election by a Holder prior to the issuance of any Warrants, 9.99%) of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

### Section 3. Certain Adjustments.

a) **Stock Dividends and Splits.** If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) **Reserved.**

c) **Subsequent Rights Offerings.** In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all (or substantially all) of the record holders of any class of Common Stock (the **"Purchase Rights"**), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) **Pro Rata Distributions.** During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all (or substantially all) of holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a **"Distribution"**), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) **Fundamental Transaction.** If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company or any Subsidiary, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a **"Fundamental Transaction"**), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the **"Alternate Consideration"**) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on

the amount of Alternate Consideration issuable in respect of one shares of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “**Successor Entity**”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

---

8

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice (unless such information is filed with the Commission, in which case a notice shall not be required) stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the shares of Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the shares of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

h) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4. Transfer of Warrant.

a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

---

9

b) New Warrants. If this Warrant is not held in global form through DTC (or any successor depository), this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

Section 5. Reserved

## Section 6. Miscellaneous.

a) No Rights as Stockholder until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, including if the Company is for any reason unable to issue and deliver Warrant Shares upon exercise of this Warrant as required pursuant to the terms hereof, in no event shall the Company be required to net cash settle an exercise of this Warrant or cash settle in any other form.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued shares of Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

---

10

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. Notwithstanding the foregoing, nothing in this paragraph shall limit or restrict the federal district court in which a Holder may bring a claim under the federal securities laws.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. No provision of this Warrant shall be construed as a waiver by the Holder of any rights which the Holder may have under the federal securities laws and the rules and regulations of the Commission thereunder. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

---

11

h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 2590 Oakmont Drive, Suite 5, Round Rock, Texas 78665, Attention: **Chief Executive Officer**, facsimile number: [●], email address: [●], or such other facsimile number, email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to

be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Report on Form 8-K.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any shares of Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder, on the other hand.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

\*\*\*\*\*

(Signature Page Follows)

12

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**VOLCON, INC.**

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

Name: Jordan Davis

Title: Chief Executive Officer

13

**ANNEX A  
NOTICE OF EXERCISE**

TO: VOLCON, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ [if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number:

\_\_\_\_\_

\_\_\_\_\_

---

[SIGNATURE OF HOLDER]

Name of Investing Entity:  
Signature of Authorized Signatory of Investing Entity:  
Name of Authorized Signatory:  
Title of Authorized Signatory:  
Date:

**ANNEX B  
ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to:

Name: \_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_  
(Please Print)

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

(Signature Guaranteed): \_\_\_\_\_ Date: \_\_\_\_\_, \_\_\_\_\_

*Signature to be guaranteed by an authorized officer of a chartered bank, trust company or medallion guaranteed by an investment dealer who is a member of a recognized stock exchange.*

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF REGISTRATION OF THE RESALE THEREOF UNDER THE SECURITIES ACT OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY IN FORM, SCOPE AND SUBSTANCE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

### PROMISSORY NOTE

Principal Amount: \$ \_\_\_\_\_ .00

Dated as of September \_\_\_\_, 2021

FOR VALUE RECEIVED, **Volcon, Inc.**, a Delaware corporation (the "**Maker**"), promises to pay to the order of \_\_\_\_\_ or its registered assigns or successors in interest (the "**Payee**") the principal sum of \_\_\_\_\_ **Dollars (\$ \_\_\_\_\_ .00)** in lawful money of the United States of America, on the terms and conditions described below. Reference is made to that certain Note Purchase Agreement, dated as of September 10, 2021, by and among the Maker, Payee in its capacity as a Purchaser, and the other Purchasers party thereto (as the same may be amended, modified, increased, supplemented and/or restated from time to time, the "**Purchase Agreement**"; capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement).

1. **Principal.** The principal balance of this Promissory Note (this "**Note**") shall be payable on the earlier of: (i) the one year from the date hereof, (ii) on the date on which the Maker consummates an initial public offering of its securities (the "**Maturity Date**"). The principal balance may be prepaid at any time prior to the Maturity Date. Under no circumstances shall any individual, including but not limited to any officer, director, employee or shareholder of the Maker, be obligated personally for any obligations or liabilities of the Maker hereunder.
2. **Interest.**
  - (a) The unpaid principal balance of this Note shall bear interest from and including the date of issuance until all obligations of the Maker hereunder are paid in full at a rate of (i) 6.0% per annum, or (ii) upon the occurrence and during the continuance of an Event of Default, 18.0% per annum. Accrued and unpaid interest is due and payable monthly in arrears in cash, commencing on October 1, 2021 in accordance with Section 3 (the "**Monthly Interest Payments**").
  - (b) All computations of interest hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable.
3. **Payments.**
  - (a) Each Monthly Interest Payment due under the Note (other than at the Maturity Date) shall be payable in cash to the Payee by the Maker in accordance with the wire instructions set forth on Schedule A hereto or in accordance with instructions provided by the Payee.
  - (b) The outstanding principal balance of the Note shall be payable in cash on the Maturity Date, when all when all unpaid principal of, and accrued and unpaid interest on the Note shall be due and payable in cash to Payee in accordance with the wire instructions set forth on Schedule A hereto or in accordance with instructions provided by the Payee.
  - (c) Whenever any payment owed under the Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fee, as the case may be. As used herein, "Business Day" means a day of the year on which banks are not required or authorized to close in New York, New York.
4. **Costs and Expenses.** The Maker agrees to reimburse the Payee for all out-of-pocket costs and expenses, including, without limitation, attorneys' fees, incurred by the Maker in connection with the (i) collection of any sums due under this Note; and (ii) enforcement of this Note or any other Transaction Document (including, without limitation, any costs and expenses of any third party provider engaged by Agent for such purpose).

- 
5. **Application of Payments.** All payments shall be applied as follows:
    - (a) First, to Payee for reimbursable costs and expenses incurred in the collection of any sum due under this Note, including (without limitation) reasonable attorney's fees;
    - (b) Second, to Payee to pay interest due and payable in respect of the Note until paid in full;
    - (c) Lastly, to Payee to pay principal balance of this Note until paid in full.

6. **Events of Default.** The following shall constitute an event of default (each, an "**Event of Default**"):
  - (a) **Failure to Make Required Payments.** Failure to make any payment of the principal or interest on or other payments owing in respect of this Note, free of any claim of subordination, within five (5) Business Days following the date when due; or
  - (b) **Breach of Representations or Warranties.** Any representation or warranty of Maker, or any certification or other material written statement of fact made or deemed made by such Maker in in the Purchase Agreement or in any other Transaction Document, or in any document delivered in connection therewith, shall prove to have been incorrect in any material respect when made or deemed made, and such breach shall not, if subject to the possibility of a cure by the Maker, have been remedied within five (5) Business days after the date on which notice of such failure or breach shall have been given; or
  - (c) **Breach of Covenant.** Maker shall fail to observe or perform any other covenant, agreement or warranty contained in, or otherwise commit any breach of this Note, the Purchase Agreement, or any other Transaction Document, and such failure or breach shall not, if subject to the possibility of a cure by the Maker, have been remedied within five (5) Business days after the date on which notice of such failure or breach shall have been given; or
  - (d) **Cross Default.** Maker shall fail to pay any principal of, or premium or interest on, any Indebtedness when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) unless being contested in good faith, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other event constituting a default (however defined) shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, which would give rise to a right to accelerate such Indebtedness; or



- (e) **Voluntary Liquidation, Etc.** The commencement by Maker of a proceeding relating to its bankruptcy, insolvency, reorganization, rehabilitation or other similar action, or the consent by it to the appointment of, or taking possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for Maker or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of Maker generally to pay its debts as such debts become due, or the taking of corporate action by Maker in furtherance of any of the foregoing; or
- (f) **Involuntary Bankruptcy, Etc.** The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of maker in an involuntary case under any applicable bankruptcy, insolvency or similar law, for the appointing of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) for Maker or for any substantial part of its property, or ordering the winding-up or liquidation of the affairs of Maker, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.

7. **Remedies.**

- (a) Upon the occurrence of an Event of Default specified in Sections 5(a), 5(b), 5(c) or 5(d) hereof, Payee may, by written notice to Maker, declare this Note to be due immediately and payable, whereupon the unpaid principal amount of this Note, any accrued and unpaid interest thereon, and all other amounts payable hereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the documents evidencing the same to the contrary notwithstanding.

2

- (b) Upon the occurrence of an Event of Default specified in Sections 5(e) or 5(f), the unpaid principal balance of this Note, any accrued and unpaid interest thereon, and all other sums payable with regard to this Note, shall automatically and immediately become due and payable, in all cases without any action on the part of Payee.
- (c) Upon the occurrence and during the continuance of any Event of Default, the unpaid principal balance of this Note shall bear interest at a rate of 18.0% per annum.

(d) **Additional Shares.**

- (i) In the event that any amount of principal or accrued interest due and payable under this Note remains unpaid as of September \_\_\_\_, 2023, then Maker shall issue to Payee an additional \_\_\_\_\_ shares of common stock of the Maker, \$0.0001 par value per share (the “**Additional Shares**”). Maker shall cause the issuance of such Additional Shares to Payee within five (5) Business Days of notice from Payee, by delivering irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver, on an expedited basis, the Payee’s Additional Shares, by book entry transfer registered in the Company’s share register in the name of the Payee or, at the request of the Payee, by physical delivery of a certificate evidencing such Additional Shares, registered in the name of the Payee.
- (ii) The Maker agrees to timely file a Form D with respect to the Additional Shares as required under Regulation D and to provide a copy thereof, promptly upon request of the Payee. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Additional Shares for, issuance to the Payee under applicable securities or “Blue Sky” laws of the states of the United States, and shall provide evidence of such actions promptly upon request of the Payee.

8. **Waivers.** Maker and all endorsers and guarantors of, and sureties for, this Note waive presentment for payment, demand, notice of dishonor, protest, and notice of protest with regard to the Note, all errors, defects and imperfections in any proceedings instituted by Payee under the terms of this Note, and all benefits that might accrue to Maker by virtue of any present or future laws exempting any property, real or personal, or any part of the proceeds arising from any sale of any such property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment; and Maker agrees that any real estate that may be levied upon pursuant to a judgment obtained by virtue hereof, or any writ of execution issued hereon, may be sold upon any such writ in whole or in part in any order desired by Payee.

9. **Unconditional Liability.** Maker hereby waives all notices in connection with the delivery, acceptance, performance, default, or enforcement of the payment of this Note, and agrees that its liability shall be unconditional, without regard to the liability of any other party, and shall not be affected in any manner by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Payee, and consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and agrees that additional makers, endorsers, guarantors, or sureties may become parties hereto without notice to Maker or affecting Maker’s liability hereunder.

10. **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the following addresses (or at such other addresses as shall be specified by notice given in accordance with this Section 10):

3

If to Maker:

**Volcon, Inc.**  
2590 Oakmont Drive, Suite 520  
Round Rock, TX 78665  
Attention: Greg Endo  
Email: greg@volcon.com

If to Payee:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

11. **Construction.** THIS NOTE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.
12. **Jurisdiction.** The courts of Texas have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and the parties submit to the exclusive jurisdiction of the courts of Texas.
13. **Severability.** Any provision contained in this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
14. **Amendment; Waiver.** Any amendment hereto or waiver of any provision hereof may be made with, and only with, the written consent of the Maker and the Payee.
15. **Assignment.** No assignment or transfer of this Note or any rights or obligations hereunder may be made by any party hereto (by operation of law or otherwise) without the prior written consent of the other party hereto and any attempted assignment without the required consent shall be void.
16. **Further Assurance.** The Maker shall, at its own cost and expense, execute and do (or procure to be executed and done by any other necessary party) all such deeds, documents, acts and things as the Payee may from time to time require as may be necessary to give full effect to this Promissory Note.

[Signature Page Follows]

IN WITNESS WHEREOF, Maker, intending to be legally bound hereby, has caused this Note to be duly executed on the day and year first above written.

**VOLCON, INC.**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Promissory Note]

---

Schedule A

Payee Wire Instructions

September 10, 2021

Volcon, Inc.  
2590 Oakmont Drive, Suite 520  
Round Rock, TX 78665

Re: Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to Volcon, Inc., a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-1 (as amended, the “Registration Statement”), filed by the Company on September 8, 2021 with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to the offering by the Company of (i) up to an aggregate of 3,251,875 shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (“Common Stock”), (ii) a warrant to be issued to the Representative (as defined below) (the “Representative Warrant”) to purchase up to 162,594 shares of Common Stock (the “Representative Warrant Shares”), and (iii) the issuance of the Representative Warrant Shares upon exercise of the Representative Warrant, each as covered by the Registration Statement. The terms “Shares” and “Representative Warrant Shares” shall include any additional securities registered by the Company pursuant to Rule 462(b) under the Act in connection with the offering contemplated by the Registration Statement. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related prospectus, other than as expressly stated herein. The Shares are being sold pursuant to an Underwriting Agreement to be entered into between the Company and Aegis Capital Corp. in the form most recently filed as an exhibit to the Registration Statement (the “Underwriting Agreement”).

In connection with our opinion, we have examined the Registration Statement, including the exhibits thereto, the form of Representative Warrant, and such other documents, corporate records and instruments, and have examined such laws and regulations, as we have deemed necessary for the purposes of this opinion. In making our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity with the originals of all documents submitted to us as copies and the legal capacity of all natural persons. As to matters of fact material to our opinions in this letter, we have relied on certificates and statements from officers and other employees of the Company, public officials and other appropriate persons.

Based on the foregoing and subject to the qualifications set forth below, we are of the opinion that:

1. The Shares, when issued by the Company against payment therefor in the circumstances contemplated by the Underwriting Agreement, will have been duly authorized for issuance by all necessary corporate action by the Company, and will be validly issued, fully paid and non-assessable;
2. The Representative Warrant, when issued by the Company against payment therefor in the circumstances contemplated by the Underwriting Agreement, will have been duly authorized by all necessary corporate action of the Company and will constitute a valid and binding agreement of the Company enforceable against the Company in accordance with its terms; and
3. The Representative Warrant Shares initially issuable upon exercise of the Representative Warrant when issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Representative Warrant, will have been duly authorized by all necessary corporate action of the Company, and will be validly issued, fully paid and non-assessable.

The opinions set forth above are subject to the following qualifications:

A. The opinion expressed herein with respect to the legality, validity, binding nature and enforceability of the Representative Warrant is subject to (i) applicable laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting creditors’ rights generally, whether now or hereafter in effect and (ii) general principles of equity, including, without limitation, concepts of materiality, laches, reasonableness, good faith and fair dealing and the principles regarding when injunctive or other equitable remedies will be available (regardless of whether considered in a proceeding at law or in equity).

B. The foregoing opinions are limited to the laws of the State of New York, the General Corporation Law of Delaware (which includes those statutory provisions and all applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting such laws) and the federal laws of the United States of America, and we express no opinion as to the laws of any other jurisdiction.

---

The opinions expressed in this opinion letter are as of the date of this opinion letter only and as to laws covered hereby only as they are in effect on that date, and we assume no obligation to update or supplement such opinion to reflect any facts or circumstances that may come to our attention after that date or any changes in law that may occur or become effective after that date. The opinions herein are limited to the matters expressly set forth in this opinion letter, and no opinion or representation is given or may be inferred beyond the opinions expressly set forth in this opinion letter.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and to the use of this firm’s name under the caption “Legal Matters” in the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Schiff Hardin LLP

**VOLCON, INC.**  
**2021 STOCK PLAN**  
**(AS AMENDED AND RESTATED)**

**Section 1. Establishment and Purpose.**

1.1 The Board of Directors of Volcon, Inc. (the “Company”) hereby establishes the Volcon, Inc. 2021 Stock Plan (the “Plan”) effective as of March 24, 2021, subject to approval by the Company’s stockholders within one year of the date hereof.

1.2 The purpose of the Plan is to attract and retain outstanding individuals as Key Employees, Directors and Consultants of the Company and its Subsidiaries, to recognize the contributions made to the Company and its Subsidiaries by Key Employees, Directors and Consultants, and to provide such Key Employees, Directors and Consultants with additional incentive to expand and improve the profits and achieve the objectives of the Company and its Subsidiaries, by providing such Key Employees, Directors and Consultants with the opportunity to acquire or increase their proprietary interest in the Company through receipt of Awards.

**Section 2. Definitions.**

As used in the Plan, the following terms shall have the meanings set forth below:

- 2.1 “Award” means any award or benefit granted under the Plan, which shall be a Stock Option, a Stock Award, a Stock Unit Award or an SAR.
- 2.2 “Award Agreement” means, as applicable, a Stock Option Agreement, Stock Award Agreement, Stock Unit Award Agreement or SAR Agreement evidencing an Award granted under the Plan.
- 2.3 “Board” means the Board of Directors of the Company.
- 2.4 “Change in Control” has the meaning set forth in Section 8.2 of the Plan.
- 2.5 “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 2.6 “Committee” means the Compensation Committee of the Board or such other committee as may be designated by the Board from time to time to administer the Plan, or, if no such committee has been designated at the time of any grants, it shall mean the Board.
- 2.7 “Common Stock” means the Common Stock, par value \$0.00001 per share, of the Company.
- 2.8 “Company” means Volcon, Inc., a Delaware corporation.
- 2.9 “Consultant” means any person, including an advisor, who is engaged by the Company or an affiliate to render consulting or advisory services 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.
- 2.10 “Director” means a director of the Company who is not an employee of the Company or a Subsidiary.
- 2.11 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.
- 
- 2.12 “Fair Market Value” means as of any date, the closing price of a share of Common Stock on the national securities exchange on which the Common Stock is listed, or, if the Common Stock is not listed on a national securities exchange, the over-the-counter market on which the Common Stock trades, or, if the Common Stock is not listed on a national securities exchange or an over-the-counter market, as determined by the Board as of such date, or, if no trading occurred on such date, as of the trading day immediately preceding such date.
- 2.13 “Incentive Stock Option” or “ISO” means a Stock Option granted under Section 5 of the Plan that meets the requirements of Section 422(b) of the Code or any successor provision.
- 2.14 “Key Employee” means an employee of the Company or any Subsidiary selected to participate in the Plan in accordance with Section 3. A Key Employee may also include a person who is granted an Award (other than an Incentive Stock Option) in connection with the hiring of the person prior to the date the person becomes an employee of the Company or any Subsidiary, provided that such Award shall not vest prior to the commencement of employment.
- 2.15 “Non-Qualified Stock Option” or “NSO” means a Stock Option granted under Section 5 of the Plan that is not an Incentive Stock Option.
- 2.16 “Participant” means a Key Employee, Director or Consultant selected to receive an Award under the Plan.
- 2.17 “Plan” means the Volcon, Inc. 2021 Stock Plan.
- 2.18 “Stock Appreciation Right” or “SAR” means a grant of a right to receive shares of Common Stock or cash under Section 8 of the Plan.
- 2.19 “Stock Award” means a grant of shares of Common Stock under Section 6 of the Plan.
- 2.20 “Stock Option” means an Incentive Stock Option or a Non-Qualified Stock Option granted under Section 5 of the Plan.
- 2.21 “Stock Unit Award” means a grant of a right to receive shares of Common Stock or cash under Section 7 of the Plan.
- 2.22 “Subsidiary” means an entity of which the Company is the direct or indirect beneficial owner of not less than 50% of all issued and outstanding equity interest of such entity.

**Section 3. Administration.**

### 3.1 The Board.

The Plan shall be administered by the Committee, which shall be comprised of at least two members of the Board who satisfy the “non-employee director” definition set forth in Rule 16b-3 under the Exchange Act, unless the Board otherwise determines.

### 3.2 Authority of the Committee.

(a) The Committee, in its sole discretion, shall determine the Key Employees and Directors to whom, and the time or times at which Awards will be granted, the form and amount of each Award, the expiration date of each Award, the time or times within which the Awards may be exercised, the cancellation of the Awards and the other limitations, restrictions, terms and conditions applicable to the grant of the Awards. The terms and conditions of the Awards need not be the same with respect to each Participant or with respect to each Award.

(b) To the extent permitted by applicable law, regulation, and rules of a stock exchange on which the Common Stock is listed or traded, the Committee may delegate its authority to grant Awards to Key Employees and to determine the terms and conditions thereof to such officer of the Company as it may determine in its discretion, on such terms and conditions as it may impose, except with respect to Awards to officers subject to Section 16 of the Exchange Act.

---

## 2

(c) The Committee may, subject to the provisions of the Plan, establish such rules and regulations as it deems necessary or advisable for the proper administration of the Plan, and may make determinations and may take such other action in connection with or in relation to the Plan as it deems necessary or advisable. Each determination or other action made or taken pursuant to the Plan, including interpretation of the Plan and the specific terms and conditions of the Awards granted hereunder, shall be final and conclusive for all purposes and upon all persons.

(d) No member of the Board or the Committee shall be liable for any action taken or determination made hereunder in good faith. Service on the Committee shall constitute service as a Director so that the members of the Committee shall be entitled to indemnification and reimbursement as Directors of the Company pursuant to the Company’s Certificate of Incorporation and By-Laws.

### 3.3 Award Agreements.

(a) Each Award shall be evidenced by a written Award Agreement specifying the terms and conditions of the Award. In the sole discretion of the Committee, the Award Agreement may condition the grant of an Award upon the Participant’s entering into one or more of the following agreements with the Company: (i) an agreement not to compete with the Company and its Subsidiaries which shall become effective as of the date of the grant of the Award and remain in effect for a specified period of time following termination of the Participant’s employment with the Company; (ii) an agreement to cancel any employment agreement, fringe benefit or compensation arrangement in effect between the Company and the Participant; and (iii) an agreement to retain the confidentiality of certain information. Such agreements may contain such other terms and conditions as the Committee shall determine. If the Participant shall fail to enter into any such agreement at the request of the Committee, then the Award granted or to be granted to such Participant shall be forfeited and cancelled.

## Section 4. Shares of Common Stock Subject to Plan.

### 4.1 Total Number of Shares.

(a) The total number of shares of Common Stock that may be issued under the Plan shall be 3,000,000 (giving effect to stock dividend completed July 27, 2021). Such shares may be either authorized but unissued shares or treasury shares, and shall be adjusted in accordance with the provisions of Section 4.3 of the Plan.

(b) The number of shares of Common Stock delivered by a Participant or withheld by the Company on behalf of any such Participant as full or partial payment of an Award, including the exercise price of a Stock Option or of any required withholding taxes, shall not again be available for issuance pursuant to subsequent Awards, and shall count towards the aggregate number of shares of Common Stock that may be issued under the Plan. Any shares of Common Stock purchased by the Company with proceeds from a Stock Option exercise shall not again be available for issuance pursuant to subsequent Awards, shall count against the aggregate number of shares that may be issued under the Plan and shall not increase the number of shares available under the Plan.

(c) If there is a lapse, forfeiture, expiration, termination or cancellation of any Award for any reason (including for reasons described in Section 3.3), or if shares of Common Stock are issued under such Award and thereafter are reacquired by the Company pursuant to rights reserved by the Company upon issuance thereof, the shares of Common Stock subject to such Award or reacquired by the Company shall again be available for issuance pursuant to subsequent Awards, and shall not count towards the aggregate number of shares of Common Stock that may be issued under the Plan.

### 4.2 Shares Under Awards.

Of the shares of Common Stock authorized for issuance under the Plan pursuant to Section 4.1:

(a) The maximum number of shares of Common Stock as to which a Key Employee may receive Stock Options or SARs in any calendar year is 500,000, except that the maximum number of shares of Common Stock as to which a Key Employee may receive Stock Options or SARs in the calendar year in which such Key Employee begins employment with the Company or its Subsidiaries is 500,000.

(b) The maximum number of shares of Common Stock that may be subject to Stock Options (ISOs and/or NSOs) is 500,000.

---

## 3

(c) The maximum number of shares of Common Stock that may be used for Stock Awards and/or Stock Unit Awards that may be granted to any Key Employee in any calendar year is 100,000, or, in the event the Award is settled in cash, an amount equal to the Fair Market Value of such number of shares on the date on which the Award is settled.

(d) The maximum number of shares of Common Stock subject to Awards granted under the Plan or otherwise during any one calendar year to any Director, taken together with any cash fees paid by the Company to such Director during such calendar year for service on the Board, will not exceed \$300,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

The numbers of shares described herein shall be as adjusted in accordance with Section 4.3 of the Plan.

#### 4.3 Adjustment.

In the event of any reorganization, recapitalization, stock split, stock distribution, merger, consolidation, split-up, spin-off, combination, subdivision, consolidation or exchange of shares, any change in the capital structure of the Company or any similar corporate transaction, the Committee shall make such adjustments as it deems appropriate, in its sole discretion, to preserve the benefits or intended benefits of the Plan and Awards granted under the Plan. Such adjustments may include: (a) adjustment in the number and kind of shares reserved for issuance under the Plan; (b) adjustment in the number and kind of shares covered by outstanding Awards; (c) adjustment in the exercise price of outstanding Stock Options or SARs or the price of Stock Awards or Stock Unit Awards under the Plan; (d) adjustments to any of the shares limitations set forth in Section 4.1 or 4.2 of the Plan; and (e) any other changes that the Committee determines to be equitable under the circumstances.

### **Section 5. Grants of Stock Options.**

#### 5.1 Grant.

Subject to the terms of the Plan, the Committee may from time to time grant Stock Options to Participants. Unless otherwise expressly provided at the time of the grant, Stock Options granted under the Plan to Key Employees will be NSOs. Stock Options granted under the Plan to Directors who are not employees of the Company or any Subsidiary will be NSOs.

#### 5.2 Stock Option Agreement.

The grant of each Stock Option shall be evidenced by a written Stock Option Agreement specifying the type of Stock Option granted, the exercise period, the exercise price, the terms for payment of the exercise price, the expiration date of the Stock Option, the number of shares of Common Stock to be subject to each Stock Option and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.

#### 5.3 Exercise Price and Exercise Period.

With respect to each Stock Option granted to a Participant:

- (a) The per share exercise price of each Stock Option shall be the Fair Market Value of the Common Stock subject to the Stock Option on the date on which the Stock Option is granted.
- (b) Each Stock Option shall become exercisable as provided in the Stock Option Agreement; provided that the Committee shall have the discretion to accelerate the date as of which any Stock Option shall become exercisable in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Board in its sole discretion).
- (c) No dividends or dividend equivalents shall be paid with respect to any shares subject to a Stock Option prior to the exercise of the Stock Option.

- (d) Each Stock Option shall expire, and all rights to purchase shares of Common Stock thereunder shall expire, on the date ten years after the date of grant.

#### 5.4 Required Terms and Conditions of ISOs.

In addition to the foregoing, each ISO granted to a Key Employee shall be subject to the following specific rules:

- (a) The aggregate Fair Market Value (determined with respect to each ISO at the time such Option is granted) of the shares of Common Stock with respect to which ISOs are exercisable for the first time by a Key Employee during any calendar year (under all incentive stock option plans of the Company and its Subsidiaries) shall not exceed \$100,000. If the aggregate Fair Market Value (determined at the time of grant) of the Common Stock subject to an ISO which first becomes exercisable in any calendar year exceeds the limitation of this Section 5.4(a), so much of the ISO that does not exceed the applicable dollar limit shall be an ISO and the remainder shall be a NSO; but in all other respects, the original Stock Option Agreement shall remain in full force and effect.
- (b) Notwithstanding anything herein to the contrary, if an ISO is granted to a Key Employee who owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company (or its parent or subsidiaries within the meaning of Section 422(b)(6) of the Code): (i) the purchase price of each share of Common Stock subject to the ISO shall be not less than 110% of the Fair Market Value of the Common Stock on the date the ISO is granted; and (ii) the ISO shall expire, and all rights to purchase shares of Common Stock thereunder shall expire, no later than the fifth anniversary of the date the ISO was granted.
- (c) No ISOs shall be granted under the Plan after ten years from the earlier of the date the Plan is adopted or approved by shareholders of the Company.

#### 5.5 Exercise of Stock Options.

- (a) A Participant entitled to exercise a Stock Option may do so by delivering written notice to that effect specifying the number of shares of Common Stock with respect to which the Stock Option is being exercised and any other information the Committee may prescribe. All notices or requests provided for herein shall be delivered to the Chief Financial Officer of the Company.
- (b) The Committee in its sole discretion may make available one or more of the following alternatives for the payment of the Stock Option exercise price: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted an exercise notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the shares subject to the Stock Option to pay the exercise price; (iii) by directing the Company to withhold such number of shares of Common Stock otherwise issuable in connection with the exercise of the Stock Option having an aggregate Fair Market Value equal to the exercise price; (iv) by delivering previously acquired shares of Common Stock that are acceptable to the Committee and that have an aggregate Fair Market Value on the date of exercise equal to the Stock Option exercise price; or (v) by certifying to ownership by attestation of such previously acquired shares of Common Stock.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the Stock Option exercise price.

### **Section 6. Stock Awards.**

#### 6.1 Grant.

The Committee may, in its discretion, (a) grant shares of Common Stock under the Plan to any Participant without consideration from such Participant or (b) sell shares of Common Stock under the Plan to any Participant for such amount of cash, Common Stock or other consideration as the Committee deems appropriate.

## 6.2 Stock Award Agreement.

Each share of Common Stock granted or sold hereunder shall be subject to such restrictions, conditions and other terms as the Board may determine at the time of grant or sale, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Award Agreement, and the following specific rules:

- (a) The Award Agreement shall specify whether the shares of Common Stock are granted or sold to the Participant and such other provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.
- (b) The restrictions to which the shares of Common Stock awarded hereunder are subject shall lapse as provided in Stock Award Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Committee in its sole discretion).
- (c) Except as provided in this subsection (c) and unless otherwise set forth in the related Stock Award Agreement, the Participant receiving a grant of or purchasing Common Stock shall thereupon be a stockholder with respect to such shares and shall have the rights of a stockholder with respect to such shares, including the right to vote such shares and to receive dividends and other distributions paid with respect to such shares; provided that any dividends or other distributions payable with respect to the Stock Award shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Award Agreement. Any such dividends or other distributions held by the Company attributable to the portion of a Stock Award that is forfeited shall also be forfeited.

## Section 7. Stock Unit Awards.

### 7.1 Grant.

The Committee may, in its discretion, grant Stock Unit Awards to any Participant. Each Stock Unit subject to the Award shall entitle the Participant to receive, on the date or the occurrence of an event (including the attainment of performance goals) as described in the Stock Unit Award Agreement, a share of Common Stock or cash equal to the Fair Market Value of a share of Common Stock on the date of such event as provided in the Stock Unit Award Agreement.

### 7.2 Stock Unit Agreement.

Each Stock Unit Award shall be subject to such restrictions, conditions and other terms as the Committee may determine at the time of grant, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Unit Award Agreement and the following specific rules:

- (a) The Stock Unit Agreement shall specify such provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.
- (b) The restrictions to which the shares of Stock Units awarded hereunder are subject shall lapse as provided in Stock Unit Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Board in its sole discretion).

- (c) Except as provided in this subsection (c) and unless otherwise set forth in the Stock Unit Agreement, the Participant receiving a Stock Unit Award shall have no rights of a stockholder, including voting or dividends or other distributions rights, with respect to any Stock Units prior to the date they are settled in shares of Common Stock; provided that a Stock Unit Award Agreement may provide that until the Stock Units are settled in shares or cash, the Participant shall be entitled to receive on each dividend or distribution payment date applicable to the Common Stock an amount equal to the dividends or other distributions that the Participant would have received had the Stock Units held by the Participant as of the related record date been actual shares of Common Stock. Such amounts shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Unit Award Agreement. Such amounts held by the Company attributable to the portion of the Stock Unit Award that is forfeited shall also be forfeited.

## Section 8. SARs.

### 8.1 Grant.

The Committee may grant SARs to Participants. Upon exercise, an SAR entitles the Participant to receive from the Company the number of shares of Common Stock having an aggregate Fair Market Value equal to the excess of the Fair Market Value of one share as of the date on which the SAR is exercised over the exercise price, multiplied by the number of shares with respect to which the SAR is being exercised. The Committee, in its discretion, shall be entitled to cause the Company to elect to settle any part or all of its obligations arising out of the exercise of an SAR by the payment of cash in lieu of all or part of the shares it would otherwise be obligated to deliver in an amount equal to the Fair Market Value of such shares on the date of exercise. Cash shall be delivered in lieu of any fractional shares. The terms and conditions of any such Award shall be determined at the time of grant.

### 8.2 SAR Agreement.

- (a) Each SAR shall be evidenced by a written SAR Agreement specifying the terms and conditions of the SAR as the Committee may determine, including the SAR exercise price, expiration date of the SAR, the number of shares of Common Stock to which the SAR pertains, the form of settlement and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.
- (b) The per Share exercise price of each SAR shall not be less than 100% of the Fair Market Value of a Share on the date the SAR is granted.
- (c) Each SAR shall expire and all rights thereunder shall cease on the date fixed by the Committee in the related SAR Agreement, which shall not be later than the ten years after the date of grant; provided however, if a Participant is unable to exercise an SAR because trading in the Common Stock is prohibited by law or the Company's insider-trading policy, the SAR exercise date shall be extended to the date that is 30 days after the expiration of the trading prohibition.
- (d) Each SAR shall become exercisable as provided in the related SAR Agreement; provided that notwithstanding any other Plan provision, the Committee shall have the discretion to accelerate the date as of which any SAR shall become exercisable in the event of the Participant's termination of employment, or

service on the Board, without cause (as determined by the Committee in its sole discretion).

(e) No dividends or dividend equivalents shall be paid with respect to any SAR prior to the exercise of the SAR.

(f) A person entitled to exercise an SAR may do so by delivery of a written notice in accordance with procedures established by the Committee specifying the number of shares of Common Stock with respect to which the SAR is being exercised and any other information the Committee may prescribe. As soon as reasonably practicable after the exercise of an SAR, the Company shall (i) issue the total number of full shares of Common Stock to which the Participant is entitled and cash in an amount equal to the Fair Market Value, as of the date of exercise, of any resulting fractional share, and (ii) if the Committee causes the Company to elect to settle all or part of its obligations arising out of the exercise of the SAR in cash, deliver to the Participant an amount in cash equal to the Fair Market Value, as of the date of exercise, of the shares it would otherwise be obligated to deliver.

## **Section 9. Change in Control.**

### **9.1 Effect of a Change in Control.**

(a) Notwithstanding any of the provisions of the Plan or any outstanding Award Agreement, upon a Change in Control of the Company (as defined in Section 9.2), the Board is authorized and has sole discretion to provide that (i) all outstanding Awards shall become fully exercisable, (ii) all restrictions applicable to all Awards shall terminate or lapse and (iii) performance goals applicable to any Awards shall be deemed satisfied at the highest level, as applicable, in order that Participants may realize the benefits thereunder.

(b) In addition to the Board's authority set forth in Section 3, upon such Change in Control of the Company, the Board is authorized and has sole discretion as to any Award, either at the time such Award is granted hereunder or any time thereafter, to take any one or more of the following actions: (i) provide for the purchase of any outstanding Stock Option, for an amount of cash equal to the difference between the exercise price and the then Fair Market Value of the Common Stock covered thereby had such Stock Option been currently exercisable; (ii) make such adjustment to any such Award then outstanding as the Board deems appropriate to reflect such Change in Control; and (iii) cause any such Award then outstanding to be assumed by the acquiring or surviving corporation after such Change in Control.

### **9.2 Definition of Change in Control.**

"Change in Control" of the Company shall be deemed to have occurred if at any time during the term of an Award granted under the Plan any of the following events occurs:

(a) any Person (other than the Company, a trustee or other fiduciary holding securities under an employee benefit plan of the Company, or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of shares of Common Stock of the Company) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors ("Person" and "Beneficial Owner" being defined in Rule 13d-3 of the General Rules and Regulations of the Exchange Act);

(b) the Company is party to a merger, consolidation, reorganization or other similar transaction with another corporation or other Person unless, following such transaction, more than 50% of the combined voting power of the outstanding securities of the surviving, resulting or acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such transaction, in substantially the same proportions as their ownership, immediately prior to such transaction, of the Company's outstanding securities entitled to vote generally in the election of directors;

(c) the election to the Board, without the recommendation or approval of two-thirds of the incumbent Board, of the lesser of: (i) three Directors; or (ii) Directors constituting a majority of the number of Directors of the Company then in office; provided, however, that Directors whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of Directors of the Company will not be considered as incumbent members of the Board for purposes of this Section; or

(d) there is a complete liquidation or dissolution of the Company, or the Company sells all or substantially all of its business and/or assets to another corporation or other Person unless, following such sale, more than 50% of the combined voting power of the outstanding securities of the acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such sale, in substantially the same proportions as their ownership, immediately prior to such sale, of the Company's outstanding securities entitled to vote generally in the election of directors.

In no event, however, shall a Change in Control be deemed to have occurred, with respect to a Participant, if that Participant is part of a purchasing group which consummates the Change in Control transaction. A Participant shall be deemed "part of a purchasing group" for purposes of the preceding sentence if the Participant is an equity participant or has agreed to become an equity participant in the purchasing company or group (except for (a) passive ownership of less than 3% of the shares of the purchasing company; or (b) ownership of equity participation in the purchasing company or group which is otherwise not deemed to be significant, as determined prior to the Change in Control by a majority of the disinterested Directors).

## **Section 10. Payment of Taxes.**

(a) In connection with any Award, and as a condition to the issuance or delivery of any shares of Common Stock to the Participant in connection therewith, the Company shall require the Participant to pay the Company the minimum amount of federal, state, local or foreign taxes required to be withheld, and in the Company's sole discretion, the Company may permit the Participant to pay the Company up to the maximum individual statutory rate of applicable withholding.

(b) The Company in its sole discretion may make available one or more of the following alternatives for the payment of such taxes: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the shares subject to the Award to pay the withholding taxes; (iii) by directing the Company to withhold such number of shares of Common Stock otherwise issuable in connection with the Award having an aggregate Fair Market Value equal to the minimum amount of tax required to be withheld; (iv) by delivering previously acquired shares of Common Stock of the Company that are acceptable to the Board that have an aggregate Fair Market Value equal to the amount



required to be withheld; or (v) by certifying to ownership by attestation of such previously acquired shares of Common Stock.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the required withholding taxes.

**Section 11. Postponement.**

The Committee may postpone any grant or settlement of an Award or exercise of a Stock Option or SAR for such time as the Board in its sole discretion may deem necessary in order to permit the Company:

- (a) to effect, amend or maintain any necessary registration of the Plan or the shares of Common Stock issuable pursuant to an Award, including upon the exercise of a Stock Option or SAR, under the Securities Act of 1933, as amended, or the securities laws of any applicable jurisdiction;
- (b) to permit any action to be taken in order to (i) list such shares of Common Stock on a stock exchange if shares of Common Stock are then listed on such exchange or (ii) comply with restrictions or regulations incident to the maintenance of a public market for its shares of Common Stock, including any rules or regulations of any stock exchange on which the shares of Common Stock are listed; or
- (c) to determine that such shares of Common Stock and the Plan are exempt from such registration or that no action of the kind referred to in (b)(ii) above needs to be taken; and the Company shall not be obligated by virtue of any terms and conditions of any Award or any provision of the Plan to sell or issue shares of Common Stock in violation of the Securities Act of 1933 or the law of any government having jurisdiction thereof.

Any such postponement shall not extend the term of an Award and neither the Company nor its Directors or officers shall have any obligation or liability to a Participant, the Participant's successor or any other person with respect to any shares of Common Stock as to which the Award shall lapse because of such postponement.

**Section 12. Nontransferability.**

Awards granted under the Plan, and any rights and privileges pertaining thereto, may not be transferred, assigned, pledged or hypothecated in any manner, or be subject to execution, attachment or similar process, by operation of law or otherwise, other than by will or by the laws of descent and distribution.

**Section 13. Delivery of Shares.**

Shares of Common Stock issued pursuant to a Stock Award, the exercise of a Stock or SAR or the settlement of a Stock Unit Award shall be represented by stock certificates or on a non-certificated basis, with the ownership of such shares by the Participant evidenced solely by book entry in the records of the Company's transfer agent; provided, however, that upon the written request of the Participant, the Company shall issue, in the name of the Participant, stock certificates representing such shares of Common Stock. Notwithstanding the foregoing, shares granted pursuant to a Stock Award shall be held by the Secretary of the Company until such time as the shares are forfeited or settled.

**Section 14. Termination or Amendment of Plan and Award Agreements.**

**14.1 Termination or Amendment of Plan**

- (a) Except as described in Section 14.3 below, the Board may terminate, suspend, or amend the Plan, in whole or in part, from time to time, without the approval of the stockholders of the Company, unless such approval is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed. No amendment or termination of the Plan shall adversely affect the right of any Participant under any outstanding Award in any material way without the written consent of the Participant, unless such amendment or termination is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed. Subject to the foregoing, the Committee may correct any defect or supply an omission or reconcile any inconsistency in the Plan or in any Award granted hereunder in the manner and to the extent it shall deem desirable, in its sole discretion, to effectuate the Plan.
- (b) The Board shall have the authority to amend the Plan to the extent necessary or appropriate to comply with applicable law, regulation or accounting rules in order to permit Participants who are located outside of the United States to participate in the Plan.

**14.2 Amendment of Award Agreements**

The Committee shall have the authority to amend any Award Agreement at any time; provided however, that no such amendment shall adversely affect the right of any Participant under any outstanding Award Agreement in any material way without the written consent of the Participant, unless such amendment is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed.

**14.3 No Repricing of Stock Options**

Notwithstanding the foregoing, and except as described in Section 4.3, there shall be no amendment to the Plan or any outstanding Stock Option Agreement or SAR Agreement that results in the repricing of Stock Options or SARs without stockholder approval. For this purpose, repricing includes (i) a reduction in the exercise price of the Stock Option or SARs or (ii) the cancellation of a Stock Option in exchange for cash, Stock Options or SARs with an exercise price less than the exercise price of the cancelled Options or SARs, other Awards or any other consideration provided by the Company, but does not include any adjustment described in Section 4.3.

**Section 15. No Contract of Employment.**

Neither the adoption of the Plan nor the grant of any Award under the Plan shall be deemed to obligate the Company or any Subsidiary to continue the employment of any Participant for any particular period, nor shall the granting of an Award constitute a request or consent to postpone the retirement date of any Participant.

**Section 16. Applicable Law.**

All questions pertaining to the validity, construction and administration of the Plan and all Awards granted under the Plan shall be determined in conformity with the laws of the State of Nevada, without regard to the conflict of law provisions of any state, and, in the case of Incentive Stock Options, Section 422 of the Code and regulations issued thereunder.

**Section 17. Effective Date and Term of Plan.**

17.1 Effective Date.

(a) The Plan has been adopted by the Board, and is effective, as of March 24, 2021, subject to the approval of the Plan by the stockholders of the Company.

(b) In the event the Plan is not approved by stockholders of the Company within 12 months of the date hereof, the Plan shall have no effect.

17.2 Term of Plan.

Notwithstanding anything to the contrary contained herein, no Awards shall be granted on or after March 24, 2031.

VOLCON CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this “Agreement”) is made and entered into as of **AUGUST 28, 2020**, between **VOLCON, INC.**, a Delaware corporation, having its principal place of business at 3267 Bee Caves Road, 107-322, Austin, TX 78746 (the “Company”), and **PINK POSSUM, LLC.**, with an address at 3267 Bee Caves Road Suite 107-247, Austin, TX 78746 (“Consultant”).

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Engagement Period. The Company hereby engages Consultant, and Consultant hereby accepts such engagement, upon the terms and conditions set forth herein, for the period (the “Term”) beginning on the date hereof and ending on the third anniversary of this agreement, unless extended by the parties (“Termination Date”) except for those sections that are to survive the termination of this agreement. The Term may be further extended by mutual written agreement.

2. Position and Duties.

(a) Services. During the Term, Consultant shall provide consulting services with respect to different technical aspects of the Company’s products (the “Services”). The Services shall be provided at such locations reasonably determined by the Consultant. The Consultant will report to such person(s) as designated by the Company.

(b) Performance of Services. The parties expressly acknowledge and agree that Consultant will be permitted to provide consulting and other services to any other person or entity during the Consulting Period provided such services do not conflict with the services being provided to the Company. Consultant shall perform the Services to the best of Consultant’s abilities in a diligent, trustworthy, professional and efficient manner. In performing the Services hereunder, Consultant is acting as an independent contractor. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between the Company, on the one hand, and the Consultant, on the other hand. Consultant shall not have any right, power or authority in any way to bind the Company or any of its affiliates to the fulfillment of any condition, contract or obligation or to create any liability binding on the part the Company or any of its affiliates, and Consultant agrees not to represent otherwise to any third party.

(c) Compliance with Law. Consultant warrants that all work and services shall be performed in complete compliance with all relevant laws and regulations, including all securities laws, rules, regulations and guidance. Specifically, Consultant acknowledges it will comply with all laws, rules, regulations and guidance related to material non-public information. Consultant shall not provide any services that require any license or permit unless consultant has the necessary license or permit to perform such services.

3. Consulting Compensation. In consideration of the Services, Consultant will receive the stock purchase warrant attached hereto as Exhibit A. Consultant is responsible for all taxes on any consideration paid to Consultant pursuant to this Agreement.

4. Expense Reimbursement. The Company shall reimburse Consultant for all preapproved, reasonable and documented expenses incurred by Consultant in the course of performing services under this Agreement which are consistent with the Company’s policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company’s requirements with respect to reporting and documentation of expenses. All travel will be authorized for business class.

5. Termination.

(a) Termination. This Agreement shall terminate at the end of the Term and may only be terminated earlier by either Party upon thirty (30) days written notice upon a breach of this Agreement. No portion of any Common Stock or compensation (5.(b)) issued to Consultant will be refundable despite early termination of this Agreement.

---

(b) Additional Compensation. Upon the occurrence of a Fundamental Transaction for an aggregate gross sales price of \$100,000,000 or more, Consultant will receive an additional cash payment equal to one percent (1%) of such gross sales price. For the purposes of this agreement, “Fundamental Transaction” means any of the following: (i) a consolidation or merger involving the Company if the holders of the voting securities of the Company that are outstanding immediately prior to the consummation of such consolidation or merger do not, immediately after the consummation of such consolidation or merger, hold voting securities that collectively possess at least a majority of the voting power of all the outstanding securities of the surviving entity of such consolidation or merger or such surviving entity’s parent entity; (ii) a transfer or issuance (in a single transaction or series of related transactions) by one or more of the Company and its stockholders to one Person or to any group of Persons acting in concert, of shares of the Company’s capital stock then collectively possessing fifty percent (50%) or more of the voting power of all then outstanding shares of the Company’s capital stock (computed on an as-converted to common stock basis); or (iii) any sale, license, lease, assignment or other disposition of all or substantially all of the assets of the Company.

6. Confidentiality and Solicitation.

(a) Confidentiality. For purposes of this Agreement, “Confidential Information” means any information disclosed by the Company to the Consultant, of a confidential nature or marked confidential. Confidential Information may include without limitation such documents as business plans, source code, documentation, financial analysis, marketing plans, customer names, customer lists, customer data, contracts and other business information, including both the information of the Company or any prospective acquisition target entity(ies), existing or prospective customers, clients, investors or other third parties with whom the Company has relationships or conducts business that may be disclosed in connection with the Purpose of this Agreement. Consultant agrees that it will use the Confidential Information only in connection with its engagement for the Company and not for any other purpose. The Confidential Information shall be held in confidence by Consultant and shall not be disclosed to any other person without the prior written consent of the Company. Notwithstanding the foregoing, Consultant may disclose Confidential Information to the extent that: (i) the information was already in the possession of the Consultant at the time of disclosure on a non-confidential basis; (ii) disclosure is required by law, regulation or legal process or by request from any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction); or (iii) the information is or becomes publicly available, other than as a result of a breach of this Agreement. The provisions of this Section shall survive the termination of Consultant’s engagement for five (5) years, provided however such provisions shall remain in effect indefinitely solely as related to that portion of the Confidential Information that constitutes trade secrets.

(b) Solicitation. The Consultant shall not, during the Term of this Agreement and for a period of six (6) months immediately after the termination of this Agreement, or any extension of it, either directly or indirectly (a) for purposes competitive with the products or services currently offered by the Company, call on, solicit, or take away any of the Company’s customers about whom the Consultant became aware as a result of the Consultant’s services to the Company hereunder, either for the Consultant or for any other person or entity, or (b) solicit or take away or attempt to solicit or take away any of the Company’s employees or consultants either for the Consultant or for any other person or entity.

7. Consultant’s Representations. Consultant hereby represents and warrants to the Company that (a) the execution, delivery and performance of this Agreement

by Consultant do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Consultant is a party or by which Consultant is bound, (b) except as previously disclosed to the Company in writing (a copy of such agreement having been provided to the Company and with respect to which all noncompete restrictions shall expire prior to the commencement of the Consulting Period), Consultant is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity and (c) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Consultant, enforceable in accordance with its terms. Consultant hereby acknowledges and represents that Consultant has either consulted with independent legal counsel regarding Consultant's rights and obligations under this Agreement or knowingly and voluntarily waived the opportunity to do so and that Consultant fully understands the terms and conditions contained herein. Consultant agrees it shall not use the Company's name or the name of any of its employees in any advertising or promotional material without the prior written consent of the Company.

8. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such provision shall be ineffective only in the jurisdiction where so held and only to the extent of such prohibition or illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

---

2

---

9. Complete Agreement. This Agreement and those documents expressly referred to herein (including the Confidentiality Agreement) embody the complete agreement and understanding among the parties with respect to, and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to, the subject matter hereof in any way, including, without limitation, any prior consulting agreement, by and between Consultant and the Company or any of its Subsidiaries.

10. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

11. Counterparts. This Agreement may be executed in separate counterparts (including by means of facsimile or by electronic transmission in portable document format (pdf) or comparable electronic transmission), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

12. Successors and Assigns. This Agreement is personal in nature and neither of the parties hereto shall, without the consent of the other, assign, transfer or delegate this Agreement or any rights or obligations hereunder; provided that (a) this Agreement will inure to the benefit of and be enforceable by Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees and legatees (but otherwise will not otherwise be assignable, transferable or delegable by Consultant), and (b) this Agreement will be assignable, transferable or delegable by the Company without the consent of Consultant to the Company or any of its affiliates or to any successor (whether direct or indirect, in whatever form of transaction) to all or substantially all of their business or assets (none of which shall constitute a termination of Consultant's engagement hereunder).

13. Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws, provisions; and the Parties agree that the proper venue for the resolution of any disputes hereunder shall be Travis County, Texas.

14. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Consultant, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

15. Indemnification and Reimbursement of Payments on Behalf of Consultant. The Consultant acknowledges that the Company will report any compensation payable pursuant to this Agreement on the appropriate tax forms as compensation to an independent contractor with respect to which the Company and its Subsidiaries are not withholding. Notwithstanding the forgoing, the Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to Consultant any federal, state, local or foreign withholding taxes, excise tax, or employment taxes ("Taxes") imposed with respect to Consultant's compensation or other payments from the Company, as may be required to be deducted or withheld by any applicable law or regulation. In the event the Company does not make such deductions or withholdings, Consultant shall indemnify the Company and its Subsidiaries for any amounts paid with respect to any such Taxes, together (if such failure to withhold was at the written direction of Consultant or if Consultant was informed in writing by the Company that such deductions or withholdings were not made) with any interest, penalties and related expenses thereto.

16. Indemnification. The Company will indemnify and hold harmless Consultant from any claims or damages, cost, expense, liability, obligation, loss or damage (including reasonable legal fees) of any nature, incurred by or imposed upon the Consultant which results, arises out of or is based upon (i) any material misrepresentation by Company or breach of any representation or warranty by Company in this Agreement; (ii) after any applicable notice and/or cure periods, any breach or default in performance by the Company of any covenant or undertaking to be performed by the Company hereunder, or any other Agreement entered into by the Company and Consultants relating hereto; or (iii) the Consultant's performance of his duties as described in this Agreement.

---

3

---

17. Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT EACH HEREBY KNOWINGLY AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE AGREEMENT AND CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

18. Notices. All notices which are required by or may be given pursuant to the terms of this Agreement must be in writing and must be delivered personally, sent by certified mail, return receipt requested, postage prepaid, or email. Any of the addresses set forth above may be changed from time to time by written notice from the party requesting the change. Such notices and other communications will be treated for all purposes of this Agreement as being effective immediately if delivered personally or by facsimile (with written confirmation of transmission), or five days after mailing by certified mail, return receipt requested, first class postage prepaid, or one day after deposit for next business day delivery by a nationally recognized overnight delivery service.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement as of the date first written above.

**VOLCON, INC.**

By: /s/ Adrian James  
 Name: Adrian James  
 Title: Vice-President

**PINK POSSUM, LLC**

By: /s/ Christian Okansky  
 Name: Christian Okansky  
 Title: Manager

**AMENDMENT TO CONSULTING AGREEMENT**

This amendment ("**Amendment**"), dated as of the date set forth below (the "**Effective Date**"), is to that certain Consulting Agreement (the "**Agreement**") dated August 28, 2020 by and between Pink Possum, LLC (the "**Consultant**") and Volcon, Inc. (the "**Company**"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

WHEREAS, Section 3 of the Agreement provides that a portion of the compensation to the Consultant shall paid in the form of the receipt a common stock purchase warrant (the "**Original Warrant**");

WHEREAS, the Original Warrant has an exercise price of \$0.01 per share and provides for an unknown number of shares issuable upon exercise based on the number of shares of Company common stock outstanding as of the date of exercise;

WHEREAS, the Company and Consultant have agreed to amend the terms of the Original Warrant to increase the exercise price and to fix the number of shares of Company common stock underlying the Original Warrant; and

WHEREAS, the Company has agreed to amend Section 5 to provide the Consultant with certain additional compensation as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and mutual agreements herein contained, and intending to be legally bound herein, the parties hereto agree as follows:

1. Exchange of Original Warrant. On the Effective Date, the Consultant shall assign, transfer and deliver to the Company, free and clear of all liens, pledges, encumbrances, charges, restrictions or known claims of any kind, nature, or description, the Original Warrant in exchange for the common stock purchase warrant set forth in Exhibit A (the "**New Warrant**").

2. Section 5 is hereby amended to add the following new Sections 5(c) and 5(d):

( c ) Market Capitalization Compensation. Commencing upon the completion of the Company's initial public offering of securities, if the Company's Market Capitalization exceeds \$300.0 million for a period of 21 consecutive trading days (the "Measurement Period"), Consultant will receive an additional cash payment equal to \$15.0 million, payable within 90 days of the end of the Measurement Period. Notwithstanding the foregoing, the Company shall have the right, in its sole discretion, to make the foregoing \$15.0 million payment by the issuance of shares of Company common stock valued at the closing price of the Company's common stock on first trading day of the Measurement Period. For the purposes of this Agreement, "Market Capitalization" is calculated on each trading day during the Measurement Period as the product of (A) the closing price of the Company's common stock on the national securities exchange on which the Company's common stock is listed on such day, and (B) the number of shares of Company common stock outstanding on such day.

(d) For the avoidance of doubt, the compensation payable to Consultant pursuant to Sections 5(b) and 5(c) of this Agreement shall be payable to Consultant if the milestones are achieved during or after the Term of this Agreement; provided that the milestones are achieved prior to the ten-year anniversary of the initial execution of the Agreement.

3. Except as expressly set forth herein, this Amendment shall not by implication or otherwise alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

*[Signature Page To Follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized signatories as of the date first indicated below.

**Volcon, Inc.**

By: /s/ Adrian James  
Adrian James, Co-Founder & Board Member

Date: March 26, 2021

**Pink Possum, LLC**

By: /s/ Christian Okonsky  
Christian Okonsky, Manager

VOLCON CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this “Agreement”) is made and entered into as of **AUGUST 28, 2020**, between **VOLCON, INC.**, a Delaware corporation, having its principal place of business at 3267 Bee Caves Road, 107-322, Austin, TX 78746 (the “Company”), and **Highbridge Consultants, LLC**, with an address at 3300 Bee Cave Rd, #650-129, Austin, TX 78746 (“Consultant”).

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Engagement Period. The Company hereby engages Consultant, and Consultant hereby accepts such engagement, upon the terms and conditions set forth herein, for the period (the “Term”) beginning on the date hereof and ending on the third anniversary of this agreement, unless extended by the parties (“Termination Date”) except for those sections that are to survive the termination of this agreement. The Term may be further extended by mutual written agreement.

2. Position and Duties.

(a) Services. During the Term, Consultant shall provide consulting services with respect to public markets and general marketing (the “Services”). The Services shall be provided at such locations reasonably determined by the Consultant. The Consultant will report to such person(s) as designated by the Company.

(b) Performance of Services. The parties expressly acknowledge and agree that Consultant will be permitted to provide consulting and other services to any other person or entity during the Consulting Period provided such services do not conflict with the services being provided to the Company. Consultant shall perform the Services to the best of Consultant’s abilities in a diligent, trustworthy, professional and efficient manner. In performing the Services hereunder, Consultant is acting as an independent contractor. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between the Company, on the one hand, and the Consultant, on the other hand. Consultant shall not have any right, power or authority in any way to bind the Company or any of its affiliates to the fulfillment of any condition, contract or obligation or to create any liability binding on the part the Company or any of its affiliates, and Consultant agrees not to represent otherwise to any third party.

(c) Compliance with Law. Consultant warrants that all work and services shall be performed in complete compliance with all relevant laws and regulations, including all securities laws, rules, regulations and guidance. Specifically, Consultant acknowledges it will comply with all laws, rules, regulations and guidance related to material non-public information. Consultant shall not provide any services that require any license or permit unless consultant has the necessary license or permit to perform such services.

3. Consulting Compensation. In consideration of the Services, Consultant will receive the stock purchase warrant attached hereto as Exhibit A. Consultant is responsible for all taxes on any consideration paid to Consultant pursuant to this Agreement.

4. Expense Reimbursement. The Company shall reimburse Consultant for all preapproved, reasonable and documented expenses incurred by Consultant in the course of performing services under this Agreement which are consistent with the Company’s policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company’s requirements with respect to reporting and documentation of expenses. All travel will be authorized for business class.

5. Termination.

(a) Termination. This Agreement shall terminate at the end of the Term and may only be terminated earlier by either Party upon thirty (30) days written notice upon a breach of this Agreement. No portion of any Common Stock or compensation (5.(b)) issued to Consultant will be refundable despite early termination of this Agreement.

---

(b) Additional Compensation. Upon the occurrence of a Fundamental Transaction for an aggregate gross sales price of \$100,000,000 or more, Consultant will receive an additional cash payment equal to one percent (1%) of such gross sales price. For the purposes of this agreement, “Fundamental Transaction” means any of the following: (i) a consolidation or merger involving the Company if the holders of the voting securities of the Company that are outstanding immediately prior to the consummation of such consolidation or merger do not, immediately after the consummation of such consolidation or merger, hold voting securities that collectively possess at least a majority of the voting power of all the outstanding securities of the surviving entity of such consolidation or merger or such surviving entity’s parent entity; (ii) a transfer or issuance (in a single transaction or series of related transactions) by one or more of the Company and its stockholders to one Person or to any group of Persons acting in concert, of shares of the Company’s capital stock then collectively possessing fifty percent (50%) or more of the voting power of all then outstanding shares of the Company’s capital stock (computed on an as-converted to common stock basis); or (iii) any sale, license, lease, assignment or other disposition of all or substantially all of the assets of the Company.

6. Confidentiality and Solicitation.

(a) Confidentiality. For purposes of this Agreement, “Confidential Information” means any information disclosed by the Company to the Consultant, of a confidential nature or marked confidential. Confidential Information may include without limitation such documents as business plans, source code, documentation, financial analysis, marketing plans, customer names, customer lists, customer data, contracts and other business information, including both the information of the Company or any prospective acquisition target entity(ies), existing or prospective customers, clients, investors or other third parties with whom the Company has relationships or conducts business that may be disclosed in connection with the Purpose of this Agreement. Consultant agrees that it will use the Confidential Information only in connection with its engagement for the Company and not for any other purpose. The Confidential Information shall be held in confidence by Consultant and shall not be disclosed to any other person without the prior written consent of the Company. Notwithstanding the foregoing, Consultant may disclose Confidential Information to the extent that: (i) the information was already in the possession of the Consultant at the time of disclosure on a non-confidential basis; (ii) disclosure is required by law, regulation or legal process or by request from any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction); or (iii) the information is or becomes publicly available, other than as a result of a breach of this Agreement. The provisions of this Section shall survive the termination of Consultant’s engagement for five (5) years, provided however such provisions shall remain in effect indefinitely solely as related to that portion of the Confidential Information that constitutes trade secrets.

(b) Solicitation. The Consultant shall not, during the Term of this Agreement and for a period of six (6) months immediately after the termination of this Agreement, or any extension of it, either directly or indirectly (a) for purposes competitive with the products or services currently offered by the Company, call on, solicit, or take away any of the Company’s customers about whom the Consultant became aware as a result of the Consultant’s services to the Company hereunder, either for the Consultant or for any other person or entity, or (b) solicit or take away or attempt to solicit or take away any of the Company’s employees or consultants either for the Consultant or for any other person or entity.

7. Consultant’s Representations. Consultant hereby represents and warrants to the Company that (a) the execution, delivery and performance of this Agreement by Consultant do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Consultant is a

party or by which Consultant is bound, (b) except as previously disclosed to the Company in writing (a copy of such agreement having been provided to the Company and with respect to which all noncompete restrictions shall expire prior to the commencement of the Consulting Period), Consultant is not a party to or bound by any employment agreement, noncompete agreement or confidentiality agreement with any other person or entity and (c) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Consultant, enforceable in accordance with its terms. Consultant hereby acknowledges and represents that Consultant has either consulted with independent legal counsel regarding Consultant's rights and obligations under this Agreement or knowingly and voluntarily waived the opportunity to do so and that Consultant fully understands the terms and conditions contained herein. Consultant agrees it shall not use the Company's name or the name of any of its employees in any advertising or promotional material without the prior written consent of the Company.

8. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such provision shall be ineffective only in the jurisdiction where so held and only to the extent of such prohibition or illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

---

2

9. Complete Agreement. This Agreement and those documents expressly referred to herein (including the Confidentiality Agreement) embody the complete agreement and understanding among the parties with respect to, and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to, the subject matter hereof in any way, including, without limitation, any prior consulting agreement, by and between Consultant and the Company or any of its Subsidiaries.

10. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

11. Counterparts. This Agreement may be executed in separate counterparts (including by means of facsimile or by electronic transmission in portable document format (pdf) or comparable electronic transmission), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

12. Successors and Assigns. This Agreement is personal in nature and neither of the parties hereto shall, without the consent of the other, assign, transfer or delegate this Agreement or any rights or obligations hereunder; provided that (a) this Agreement will inure to the benefit of and be enforceable by Consultant's personal or legal representatives, executors, administrators, successors, heirs, distributees and legatees (but otherwise will not otherwise be assignable, transferable or delegable by Consultant), and (b) this Agreement will be assignable, transferable or delegable by the Company without the consent of Consultant to the Company or any of its affiliates or to any successor (whether direct or indirect, in whatever form of transaction) to all or substantially all of their business or assets (none of which shall constitute a termination of Consultant's engagement hereunder).

13. Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws, provisions; and the Parties agree that the proper venue for the resolution of any disputes hereunder shall be Travis County, Texas.

14. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Consultant, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

15. Indemnification and Reimbursement of Payments on Behalf of Consultant. The Consultant acknowledges that the Company will report any compensation payable pursuant to this Agreement on the appropriate tax forms as compensation to an independent contractor with respect to which the Company and its Subsidiaries are not withholding. Notwithstanding the forgoing, the Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to Consultant any federal, state, local or foreign withholding taxes, excise tax, or employment taxes ("Taxes") imposed with respect to Consultant's compensation or other payments from the Company, as may be required to be deducted or withheld by any applicable law or regulation. In the event the Company does not make such deductions or withholdings, Consultant shall indemnify the Company and its Subsidiaries for any amounts paid with respect to any such Taxes, together (if such failure to withhold was at the written direction of Consultant or if Consultant was informed in writing by the Company that such deductions or withholdings were not made) with any interest, penalties and related expenses thereto.

16. Indemnification. The Company will indemnify and hold harmless Consultant from any claims or damages, cost, expense, liability, obligation, loss or damage (including reasonable legal fees) of any nature, incurred by or imposed upon the Consultant which results, arises out of or is based upon (i) any material misrepresentation by Company or breach of any representation or warranty by Company in this Agreement; (ii) after any applicable notice and/or cure periods, any breach or default in performance by the Company of any covenant or undertaking to be performed by the Company hereunder, or any other Agreement entered into by the Company and Consultants relating hereto; or (iii) the Consultant's performance of his duties as described in this Agreement.

---

3

17. Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT EACH HEREBY KNOWINGLY AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE AGREEMENT AND CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

18. Notices. All notices which are required by or may be given pursuant to the terms of this Agreement must be in writing and must be delivered personally, sent by certified mail, return receipt requested, postage prepaid, or email. Any of the addresses set forth above may be changed from time to time by written notice from the party requesting the change. Such notices and other communications will be treated for all purposes of this Agreement as being effective immediately if delivered personally or by facsimile (with written confirmation of transmission), or five days after mailing by certified mail, return receipt requested, first class postage prepaid, or one day after deposit for next business day delivery by a nationally recognized overnight delivery service.

\*\*\*\*\*

---

4

IN WITNESS WHEREOF, the parties hereto have executed this Consulting Agreement as of the date first written above.



**VOLCON, INC.**

By: /s/ Christian Okonsky  
Name: Christian Okonsky  
Title: President

**ACCEPTED AND AGREED:**

**Highbridge Consultants, LLC**

By: /s/ Adrian James  
Name: Adrian James  
Title: Manager

**AMENDMENT TO CONSULTING AGREEMENT**

This amendment (“**Amendment**”), dated as of the date set forth below (the “**Effective Date**”), is to that certain Consulting Agreement (the “**Agreement**”) dated August 28, 2020 by and between Highbridge Consultants, LLC (the “**Consultant**”) and Volcon, Inc. (the “**Company**”). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

WHEREAS, Section 3 of the Agreement provides that a portion of the compensation to the Consultant shall paid in the form of the receipt a common stock purchase warrant (the “**Original Warrant**”);

WHEREAS, the Original Warrant has an exercise price of \$0.01 per share and provides for an unknown number of shares issuable upon exercise based on the number of shares of Company common stock outstanding as of the date of exercise;

WHEREAS, the Company and Consultant have agreed to amend the terms of the Original Warrant to increase the exercise price and to fix the number of shares of Company common stock underlying the Original Warrant; and

WHEREAS, the Company has agreed to amend Section 5 to provide the Consultant with certain additional compensation as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and mutual agreements herein contained, and intending to be legally bound herein, the parties hereto agree as follows:

1. Exchange of Original Warrant. On the Effective Date, the Consultant shall assign, transfer and deliver to the Company, free and clear of all liens, pledges, encumbrances, charges, restrictions or known claims of any kind, nature, or description, the Original Warrant in exchange for the common stock purchase warrant set forth in Exhibit A (the “**New Warrant**”).

2. Section 5 is hereby amended to add the following new Sections 5(c) and 5(d):

(c) Market Capitalization Compensation. Commencing upon the completion of the Company’s initial public offering of securities, if the Company’s Market Capitalization exceeds \$300.0 million for a period of 21 consecutive trading days (the “Measurement Period”), Consultant will receive an additional cash payment equal to \$15.0 million, payable within 90 days of the end of the Measurement Period. Notwithstanding the foregoing, the Company shall have the right, in its sole discretion, to make the foregoing \$15.0 million payment by the issuance of shares of Company common stock valued at the closing price of the Company’s common stock on first trading day of the Measurement Period. For the purposes of this Agreement, “Market Capitalization” is calculated on each trading day during the Measurement Period as the product of (A) the closing price of the Company’s common stock on the national securities exchange on which the Company’s common stock is listed on such day, and (B) the number of shares of Company common stock outstanding on such day.

(d) For the avoidance of doubt, the compensation payable to Consultant pursuant to Sections 5(b) and 5(c) of this Agreement shall be payable to Consultant if the milestones are achieved during or after the Term of this Agreement; provided that the milestones are achieved prior to the ten-year anniversary of the initial execution of the Agreement.

3. Except as expressly set forth herein, this Amendment shall not by implication or otherwise alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

*[Signature Page To Follow]*

---

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized signatories as of the date first indicated below.

**Volcon, Inc.**

By: /s/ Christian Okonsky

Christian Okonsky, President

Date: March 25, 2021

**Highbridge Consultants, LLC**

By: /s/ Adrian James  
Adrian James, Manager



# COMMERCIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2014

## Table of Contents

No.	Paragraph Description	Pg.	No.	Paragraph Description	Pg.
1.	Parties .....	2	24.	Assignment and Subletting .....	11
2.	Leased Premises .....	2	25.	Relocation .....	11
3.	Term .....		26.	Subordination .....	11
A.	Term .....	2	27.	Estoppel Certificates & Financial Info .....	11
B.	Delay of Occupancy .....	2	28.	Casualty Loss .....	12
C.	Certificate of Occupancy .....	3	29.	Condemnation .....	12
4.	Rent and Expenses .....		30.	Attorney's Fees .....	12
A.	Base Monthly Rent .....	3	31.	Representations .....	12
B.	Additional Rent .....	3	32.	Brokers .....	13
C.	First Full Month's Rent .....	3	33.	Addenda .....	13
D.	Prorated Rent .....	3	34.	Notices .....	13
E.	Place of Payment .....	3	35.	Special Provisions .....	14
F.	Method of Payment .....	3	36.	Agreement of the Parties .....	14
G.	Late Charges .....	4			
H.	Returned Checks .....	4			
5.	Security Deposit .....	4			
6.	Taxes .....	4			
7.	Utilities .....	4			
8.	Insurance .....	5			
9.	Use and Hours .....	6			
10.	Legal Compliance .....	6			
11.	Signs .....	6			
12.	Access By Landlord .....	7			
13.	Move-In Condition .....	7			
14.	Move-Out Condition .....	7			
15.	Maintenance and Repairs .....				
A.	Cleaning .....	7			
B.	Conditions Caused by a Party .....	8			
C.	Repair & Maintenance Responsibility .....	8			
D.	Repair Persons .....	8			
E.	HVAC Service Contract .....	9			
F.	Common Areas .....	9			
G.	Notice of Repairs .....	9			
H.	Failure to Repair .....	9			
16.	Alterations .....	9			
17.	Liens .....	9			
18.	Liability .....	9			
19.	Indemnity .....	10			
20.	Default .....	10			
21.	Abandonment, Interruption of Utilities, Removal of Property & Lockout .....	10			
22.	Holdover .....	10			
23.	Landlord's Lien & Security Interest .....	11			

## ADDENDA & EXHIBITS (check all that apply)

<input checked="" type="checkbox"/>	Exhibit <u>Survey + Site Plan</u>
<input type="checkbox"/>	Exhibit .....
<input type="checkbox"/>	Commercial Lease Addendum for Broker's Fee (TXR-2102)
<input type="checkbox"/>	Commercial Lease Addendum for Expense Reimbursement (TXR-2103)
<input type="checkbox"/>	Commercial Lease Addendum for Extension Option (TXR-2104)
<input type="checkbox"/>	Commercial Lease Addendum for Percentage Rent (TXR-2106)
<input type="checkbox"/>	Commercial Lease Addendum for Parking (TXR-2107)
<input type="checkbox"/>	Commercial Landlord's Rules and Regulations (TXR-2108)
<input type="checkbox"/>	Commercial Lease Guaranty (TXR-2109)
<input type="checkbox"/>	Commercial Lease Addendum for Right of First Refusal (TXR-2105)
<input type="checkbox"/>	Commercial Lease Addendum for Optional Space (TXR-2110)
<input type="checkbox"/>	Commercial Lease Addendum for Construction (TXR-2111) or (TXR-2112)
<input type="checkbox"/>	Commercial Lease Addendum for Contingencies (TXR-2119)
<input type="checkbox"/>	.....
<input type="checkbox"/>	.....
<input type="checkbox"/>	.....
<input type="checkbox"/>	Information About Brokerage Services (TXR-2501)

(TXR-2101) 4-1-14

Initialed for Identification by Landlord

OS

, and Tenant:

DS

Page 1 of 15



## COMMERCIAL LEASE

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® INC. IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 2014

### 1. PARTIES: The parties to this lease are:

Landlord: Alexander EV Park, LLC ; and  
 Tenant: Volcon, Inc.

### 2. LEASED PREMISES:

A. Landlord leases to Tenant the following described real property, known as the "leased premises," along with all its improvements (Check only one box):

☒ (1) Multiple-Tenant Property: Suite or Unit Number 100 containing approximately 10,000 square feet of rentable area in Alexander EV Park (project name) at 19201 HWY 29 (address) in Liberty Hill (city), Williamson (county), Texas, which is legally described on attached Exhibit \_\_\_\_\_ or as follows: AW0438 Mudd, B.S. SUR., Acres 53.79

☐ (2) Single-Tenant Property: The real property containing approximately \_\_\_\_\_ square feet of rentable area at: \_\_\_\_\_ (address) in \_\_\_\_\_ (city), \_\_\_\_\_ (county), Texas, which is legally described on attached Exhibit \_\_\_\_\_ or as follows: \_\_\_\_\_

B. If Paragraph 2A(1) applies:

- (1) "Property" means the building or complex in which the leased premises are located, inclusive of any common areas, drives, parking areas, and walks; and
- (2) the parties agree that the rentable area of the leased premises may not equal the actual or useable area within the leased premises and may include an allocation of common areas in the Property. The rentable area ☒ will ☐ will not be adjusted if re-measured.

### 3. TERM:

A. Term: The term of this lease is 60 months and 0 days, commencing on: December 1, 2020 (Commencement Date) and ending on November 30, 2025 (Expiration Date).

B. Delay of Occupancy: If Tenant is unable to occupy the leased premises on the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:

, and Tenant:

Page 2 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

complete or a prior tenant's holding over of the leased premises, Landlord will not be liable to Tenant for such delay and this lease will remain enforceable. In the event of such a delay, the Commencement Date will automatically be extended to the date Tenant is able to occupy the Property and the Expiration Date will also be extended by a like number of days, so that the length of this lease remains unchanged. ~~If Tenant is unable to occupy the leased premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete or a prior tenant's holding over of the leased premises, Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant. This Paragraph 3B does not apply to any delay in occupancy caused by cleaning or repairs.~~

- C. Certificate of Occupancy: Unless the parties agree otherwise, Tenant is responsible for obtaining a certificate of occupancy for the leased premises if required by a governmental body.

#### 4. RENT AND EXPENSES:

- A. Base Monthly Rent: On or before the first day of each month during this lease, Tenant will pay Landlord base monthly rent as described on attached Exhibit N/A or as follows:

Dates		Rate per rentable square foot (optional)		Base Monthly Rent \$
From	To	\$ Monthly Rate	\$ Annual Rate	
12/01/2020	11/30/2021	1.50 / rsf / month	/ rsf / year	15,000.00
12/01/2021	11/30/2022	1.55 / rsf / month	/ rsf / year	15,500.00
12/01/2022	11/30/2023	1.60 / rsf / month	/ rsf / year	16,000.00
12/01/2023	11/30/2024	1.65 / rsf / month	/ rsf / year	16,500.00
12/01/2024	11/30/2025	1.70 / rsf / month	/ rsf / year	17,000.00

- B. Additional Rent: In addition to the base monthly rent, Tenant will pay Landlord all other amounts, as provided by the attached (Check all that apply):

- ☒ (1) Commercial Lease Addendum for Expense Reimbursement (TXR-2103)  
☐ (2) Commercial Lease Addendum for Percentage Rent (TXR-2106)  
☐ (3) Commercial Lease Addendum for Parking (TXR-2107)  
☐ (4)

All amounts payable under the applicable addenda are deemed to be "rent" for the purposes of this lease.

- C. First Full Month's Rent: The first full monthly rent is due on or before Upon landlord receiving certificate of occupancy on improved building.

- D. Prorated Rent: If the Commencement Date is on a day other than the first day of a month, Tenant will pay Landlord as prorated rent, an amount equal to the base monthly rent multiplied by the following fraction: the number of days from the Commencement Date to the first day of the following month divided by the number of days in the month in which this lease commences. The prorated rent is due on or before the Commencement Date.

- E. Place of Payment: Tenant will remit all amounts due to Landlord under this lease to the following person at the place stated or to such other person or place as Landlord may later designate in writing:

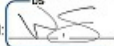
Name: Alexander EV Park, LLC

Address: 317 w 3rd Street, Austin, TX 78701

- F. Method of Payment: Tenant must pay all rent timely without demand, deduction, or offset, except as permitted by law or this lease. If Tenant fails to timely pay any amounts due under this lease or if any

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



CS D

, and Tenant:

Page 3 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

check of Tenant is returned to Landlord by the institution on which it was drawn, Landlord after providing written notice to Tenant may require Tenant to pay subsequent amounts that become due under this lease in certified funds. This paragraph does not limit Landlord from seeking other remedies under this lease for Tenant's failure to make timely payments with good funds.

G. **Late Charges:** If Landlord does not actually receive a rent payment at the designated place of payment within 5 days after the date it is due, Tenant will pay Landlord a late charge equal to 10% of the amount due. In this paragraph, the mailbox is not the agent for receipt for Landlord. The late charge is a cost associated with the collection of rent and Landlord's acceptance of a late charge does not waive Landlord's right to exercise remedies under Paragraph 20.

H. **Returned Checks:** Tenant will pay \$ 25.00 for each check Tenant tenders to Landlord which is returned by the institution on which it is drawn for any reason, plus any late charges until Landlord receives payment.

##### 5. SECURITY DEPOSIT:

A. Upon execution of this lease, Tenant will pay \$ 45,000.00 to Landlord as a security deposit.

B. Landlord may apply the security deposit to any amounts owed by Tenant under this lease. If Landlord applies any part of the security deposit during any time this lease is in effect to amounts owed by Tenant, Tenant must, within 10 days after receipt of notice from Landlord, restore the security deposit to the amount stated.

C. Within 60 days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

6. **TAXES:** Unless otherwise agreed by the parties, Landlord will pay all real property ad valorem taxes assessed against the leased premises.

##### 7. UTILITIES:

A. The party designated below will pay for the following utility charges to the leased premises and any connection charges for the utilities. (Check all that apply.)

	<u>N/A</u>	<u>Landlord</u>	<u>Tenant</u>
(1) Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Electric	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) Gas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Telephone	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Internet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(7) Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Trash	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(9) <u>Septic &amp; Well Maintenance</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(10) All other utilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

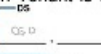
B. The party responsible for the charges under Paragraph 7A will pay the charges directly to the utility service provider. The responsible party may select the utility service provider except that if Tenant selects the provider, any access or alterations to the Property or leased premises necessary for the utilities may be made only with Landlord's prior consent, which Landlord will not unreasonably withhold. If Landlord incurs any liability for utility or connection charges for which Tenant is responsible to pay

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



and Tenant:



Page 4 of 15



19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

and Landlord pays such amount, Tenant will immediately upon written notice from Landlord reimburse Landlord such amount.

C. **Notice:** Tenant should determine if all necessary utilities are available to the leased premises and are adequate for Tenant's intended use.

D. **After-Hours HVAC Charges:** "HVAC services" means heating, ventilating, and air conditioning of the leased premises. (Check one box only.)

☐ (1) Landlord is obligated to provide the HVAC services to the leased premises only during the Property's operating hours specified under Paragraph 9C.

☐ (2) Landlord will provide the HVAC services to the leased premises during the operating hours specified under Paragraph 9C for no additional charge and will, at Tenant's request, provide HVAC services to the leased premises during other hours for an additional charge of \$ \_\_\_\_\_ per hour. Tenant will pay Landlord the charges under this paragraph immediately upon receipt of Landlord's invoice. Hourly charges are charged on a half-hour basis. Any partial hour will be rounded up to the next half hour. Tenant will comply with Landlord's procedures to make a request to provide the additional HVAC services under this paragraph.

☒ (3) Tenant will pay for the HVAC services under this lease.

#### 8. INSURANCE:

A. During all times this lease is in effect, Tenant must, at Tenant's expense, maintain in full force and effect from an insurer authorized to operate in Texas:

(1) public liability insurance naming Landlord as an additional insured with policy limits on an occurrence basis in a minimum amount of: (check only (a) or (b) below)

☒ (a) \$1,000,000; or

☐ (b) \$2,000,000.

If neither box is checked the minimum amount will be \$1,000,000.

(2) personal property damage insurance for the business operations being conducted in the leased premises and contents in the leased premises in an amount sufficient to replace such contents after a casualty loss; and

☐ (3) business interruption insurance sufficient to pay 12 months of rent payments;

B. Before the Commencement Date, Tenant must provide Landlord with a copy of insurance certificates evidencing the required coverage. If the insurance coverage is renewed or changes in any manner or degree at any time this lease is in effect, Tenant must, not later than 10 days after the renewal or change, provide Landlord a copy of an insurance certificate evidencing the renewal or change.

C. If Tenant fails to maintain the required insurance in full force and effect at all times this lease is in effect, Landlord may:

(1) purchase insurance that will provide Landlord the same coverage as the required insurance and Tenant must immediately reimburse Landlord for such expense; or

(2) exercise Landlord's remedies under Paragraph 20.

D. Unless the parties agree otherwise, Landlord will maintain in full force and effect insurance for: (1) fire and extended coverage in an amount to cover the reasonable replacement cost of the improvements of the Property; and (2) any public liability insurance in an amount that Landlord determines reasonable and appropriate.

E. If there is an increase in Landlord's insurance premiums for the leased premises or Property or its contents that is caused by Tenant, Tenant's use of the leased premises, or any improvements made by or for Tenant, Tenant will, for each year this lease is in effect, pay Landlord the increase immediately

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:

, and Tenant:

Page 5 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

after Landlord notifies Tenant of the increase. Any charge to Tenant under this Paragraph 8E will be equal to the actual amount of the increase in Landlord's insurance premium.

**9. USE AND HOURS:**

- A. Tenant may use the leased premises for the following purpose and no other: Assembly, manufacturing, test driving, events, office and retail services.
- B. Unless otherwise specified in this lease, Tenant will operate and conduct its business in the leased premises during business hours that are typical of the industry in which Tenant represents it operates.
- C. The Property maintains operating hours of *(specify hours, days of week, and if inclusive or exclusive of weekends and holidays)*: 24-7

**10. LEGAL COMPLIANCE:**

- A. Tenant may not use or permit any part of the leased premises or the Property to be used for:
- (1) any activity which is a nuisance or is offensive, noisy, or dangerous;
  - (2) any activity that interferes with any other tenant's normal business operations or Landlord's management of the Property;
  - (3) any activity that violates any applicable law, regulation, zoning ordinance, restrictive covenant, governmental order, owners' association rules, tenants' association rules, Landlord's rules or regulations, or this lease;
  - (4) any hazardous activity that would require any insurance premium on the Property or leased premises to increase or that would void any such insurance;
  - (5) any activity that violates any applicable federal, state, or local law, including but not limited to those laws related to air quality, water quality, hazardous materials, wastewater, waste disposal, air emissions, or other environmental matters;
  - (6) the permanent or temporary storage of any hazardous material; or
  - (7) \_\_\_\_\_.
- B. "Hazardous material" means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent, or oil as defined by any federal, state, or local environmental law, regulation, ordinance, or rule existing as of the date of this lease or later enacted.
- C. Landlord does not represent or warrant that the leased premises or Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, and other matters that may relate to Tenant's intended use. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters related to the use of the leased premises or Property. Tenant agrees that it is not relying on any warranty or representation made by Landlord, Landlord's agent, or any broker concerning the use of the leased premises or Property.

**11. SIGNS:**

- A. Tenant may not post or paint any signs or place any decoration outside the leased premises or on the Property without Landlord's written consent. Landlord may remove any unauthorized sign or decorations, and Tenant will promptly reimburse Landlord for its cost to remove any unauthorized sign or decorations.

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



, and Tenant:



Page 6 of 15



19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

- B. Any authorized sign must comply with all laws, restrictions, zoning ordinances, and any governmental order relating to signs on the leased premises or Property. Landlord may temporarily remove any authorized sign to complete repairs or alterations to the leased premises or the Property.
- C. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all signs or decorations that were placed on the Property or leased premises by or at the request of Tenant. Any signs or decorations that Landlord does not require Tenant to remove and that are fixtures, become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

**12. ACCESS BY LANDLORD:**

- A. During Tenant's normal business hours Landlord may enter the leased premises for any reasonable purpose, including but not limited to purposes for repairs, maintenance, alterations, and showing the leased premises to prospective tenants or purchasers. Landlord may access the leased premises after Tenant's normal business hours if: (1) entry is made with Tenant's permission; or (2) entry is necessary to complete emergency repairs. Landlord will not unreasonably interfere with Tenant's business operations when accessing the leased premises.
- B. During the last 90 days of this lease, Landlord may place a "For Lease" or similarly worded sign on the leased premises.

**13. MOVE-IN CONDITION:** Tenant has inspected the leased premises and accepts it in its present (as-is) condition unless expressly noted otherwise in this lease or in an addendum. Landlord and any agent have made no express or implied warranties as to the condition or permitted use of the leased premises or Property.

**14. MOVE-OUT CONDITION AND FORFEITURE OF TENANT'S PERSONAL PROPERTY:**

- A. At the time this lease ends, Tenant will surrender the leased premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials, and environmental contaminants.
- B. If Tenant leaves any personal property in the leased premises after Tenant surrenders possession of the leased premises, Landlord may: (1) require Tenant, at Tenant's expense, to remove the personal property by providing written notice to Tenant; or (2) retain such personal property as forfeited property to Landlord.
- C. "Surrender" means vacating the leased premises and returning all keys and access devices to Landlord. "Normal wear and tear" means deterioration that occurs without negligence, carelessness, accident, or abuse.
- D. By providing written notice to Tenant before this lease ends, Landlord may require Tenant, upon move-out and at Tenant's expense, to remove, without damage to the Property or leased premises, any or all fixtures that were placed on the Property or leased premises by or at the request of Tenant. Any fixtures that Landlord does not require Tenant to remove become the property of the Landlord and must be surrendered to Landlord at the time this lease ends.

**15. MAINTENANCE AND REPAIRS:**

- A. Cleaning: Tenant must keep the leased premises clean and sanitary and promptly dispose of all garbage in appropriate receptacles. ☐ Landlord ☒ Tenant will provide, at its expense, janitorial services to the leased premises that are customary and ordinary for the property type. Tenant will maintain any grease trap on the Property which Tenant uses, including but not limited to periodic

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



, and Tenant:



Page 7 of 15

Produced with Lone Wolf Transactions (ZipForm Edition) 231

Cambridge, Ontario, Canada N1T 1J5 www.lwof.com

00 HWY 290

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

emptying and cleaning, as well as making any modification to the grease trap that may be necessary to comply with any applicable law.

B. Repairs of Conditions Caused by a Party: Each party must promptly repair a condition in need of repair that is caused, either intentionally or negligently, by that party or that party's guests, patrons, invitees, contractors or permitted subtenants.

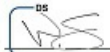
C. Repair and Maintenance Responsibility: Except as otherwise provided by this Paragraph 15, the party designated below, at its expense, is responsible to maintain and repair the following specified items in the leased premises (if any). The specified items must be maintained in clean and good operable condition. If a governmental regulation or order requires a modification to any of the specified items, the party designated to maintain the item must complete and pay the expense of the modification. The specified items include and relate only to real property in the leased premises. Tenant is responsible for the repair and maintenance of its personal property. (Check all that apply.)

	N/A	Landlord	Tenant
(1) Foundation, exterior walls, roof, and other structural components .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(2) Glass and windows .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(3) Fire protection equipment .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(4) Fire sprinkler systems .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(5) Exterior & overhead doors, including closure devices, molding, locks, and hardware .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Grounds maintenance, including landscaping and irrigation systems .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(7) Interior doors, including closure devices, frames, molding, locks, and hardware .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(8) Parking areas and walks .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(9) Plumbing systems, drainage systems and sump pumps .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(10) Electrical systems, mechanical systems .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(11) Ballast and lamp replacement .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(12) Heating, Ventilation and Air Conditioning (HVAC) systems .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(13) HVAC system replacement .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(14) Signs and lighting: .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(a) Pylon .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Facia .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Monument .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Door/Suite .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) Other: .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(15) Extermination and pest control, excluding wood-destroying insects. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(16) Fences and Gates .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(17) Storage yards and storage buildings .....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(18) Wood-destroying insect treatment and repairs .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(19) Cranes and related systems .....	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(20) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(21) .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(22) All other items and systems. ....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D. Repair Persons: Repairs must be completed by trained, qualified, and insured repair persons.

(TXR-2101) 4-1-14

Initiated for Identification by Landlord:




Page 8 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

- E. HVAC Service Contract: If Tenant maintains the HVAC system under Paragraph 15C(12), Tenant ☒ is ☐ is not required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service contract in effect at all times during this lease, Landlord may do so and Tenant will reimburse Landlord for the expense of such maintenance and service contract or Landlord may exercise Landlord's remedies under Paragraph 20.
- F. Common Areas: Landlord will maintain any common areas in the Property in a manner as Landlord determines to be in the best interest of the Property. Landlord will maintain any elevator and signs in the common area. Landlord may change the size, dimension, and location of any common areas, provided that such change does not materially impair Tenant's use and access to the leased premises. Tenant has the non-exclusive license to use the common areas in compliance with Landlord's rules and regulations. Tenant may not solicit any business in the common areas or interfere with any other person's right to use the common areas. This paragraph does not apply if Paragraph 2A(2) applies.
- G. Notice of Repairs: Tenant must promptly notify Landlord of any item that is in need of repair and that is Landlord's responsibility to repair. All requests for repairs to Landlord must be in writing.
- H. Failure to Repair: Landlord must make a repair for which Landlord is responsible within a reasonable period of time after Tenant provides Landlord written notice of the needed repair. If Tenant fails to repair or maintain an item for which Tenant is responsible within 10 days after Landlord provides Tenant written notice of the needed repair or maintenance, Landlord may: (1) repair or maintain the item, without liability for any damage or loss to Tenant, and Tenant must immediately reimburse Landlord for the cost to repair or maintain; or (2) exercise Landlord's remedies under Paragraph 20.

**16. ALTERATIONS:**

- A. Tenant may not alter (including making any penetrations to the roof, exterior walls or foundation), improve, or add to the Property or the leased premises without Landlord's written consent. Landlord will not unreasonably withhold consent for the Tenant to make reasonable non-structural alterations, modifications, or improvements to the leased premises.
- B. Tenant may not alter any locks or any security devices on the Property or the leased premises without Landlord's consent. If Landlord authorizes the changing, addition, or rekeying of any locks or other security devices, Tenant must immediately deliver the new keys and access devices to Landlord.
- C. If a governmental order requires alteration or modification to the leased premises, the party obligated to maintain and repair the item to be modified or altered as designated in Paragraph 15 will, at its expense, modify or alter the item in compliance with the order and in compliance with Paragraphs 16A and 17.
- D. Any alterations, improvements, fixtures or additions to the Property or leased premises installed by either party during the term of this lease will become Landlord's property and must be surrendered to Landlord at the time this lease ends, except for those fixtures Landlord requires Tenant to remove under Paragraph 11 or 14 or if the parties agree otherwise in writing.

17. **LIENS**: Tenant may not do anything that will cause the title of the Property or leased premises to be encumbered in any way. If Tenant causes a lien to be filed against the Property or leased premises, Tenant will within 20 days after receipt of Landlord's demand: (1) pay the lien and have the lien released of record; or (2) take action to discharge the lien. Tenant will provide Landlord a copy of any release Tenant obtains pursuant to this paragraph.

18. **LIABILITY**: To the extent permitted by law, Landlord is NOT responsible to Tenant or Tenant's employees, patrons, guests, or invitees for any damages, injuries, or losses to person or property caused by:

(TXR-2101) 4-1-14

Initialed for Identification by Landlord



, and Tenant:



Page 9 of 15

Produced with Lone Wolf Transactions (zipForm Edition) 231 Sheppard Ave. East, Toronto, Ontario, Canada M1T 4S5 www.lwof.com

© HWY 290



19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

- A. an act, omission, or neglect of: Tenant; Tenant's agent; Tenant's guest; Tenant's employees; Tenant's patrons; Tenant's invitees; or any other tenant on the Property;
- B. fire, flood, water leaks, ice, snow, hail, winds, explosion, smoke, riot, strike, interruption of utilities, theft, burglary, robbery, assault, vandalism, other persons, environmental contaminants, or other occurrences or casualty losses;

**19. INDEMNITY:** Each party will indemnify, defend, and hold the other party harmless from any property damage, personal injury, suits, actions, liabilities, damages, cost of repairs or service to the leased premises or Property, or any other loss caused, negligently or otherwise, by that party or that party's employees, patrons, guests, or invitees.

**20. DEFAULT:**

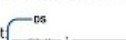
- A. If Landlord fails to comply with this lease within 30 days after Tenant notifies Landlord of Landlord's failure to comply, Landlord will be in default and Tenant may seek any remedy provided by law. If, however, Landlord's non-compliance reasonably requires more than 30 days to cure, Landlord will not be in default if the cure is commenced within the 30-day period and is diligently pursued.
- B. If Landlord does not actually receive at the place designated for payment any rent due under this lease within 5 days after it is due, Tenant will be in default. If Tenant fails to comply with this lease for any other reason within 10 days after Landlord notifies Tenant of its failure to comply, Tenant will be in default.
- C. If Tenant is in default, Landlord may, with at least 3 days written notice to Tenant: (i) terminate this lease, or (ii) terminate Tenant's right to occupy the leased premises without terminating this lease and may accelerate all rents which are payable during the remainder of this lease or any renewal period. Landlord will attempt to mitigate any damage or loss caused by Tenant's breach by using commercially reasonable means. If Tenant is in default, Tenant will be liable for:
- (1) any lost rent;
  - (2) Landlord's cost of reletting the leased premises, including brokerage fees, advertising fees, and other fees necessary to relet the leased premises;
  - (3) repairs to the leased premises for use beyond normal wear and tear;
  - (4) all Landlord's costs associated with eviction of Tenant, such as attorney's fees, court costs, and prejudgment interest;
  - (5) all Landlord's costs associated with collection of rent such as collection fees, late charges, and returned check charges;
  - (6) cost of removing any of Tenant's equipment or fixtures left on the leased premises or Property;
  - (7) cost to remove any trash, debris, personal property, hazardous materials, or environmental contaminants left by Tenant or Tenant's employees, patrons, guests, or invitees in the leased premises or Property;
  - (8) cost to replace any unreturned keys or access devices to the leased premises, parking areas, or Property; and
  - (9) any other recovery to which Landlord may be entitled under this lease or under law.
- 21. ABANDONMENT, INTERRUPTION OF UTILITIES, REMOVAL OF PROPERTY, AND LOCKOUT:** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Tenant's property; and (d) "lock-out" of Tenant.
- 22. HOLDOVER:** If Tenant fails to vacate the leased premises at the time this lease ends, Tenant will become a tenant-at-will and must vacate the leased premises immediately upon receipt of demand from Landlord. No holding over by Tenant, with or without the consent of Landlord, will extend this lease. Tenant will

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



, and Tenant:



Page 10 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

indemnify Landlord and any prospective tenants for any and all damages caused by the holdover. Rent for any holdover period will be 150% of the base monthly rent plus any additional rent calculated on a daily basis and will be immediately due and payable daily without notice or demand.

**23. LANDLORD'S LIEN AND SECURITY INTEREST:** To secure Tenant's performance under this lease, Tenant grants to Landlord a lien and security interest against all of Tenant's nonexempt personal property that is in the leased premises or on the Property. This lease is a security agreement for the purposes of the Uniform Commercial Code. Landlord may file a financing statement to perfect Landlord's security interest under the Uniform Commercial Code.

**24. ASSIGNMENT AND SUBLETTING:** Landlord may assign this lease to any subsequent owner of the Property. Tenant may not assign this lease or sublet any part of the leased premises without Landlord's written consent. An assignment of this lease or subletting of the leased premises without Landlord's written consent is voidable by Landlord. If Tenant assigns this lease or sublets any part of the leased premises, Tenant will remain liable for all of Tenant's obligations under this lease regardless if the assignment or sublease is made with or without the consent of Landlord.

**25. RELOCATION:**

☐ A. By providing Tenant with not less than 90 days advanced written notice, Landlord may require Tenant to relocate to another location in the Property, provided that the other location is equal in size or larger than the leased premises then occupied by Tenant and contains similar leasehold improvements. Landlord will pay Tenant's reasonable out-of-pocket moving expenses for moving to the other location. "Moving expenses" means reasonable expenses payable to professional movers, utility companies for connection and disconnection fees, wiring companies for connecting and disconnecting Tenant's office equipment required by the relocation, and printing companies for reprinting Tenant's stationary and business cards. A relocation of Tenant will not change or affect any other provision of this lease that is then in effect, including rent and reimbursement amounts, except that the description of the suite or unit number will automatically be amended.

☒ B. Landlord may not require Tenant to relocate to another location in the Property without Tenant's prior consent.

**26. SUBORDINATION:**

A. This lease and Tenant's leasehold interest are and will be subject, subordinate, and inferior to:

- (1) any lien, encumbrance, or ground lease now or hereafter placed on the leased premises or the Property that Landlord authorizes;
- (2) all advances made under any such lien, encumbrance, or ground lease;
- (3) the interest payable on any such lien or encumbrance;
- (4) any and all renewals and extensions of any such lien, encumbrance, or ground lease;
- (5) any restrictive covenant affecting the leased premises or the Property; and
- (6) the rights of any owners' association affecting the leased premises or Property.

B. Tenant must, on demand, execute a subordination, attornment, and non-disturbance agreement that Landlord may request that Tenant execute, provided that such agreement is made on the condition that this lease and Tenant's rights under this lease are recognized by the lien-holder.

**27. ESTOPPEL CERTIFICATES & FINANCIAL INFORMATION:**

A. Within 10 days after receipt of a written request from Landlord, Tenant will execute and deliver to Landlord an estoppel certificate that identifies the terms and conditions of this lease.

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



, and Tenant



Page 11 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

- B. Within 30 days after receipt of a written request from Landlord, Tenant will provide to Landlord Tenant's current financial information (balance sheet and income statement). Landlord may request the financial information no more frequently than once every 12 months.

**28. CASUALTY LOSS:**

- A. Tenant must immediately notify Landlord of any casualty loss in the leased premises. Within 20 days after receipt of Tenant's notice of a casualty loss, Landlord will notify Tenant if the leased premises are less than or more than 50% unusable, on a per square foot basis, and if Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss.
- B. If the leased premises are less than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord will restore the leased premises to substantially the same condition as before the casualty. If Landlord fails to substantially restore within the time required, Tenant may terminate this lease.
- C. If the leased premises are more than 50% unusable and Landlord can substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty, Landlord may: (1) terminate this lease; or (2) restore the leased premises to substantially the same condition as before the casualty. If Landlord chooses to restore and does not substantially restore the leased premises within the time required, Tenant may terminate this lease.
- D. If Landlord notifies Tenant that Landlord cannot substantially restore the leased premises within 120 days after Tenant notifies Landlord of the casualty loss, Landlord may: (1) choose not to restore and terminate this lease; or (2) choose to restore, notify Tenant of the estimated time to restore, and give Tenant the option to terminate this lease by notifying Landlord within 10 days.
- E. If this lease does not terminate because of a casualty loss, rent will be reduced from the date Tenant notifies Landlord of the casualty loss to the date the leased premises are substantially restored by an amount proportionate to the extent the leased premises are unusable.

**29. CONDEMNATION:** If after a condemnation or purchase in lieu of condemnation the leased premises are totally unusable for the purposes stated in this lease, this lease will terminate. If after a condemnation or purchase in lieu of condemnation the leased premises or Property are partially unusable for the purposes of this lease, this lease will continue and rent will be reduced in an amount proportionate to the extent the leased premises are unusable. Any condemnation award or proceeds in lieu of condemnation are the property of Landlord and Tenant has no claim to such proceeds or award. Tenant may seek compensation from the condemning authority for its moving expenses and damages to Tenant's personal property.

**30. ATTORNEY'S FEES:** Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs of litigation from the nonprevailing party.

**31. REPRESENTATIONS:**

- A. Tenant's statements in this lease and any application for rental are material representations relied upon by Landlord. Each party signing this lease represents that he or she is of legal age to enter into a binding contract and is authorized to sign the lease. If Tenant makes any misrepresentation in this lease or in any application for rental, Tenant is in default.
- B. Landlord is not aware of any material defect on the Property that would affect the health and safety of an ordinary person or any environmental hazard on or affecting the Property that would affect the

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



, and Tenant



Page 12 of 15

19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

health or safety of an ordinary person, except: \_\_\_\_\_

- C. Each party and each signatory to this lease represents that: (1) it is not a person named as a Specially Designated National and Blocked Person as defined in Presidential Executive Order 13224; (2) it is not acting, directly or indirectly, for or on behalf of a Specially Designated and Blocked Person; and (3) is not arranging or facilitating this lease or any transaction related to this lease for a Specially Designated and Blocked Person. Any party or any signatory to this lease who is a Specially Designated and Blocked person will indemnify and hold harmless any other person who relies on this representation and who suffers any claim, damage, loss, liability or expense as a result of this representation.

**32. BROKERS:**

- A. The brokers to this lease are:

Principal Broker: _____	Cooperating Broker: _____
<u>DEN Property Group, LLC</u>	_____
Agent: <u>William M. Steakley</u>	Agent: _____
Address: <u>317 W 3rd St</u>	Address: _____
<u>Austin, TX 78701</u>	_____
Phone & Fax: _____	Phone & Fax: _____
E-mail: <u>will@denpg.com</u>	E-mail: _____
License No.: <u>8999937</u>	License No.: _____

Principal Broker: (Check only one box)  
☐ represents Landlord only.  
☐ represents Tenant only.  
☒ is an intermediary between Landlord and Tenant.

Cooperating Broker represents Tenant.

- B. Fees:

- ☐ (1) Principal Broker's fee will be paid according to: (Check only one box).  
☐ (a) a separate written commission agreement between Principal Broker and:  
☐ Landlord ☐ Tenant.  
☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).  
☐ (2) Cooperating Broker's fee will be paid according to: (Check only one box).  
☐ (a) a separate written commission agreement between Cooperating Broker and:  
☐ Principal Broker ☐ Landlord ☐ Tenant.  
☐ (b) the attached Commercial Lease Addendum for Broker's Fee (TXR-2102).

- 33. ADDENDA:** Incorporated into this lease are the addenda, exhibits and other information marked in the Addenda and Exhibit section of the Table of Contents. If Landlord's Rules and Regulations are made part of this lease, Tenant agrees to comply with the Rules and Regulations as Landlord may, at its discretion, amend from time to time.

- 34. NOTICES:** All notices under this lease must be in writing and are effective when hand-delivered, sent by mail, or sent by facsimile transmission to:

Landlord at: Alexander EV Park, LLC  
 Address: 317 West 3rd St, Austin, TX 78701

(TXR-2101) 4-1-14

Initialed for Identification by Landlord: \_\_\_\_\_, and Tenant: \_\_\_\_\_

Page 13 of 15



19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642

Phone: (512)799-3777

Fax:

and a copy to:

Address:

Phone:

Fax:

☒ Landlord also consents to receive notices by e-mail at: will@denpg.com

Tenant at the leased premises,

and a copy to:

Address:

Phone: (305)962-3851

Fax:

☒ Tenant also consents to receive notices by e-mail at: adrian@volcon.com**35. SPECIAL PROVISIONS:****Due to lack of credit and rental history, landlord requires tenant to prepay rent.**

In addition to the security deposit, tenant will pre-pay 6 months of rent to landlord upon lease execution. The pre-paid rent will be credited to the tenant's last 6 months of payments on final lease term. Prior to occupancy, tenant will have complimentary access and use of the land while the landlord entitles and develops the property.

Tenant has the right to pay for preliminary site work, gate improvements and maintenance of the test track.

Commencement (they dat monthly lease payments to landlord begins) date will be 24hrs after landlord receives the "certificate of occupancy" on the completed building.

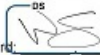
The proposed 35,000sf building may have additional tenants and who will share all common elements, amenities, frontage access and parking.

**36. AGREEMENT OF PARTIES:**

- A. Entire Agreement: This lease contains the entire agreement between Landlord and Tenant and may not be changed except by written agreement.
- B. Binding Effect: This lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors, and permitted assigns.
- C. Joint and Several: All Tenants are jointly and severally liable for all provisions of this lease. Any act or notice to, or refund to, or signature of, any one or more of the Tenants regarding any term of this lease, its renewal, or its termination is binding on all Tenants.
- D. Controlling Law: The laws of the State of Texas govern the interpretation, performance, and enforcement of this lease.
- E. Severable Clauses: If any clause in this lease is found invalid or unenforceable by a court of law, the remainder of this lease will not be affected and all other provisions of this lease will remain valid and enforceable.
- F. Waiver: Landlord's delay, waiver, or non-enforcement of acceleration, contractual or statutory lien, rental due date, or any other right will not be deemed a waiver of any other or subsequent breach by Tenant or any other term in this lease.

(TXR-2101) 4-1-14

Initialed for Identification by Landlord:



and Tenant:



Page 14 of 15



19201 HWY 29

Commercial Lease concerning: Liberty Hill, TX 78642


- G. Quiet Enjoyment: Provided that Tenant is not in default of this lease, Landlord covenants that Tenant will enjoy possession and use of the leased premises free from material interference.
- H. Force Majeure: If Landlord's performance of a term in this lease is delayed by strike, lock-out, shortage of material, governmental restriction, riot, flood, or any cause outside Landlord's control, the time for Landlord's performance will be abated until after the delay.
- I. Time: Time is of the essence. The parties require strict compliance with the times for performance.

**Brokers are not qualified to render legal advice, property inspections, surveys, engineering studies, environmental assessments, tax advice, or compliance inspections. The parties should seek experts to render such services. READ THIS LEASE CAREFULLY. If you do not understand the effect of this Lease, consult your attorney BEFORE signing.**

Landlord: Alexander EV Park, LLCTenant: Volcon, Inc.

By: \_\_\_\_\_  
 DocuSigned by:  
 By (signature):   
 Printed Name: William M. Steakley  
 Title: Manager Date: November 19, 2020

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_  
 DocuSigned by:  
 By (signature):   
 Printed Name: Adrian James  
 Title: Co-Founder Date: November 20, 2020

By: \_\_\_\_\_  
 By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_



# COMMERCIAL LEASE AMENDMENT

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
(©Texas Association of REALTORS®, Inc. 2019)

## AMENDMENT TO THE COMMERCIAL LEASE BETWEEN THE UNDERSIGNED PARTIES CONCERNING THE LEASED PREMISES AT 19201 HWY 29, Liberty Hill, TX 78642

Effective on February 23, 2021, Landlord and Tenant amend the above-referenced lease as follows:

☒ A. Leased Premises: The suite or unit number identified in Paragraph 2A(1) is:

☐ (1) changed to \_\_\_\_\_.

☒ (2) contains approximately 40940 square feet.

☒ B. Term:

☐ (1) The length of the term stated in Paragraph 3A is changed to \_\_\_\_\_ months and \_\_\_\_\_ days.

☐ (2) The Commencement Date stated in Paragraph 3A is changed to \_\_\_\_\_.

☐ (3) The Expiration Date stated in Paragraph 3A is changed to \_\_\_\_\_.

☒ C. Rent: The amount of the base monthly rent specified in Paragraph 4A is changed to:

\$ \$61,410/mo (\$1.50/FT) from 12/01/2020 to 11/30/2021 ;  
 \$ \$63,457/mo (\$1.55/FT) from 12/01/2021 to 11/30/2022 ;  
 \$ \$65,504/mo (\$1.60/FT) from 12/01/2022 to 11/30/2023 ;  
 \$ \$67,551/mo (\$1.65/FT) from 12/01/2023 to 11/30/2024 ;  
 \$ \$69,598/mo (\$1.70/FT) from 12/01/2024 to 11/30/2025 .

☒ D. Security Deposit: The amount of the security deposit in Paragraph 5 is changed to \$ 184,230.00 .

☐ E. Maintenance and Repairs: The following item(s) specified in the identified subparagraph of Paragraph 15C will be maintained by the party designated below:

Para. No.	Description	Responsible Party
_____	_____	<input type="checkbox"/> N/A <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant
_____	_____	<input type="checkbox"/> N/A <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant
_____	_____	<input type="checkbox"/> N/A <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant
_____	_____	<input type="checkbox"/> N/A <input type="checkbox"/> Landlord <input type="checkbox"/> Tenant

☐ F. Parking:

☐ (1) Common Parking: The number of vehicles identified in Paragraph A(1) of the Commercial Lease Parking Addendum is changed \_\_\_\_\_ to vehicles.

☐ (2) Restricted Common Parking for Tenants: The number of vehicles identified in Paragraph A(2) of the Commercial Lease Parking Addendum is changed to \_\_\_\_\_ vehicles.

(TXR-2114) 1-26-10

Initiated for Identification by Landlord:

, and Tenant:

Page 1 of 2

Amendment to Commercial Lease concerning 19201 HWY 29, Liberty Hill, TX 78642


- ☐ (3) **Assigned Parking:** Tenant's assigned parking areas identified in Paragraph A(3) of the Commercial Lease Parking Addendum is changed to \_\_\_\_\_
- ☐ (4) **Parking Rental:** The amount of rent identified in Paragraph B of the Commercial Lease Parking Addendum is changed to \$ \_\_\_\_\_
- ☒ G. Other: Paragraph(s) Section 35 are changed to read *(cite specific paragraphs and copy the applicable paragraphs verbatim, making any necessary changes):*
- 1) **Additional Special Provisions:** "Landlord anticipates delivering warm shell in Q1 2021"
- 2) **Additional Special Provisions:** "Building size has increased to approx. 40,940sf rentable square feet and will be a purpose-built facility leased exclusively to Volcon Inc."
- 3) **Additional Special Provisions:** "Tenant may use undeveloped, open land for test track."
- 4) **New attachment to Lease Agreement:** "Commercial Lease Addendum for Expense Reimbursement"
- 5) **Correction in Special Provisions:** Commencement date (the date monthly lease payments to landlord begins) will be 24hrs after landlord receives the "certificate of occupancy" on the completed building. All printed Tenant Name signatures changed to "Christian Okonsky".
- 6) All lease terms will adjust according to tenant's occupancy date upon completion.
- 7) Upon execution, Volcon, Inc. additional prepaid rents and deposits are due as follows:  
 Additional Prepaid Rents Due: \$315,588 (50% paid before 3/1/2021 and 50% before 4/1/2021)  
 Additional Security Deposit: \$139,230 (50% paid before 3/1/2021 and 50% before 4/1/2021)

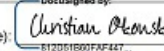
Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

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

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

By (signature):   
 Printed Name: William M. Steukley  
 Title: \_\_\_\_\_ Date: February 24, 2021

By (signature):   
 Printed Name: Christian Okonsky  
 Title: \_\_\_\_\_ Date: February 24, 2021

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

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

By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

By (signature): \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of June 7, 2021 (the "Effective Date"), by and between Volcon, Inc., a Delaware corporation (the "Company") having its principal place of business at 2590 Oakmont Drive, Suite 520, Round Rock, TX 78665, and Greg Endo (Executive), and the Company and the Executive collectively referred to herein as the "Parties".

## WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company's Chief Financial Officer ("CFO") and the Company would like to retain Executive as its CFO, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as CFO. Executive shall report directly to the Company's Board of Directors (the "Board").

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and businesslike manner. Executive shall have all duties and responsibilities commensurate with his title. Executive also agrees that the Board shall determine from time to time such other duties as may be assigned to him consistent with his title. Executive agrees to carry out and abide by such directions of the Board.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere with Executive's responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

2. Salary and Additional Compensation.

(a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary ("Base Salary"), which shall initially be \$190,000. The Board of Directors of the Company (the "Board") shall review the Executive's Base Salary no less than annually (at the end of the Company's compensation year) and may increase (but not decrease) such Base Salary during the term of this Agreement.

(b) Annual Bonus. For each compensation year during the Term, Executive will be entitled to receive an annual cash bonus (the "Annual Bonus"), within ninety (90) days of the completion of such year, payable on the date that bonuses are paid to senior officers of the Company. The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee of the Board (or the Board, if such committee has been dissolved), based on goals and objectives previously approved by the Compensation Committee of the Board (or the Board, if such committee has been dissolved). The target Annual Bonus for the 2021 compensation year is \$125,000, and thereafter the target Annual Bonus shall be determined by the Compensation Committee of the Board (or the Board, if such committee has been dissolved).

(c) Option Grant. On the Effective Date, Executive will be granted a stock option to purchase 125,000 shares of Company common stock at an exercise price of \$2.50 per share (the "Option Grant"). The Option Grant shall have a term of ten years and shall vest in three (3) equal installments on each of the succeeding three anniversary dates of the date of grant; provided Executive remains continuously employed by Company on and does not resign prior to each such vesting date. The Option Grant shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan"). In the event of a Change in Control (as defined in the Plan) prior to the final vesting of the Option Grant, all of the unvested options shall immediately vest; provided, however, in the event the acquiring party desires to replace the unvested Option Grant with a substitute of equal or greater value (the "Substitute Grant"), such proposed substitution shall be submitted to the Compensation Committee of the Board (or the Board, if such committee has been dissolved prior to the Change in Control), and the Compensation Committee of the Board (or the Board if such committee has been dissolved) shall decide whether to allow the unvested Option Grant to vest or whether to cancel the unvested Option Grant and replace them with the Substitute Grant proposed by the acquiring party. In the event of a termination without Cause, the next unvested tranche shall vest, and you shall have no less than 12 months to exercise any such options.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentation of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

4. Benefits.

(a) Vacation. Executive shall be entitled to reasonable vacation time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance. Executive shall be eligible for medical benefits through the Company's provider with the Company agreeing to cover 75% of the Executive's and 25% of the Executive's spouse and dependents' premium costs.

(c) Relocation and Living Stipend. Executive will receive a monthly stipend for living expenses in the amount of \$1,500 for the first 12 months of employment for housing in the Austin area prior to Executive's relocation. If the Executive relocates to the Austin area, Executive will receive a relocation allowance of \$15,000.

5. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

6. Termination.

(a) Termination at the Company's Election

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean that Executive: (A) pleads "guilty" or "no contest" to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or Embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) willfully engages in any inappropriate or improper conduct that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

(ii) Upon Disability or Without Cause; Death. At the election of the Company Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) with thirty (30) days prior written notice, at any time without Cause. Executive's employment with the Company will end upon Executive's death.

---

2

---

(b) Termination at Executive's Election Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation the Company may terminate Executive's employment immediately.

(c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (iii) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

#### 7. Severance.

(a) A "Covered Period" is defined as the period commencing 30 days prior to a Change in Control and ending twelve (12) months following a Change in Control.

(b) Subject to Section 7(c) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a severance payment equal to six months of Executive's Base Salary at the time of termination; provided, however, if such termination occurs during a Covered Period, the payment in shall be twelve months rather than six. Executive shall also receive a prior year's bonus, if not yet paid, payable at no less than target. Such severance payment shall be made in a single lump sum sixty (60) days following such termination provided the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.

(c) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

#### 8. Confidentiality Agreement.

(a) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non-technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from (i) reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

---

3

---

(b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control. Executive shall be permitted to retain any documents evidencing his compensation, equity holdings, or terms of employment without violation of this provision.

(c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive

understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/ or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.

(d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.

(e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney-in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

9. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

10. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.

---

4

11. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Greg Endo  
[\*\*\*]  
[\*\*\*]

If to the Company, to:

Volcon, Inc.  
2590 Oakmont Drive, Suite 520  
Round Rock, TX 78665  
Attention: CEO

12. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.

13. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal state or local law.

14. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.

15. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Travis County, Texas.

16. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.

17. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.

18. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

**Volcon, Inc.**

By: /s/ Christian Okonsky  
Name: Christian Okonsky  
Title: Chairman

Agreed to and Accepted:

**Greg Endo**

/s/ Greg Endo

Date: 6/4/21

**SUBLEASE AGREEMENT**

This Sublease Agreement (this "Sublease") is entered into as of the 01 June 2021 (the "Effective Date") by and between Sustainability Initiatives ("Tenant") and Volcon, Inc. ("Subtenant"). Each Tenant and Subtenant may be referred to individually as a "Party" and collectively as the "Parties."

**1. Premises.** The premises subject to this Sublease is for the cohabitated use of the space located at 1135 W. 6th Street, Unit 120, Austin, TX 78703 (the "Premises") with Tenant.

**2. Lease.** Tenant entered into a Lease Agreement dated June 1st 2020, with Cohn Ventures, LLC ("Landlord") for the rent and use of the Premises (the "Original Lease"). Tenant represents to Subtenant that the Original Lease is in full force and effect and that no default exists on the part of any party to the Original Lease.

**3. Agreement to Sublease.** Tenant agrees to lease to Subtenant and Subtenant hereby agrees to temporarily accept from Tenant for the term specified below, and upon all the conditions set forth herein, that portion of Tenant's interest in the Premises, including improvements.

**4. Term and Termination.** The initial term of this Sublease Agreement shall commence as of the Effective Date and continue thereafter for one (1) year, and shall renew automatically thereafter for an additional one (1) year term (the period during which this Agreement is in effect, the "Term") on the same terms and conditions, unless either party provides at least ninety (90) days' written notice of its intention not to renew to the other party prior to the expiration of the initial or any renewal term. This Agreement may be terminated (a) upon the written agreement of both Volcon Inc. and SI, (b) upon a party ceasing to do business as a going concern, or (c) a party commits a material breach of any of the provisions of this Agreement, which breach continues for a period of more than sixty (60) consecutive days after receipt of written notice from the non-breaching party specifying the breach. Notwithstanding the foregoing, termination of this Agreement shall not affect obligations of either party that may have accrued prior to the effective date of termination.

**5. Rent.** Rent will be payable in advance in monthly installments of \$2,000 due on the 1st day of each month but no later than the 3rd day of the each month during the Term. The first rent payment is payable to Tenant on June 1, 2021. Rent will be paid directly to Tenant at the address stated in the Notices section herein (or to such other places or persons as directed by Tenant) by mail, in person by personal check, or via wire or bank ACH/transfer, and will be payable in U.S. Dollars. Tenant will be responsible for paying the rent on the Original Lease to Landlord.

**6. Security Deposit.** No Security Deposit required.

**7. Tenants Failure to Give Possession.** In the event Tenant is unable to deliver possession of the Premises to Subtenant on the start date of the Term, Tenant will not be subject to any liability for such failure, the validity of this Sublease will not be affected, and the Term will not be extended. Subtenant will not be liable for rent until Tenant gives possession of the Premises to Subtenant; provided, however, that if Tenant does not give possession of the Premises to Subtenant within 7 days from the start date of the Term, Subtenant may cancel this Sublease by notice in writing to Tenant.

**8. Holdover Tenancy.** Unless this Sublease has been extended by mutual written agreement of the parties, there will be no holding over past the Term under the terms of this Sublease under any circumstances. If it becomes necessary to commence legal action to remove Subtenant from the Premises, the prevailing Party will be entitled to attorney's fees and costs in addition to damages.

**9. Use of Premises.** The Premises will be occupied only by Subtenant. Subtenant agrees not to use the Premises for any unlawful or hazardous purpose.

**10. Condition of Premises.** Subtenant has examined the Premises, including all appliances and fixtures, and acknowledges that they are in good condition and repair, normal wear and tear excepted, and accepts them in its current condition. At the end of the Term, Subtenant agrees to surrender and deliver to Tenant possession of the Premises, including all appliances and fixtures, in as good a condition as they were at the commencement of the Term, reasonable wear and tear excepted. Subtenant will be liable to Tenant for any damage occurring to the Premises and any damage to or loss of the contents thereof which are done by Subtenant or Subtenant's guests or invitees.

**11. Maintenance and Repairs.** Subtenant will maintain the Premises, including the grounds and all appliances and fixtures, in clean, sanitary and good condition and repair. Subtenant shall not paint, otherwise redecorate, add or change locks, or make any other alterations to the Premises without the prior written consent of Tenant. Subtenant will not remove Tenant's appliance and fixtures, from the Premises for any purpose. If repairs other than general maintenance are required, Subtenant will notify Tenant for such repairs.

**12. Smoking.** Smoking of any kind is strictly prohibited on any part of the Premises. This prohibition applies to Subtenant and any visitor, guest or other occupant on the Premises.

**13. Pets.** Tenant is not allowed to have or keep any pets, even temporarily, on any part of the Premises. The unauthorized presence of any pet will subject Subtenant to penalties, damages, deductions and termination of this Sublease. Properly trained service animals that provide assistance to individuals with disabilities will be permitted on the Premises with the prior written consent of Tenant. Subtenant will be responsible for the costs of de-fleaing, deodorizing and/or shampooing all or any portion of the Premises if a pet has been on the Premises at any time during the Term (whether with or without written consent of Tenant).

**14. Obligations of the Parties.** Subtenant agrees to assume and agrees to perform and comply with all of the obligations and responsibilities of Tenant under the Original Lease for the Term, except as otherwise set forth in this Sublease. Subtenant agrees to comply with all applicable laws, ordinances, requirements and regulations of any federal, state, county, municipal or other authority. Tenant agrees to maintain the Original Lease for the length of the Term, subject, however, to any earlier termination of the Original Lease without the fault of Tenant. Tenant will remain obligated to pay rent and perform and comply with all of the obligations of Tenant under the Original Lease or by law, including, if applicable, payment of resident income tax.

**15. Liability.** Tenant is not responsible or liable for any loss, claim, damage or expense as a result of any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or willful misconduct of Tenant.

**16. Right of Entry.** Tenant or Landlord or their respective agents may enter the Premises at reasonable times to inspect the Premises, to make any alterations, improvements or repairs or to show the Premises to a prospective tenant, buyer or lender. In the event of an emergency, Tenant or Landlord may enter the Premises at any time.

**17. Assignment or Subletting.** Subtenant will not assign this Sublease or sublet or grant any right to use the Premises or any portion thereof. Any attempted assignment or delegation in contravention of this provision will be void and ineffective.

**18. Notices.** All notices given under this Sublease must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or



sent via certified or registered mail, addressed to Tenant or Subtenant as follows (or to another address as that Party may designate upon reasonable notice to the other Party):

To Tenant: Sustainability Initiatives  
3267 Bee Caves Rd, suite 107-247  
Austin, TX 78746

To Subtenant:  
Volcon Inc.  
3267 Bee Caves Rd, suite 107-322  
Austin, TX 78746

**19. No Waiver.** Neither Tenant nor Subtenant shall be deemed to have waived any provision of this Sublease or the exercise of any rights held under this Sublease unless such waiver is made expressly in writing.

**20. Severability.** If any provision of this Sublease is held invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Sublease.

**21. Governing Law.** This Sublease and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws provisions.

**22. Disputes.** Any dispute arising from this Sublease shall be resolved through mediation. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

**23. Amendments.** This Sublease may be amended or modified only by a written agreement signed by both Parties.

**24. Counterparts.** This Sublease may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document.

**25. Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Sublease.

**26. Entire Agreement.** This Sublease contains the entire agreement between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to the subject matter.

IN WITNESS WHEREOF, the Parties hereto, individually or by their duly authorized representatives, have executed this Sublease as of the Effective Date.

/s/ Christian Okansky 5/4/21  
Tenant Signature and Date

Sustainability Initiatives – Christian Okansky  
Tenant Full Name

/s/ Andy Leisner 5/4/21  
Subtenant Signature and Date

Volcon, Inc. – Andy Leisner  
Subtenant Full Name

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the “Agreement”) is entered into as of June 16, 2021 (the “Effective Date”), by and between Volcon, Inc., a Delaware corporation (the “Company”) having its principal place of business at 2590 Oakmont Drive, Suite 520, Round Rock, TX 78665, and Bruce Riggs (“Executive”, and the Company and the Executive collectively referred to herein as the “Parties”).

### WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company’s Chief Operating Officer (“COO”) and the Company would like to retain Executive as its COO, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

- (a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as COO. Executive shall report directly to the Company’s Board of Directors (the “Board”).
- (b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and businesslike manner. Executive shall have all duties and responsibilities commensurate with his title. Executive also agrees that the Board shall determine from time to time such other duties as may be assigned to him consistent with his title. Executive agrees to carry out and abide by such directions of the Board.
- (c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive’s involvement in associations, charities and service on another entity’s board of directors, provided such involvement does not interfere with Executive’s responsibilities (and as it pertains to any service on another entity’s board of directors, provided such action is pre-approved by the Company).

2. Salary and Additional Compensation.

- (a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary (“Base Salary”), which shall initially be \$162,000. The Board of Directors of the Company (the “Board”) shall review the Executive’s Base Salary no less than annually (at the end of the Company’s compensation year) and may increase (but not decrease) such Base Salary during the term of this Agreement.
- (b) The RSUs issued in the Restricted Stock Agreement dated November 1, 2020 between Volcon Inc and Bruce Riggs remain in effect and will continue to vest under the original schedule.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentation of detailed receipts in the form required by the Company’s policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

1

4. Benefits.

- (a) Vacation. Executive shall be entitled to reasonable vacation time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall exercise reasonable judgment with regard to appropriate vacation scheduling.
- (b) Health Insurance. Executive shall be eligible for medical benefits through the Company’s provider with the Company agreeing to cover 75% of the Executive’s and 25% of the Executive’s spouse and dependents’ premium costs.

5. Term. The term of employment under this Agreement (the “Term”) shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

6. Supersedes Prior Agreements. With respect to the period covered by the Term, this Agreement supersedes and cancels all prior agreements relating to your employment by Volcon Inc. or any of its affiliated companies.

7. Termination.

(a) Termination at the Company’s Election

- (i) For Cause. At the election of the Company, Executive’s employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, “Cause” for termination shall mean that Executive: (A) pleads “guilty” or “no contest” to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or Embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) willfully engages in any inappropriate or improper conduct that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

- (ii) Upon Disability or Without Cause; Death. At the election of the Company Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) with thirty (30) days prior written notice, at any time without Cause. Executive's employment with the Company will end upon Executive's death.
- (b) Termination at Executive's Election. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation the Company may terminate Executive's employment immediately.
- (c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (iii) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

8. Severance.

- (a) A "Covered Period" is defined as the period commencing 30 days prior to a Change in Control and ending twelve (12) months following a Change in Control.
- (b) Subject to Section 7(c) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a severance payment equal to six months of Executive's Base Salary at the time of termination; provided, however, if such termination occurs during a Covered Period, the payment in shall be twelve months rather than six. Such severance payment shall be made in a single lump sum sixty (60) days following such termination provided the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/ or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.
- (c) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

9. Confidentiality Agreement.

(i) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non- technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

- (b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control. Executive shall be permitted to retain any documents evidencing his compensation, equity holdings, or terms of employment without violation of this provision.

- (c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/ or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.
- (d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.
- (e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney- in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

- 10. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.
- 11. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.
- 12. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:  
  
If to Executive, to:  
  
Bruce Riggs  
[\*\*\*]  
[\*\*\*]  
  
If to the Company, to:  
  
Volcon, Inc.  
2590 Oakmont Drive, Suite 520 Round Rock, TX 78665 Attention: CEO
- 13. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.
- 14. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal state or local law.
- 15. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.
- 16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Travis County, Texas.

17. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.
18. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.
19. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

**Volcon, Inc.**

By: /s/ Christian Okonsky

Name: Christian Okonsky

Title: Chairman

Agreed to and Accepted:

/s/ Bruce Riggs

**Bruce Riggs**

Date: 6/17/2021

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of August 5, 2021 (the "Effective Date"), by and between Volcon, Inc., a Delaware corporation (the "Company") having its principal place of business at 2590 Oakmont Drive, Suite 520, Round Rock, TX 78665, and Jordan Davis (Executive"), and the Company and the Executive collectively referred to herein as the "Parties").

### WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company's Chief Executive Officer ("CEO") and the Company would like to retain Executive as its CEO, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

#### 1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as CEO. Executive shall report directly to the Company's Board of Directors (the "Board").

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and businesslike manner. Executive shall have all duties and responsibilities commensurate with his title. Executive also agrees that the Board shall determine from time to time such other duties as may be assigned to him consistent with his title. Executive agrees to carry out and abide by such directions of the Board.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. For a period of five (5) weeks from the date of hire as outlined above, you shall be allowed to transition from your current employer which may include the completion of projects in process or other consultative work. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere with Executive's responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

#### 2. Salary and Additional Compensation.

(a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary ("Base Salary"), which shall initially be \$230,000. The Board of Directors of the Company (the "Board") shall review the Executive's Base Salary no less than annually (at the end of the Company's compensation year) and may increase (but not decrease) such Base Salary during the term of this Agreement.

(b) Annual Bonus. For each compensation year during the Term, Executive will be entitled to receive an annual cash bonus (the "Annual Bonus"), within ninety (90) days of the completion of such year, payable on the date that bonuses are paid to senior officers of the Company. The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee of the Board (or the Board, if such committee has been dissolved), based on goals and objectives previously approved by the Compensation Committee of the Board (or the Board, if such committee has been dissolved). The target Annual Bonus is \$172,500 unless changed by the Company in writing,

---

(c) Option Grant. On the Effective Date, Executive will be granted a stock option to purchase 450,000 shares of Company common stock at an exercise price of \$3.00 per share (the "Option Grant"). The Option Grant shall have a term of ten years and shall vest in three (3) equal installments on each of the succeeding three anniversary dates of the date of grant; provided Executive remains continuously employed by Company on and does not resign prior to each such vesting date. The Option Grant shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan"). In the event of a Change in Control (as defined in the Plan) prior to the final vesting of the Option Grant, all of the unvested options shall immediately vest; provided, however, in the event the acquiring party desires to replace the unvested Option Grant with a substitute of equal or greater value (the "Substitute Grant"), such proposed substitution shall be submitted to the Compensation Committee of the Board (or the Board, if such committee has been dissolved prior to the Change in Control), and the Compensation Committee of the Board (or the Board if such committee has been dissolved) shall decide whether to allow the unvested Option Grant to vest or whether to cancel the unvested Option Grant and replace them with the Substitute Grant proposed by the acquiring party. In the event of a termination without Cause, then the unvested options for the current anniversary year shall vest, and you shall have no less than 6 months to exercise any such options.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentation of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

#### 4. Benefits.

(a) Vacation. Executive shall be entitled to reasonable vacation time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance. Executive shall be eligible for medical benefits through the Company's provider with the Company agreeing to cover 75% of the Executive's and 25% of the Executive's spouse and dependents' premium costs.

(c) Relocation and Living Stipend. Executive will receive a monthly stipend for living expenses in the amount of \$1,500 for the first 6 months of employment for housing in the Austin area prior to the Executive's relocation. The Executive will relocate to the Austin area, and the Executive will receive a relocation allowance of \$25,000 upon completion of the relocation. The relocation allowance is repayable to the Company by the Executive if the Executive voluntarily terminates his employment with the Company less than twelve months from the Effective Date.

5. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

#### 6. Termination.

(a) Termination at the Company's Election

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean that Executive: (A) pleads "guilty" or "no contest" to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or Embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) willfully engages in any inappropriate or improper conduct in the course of his duties that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

---

2

(ii) Upon Disability or Without Cause; Death. At the election of the Company Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) with thirty (30) days prior written notice, at any time without Cause. Executive's employment with the Company will end upon Executive's death.

(b) Termination at Executive's Election Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation the Company may terminate Executive's employment immediately.

(c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (iii) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

7. Severance.

(a) A "Covered Period" is defined as the period commencing 30 days prior to a Change in Control and ending twelve (12) months following a Change in Control.

(b) Subject to Section 7(c) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a severance payment equal to (i) six months of the Executive's Base Salary at the time of termination, and (ii) 100% of Executive's target bonus for the year in which the termination occurs; Executive shall also receive a prior year's bonus, if not yet paid, payable at no less than target. If Executive's employment is terminated during a Covered Period, Executive shall be entitled to receive 12 months of severance, and an acceleration of the vesting of the option grant described in the prior paragraph. Such severance payment shall be made in a single lump sum sixty (60) days following such termination provided the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.

(c) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

---

3

8. Confidentiality Agreement.

(a) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non-technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from (i) reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

(b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control. Executive shall be permitted to retain any documents evidencing his compensation, equity holdings, or terms of employment without violation of this provision.

(c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive

alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/ or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.

(d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.

(e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney-in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

9. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

10. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.

11. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Jordan Davis

\*\*\*

\*\*\*

If to the Company, to:

Volcon, Inc.

2590 Oakmont Drive, Suite 520

Round Rock, TX 78665

Attention: Chairman of the Board

12. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.

13. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal state or local law.

14. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.

15. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Travis County, Texas.

16. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.

17. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.



18. **Entire Agreement.** This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

**Volcon, Inc.**

By: /s/ Christian Okonsky  
Name: Christian Okonsky  
Title: Chairman of the Board of Directors

Agreed to and Accepted:

Jordan Davis

/s/ Jordan Davis

Date:

## NOTE PURCHASE AGREEMENT

This Note Purchase Agreement (this “**Agreement**”) is made and entered into as of September 10, 2021 by and among Volcon, Inc., a Delaware corporation (the “**Company**”) and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “**Purchaser**” and collectively, the “**Purchasers**”).

**WHEREAS**, the Company is currently in need of funds to help finance its operations; and

**WHEREAS**, the Purchasers are willing to advance funds to the Company in exchange for the issuance to each Purchaser of (i) promissory notes evidencing the Company’s obligation to repay the each Purchaser’s loan of the advanced funds, and (ii) shares of the Company’s Common Stock, all as provided in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

**1. DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1:

“**Common Stock**” means the common stock of the Company, \$0.0001 par value per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“**Company Counsel**” means Schiff Hardin LLP, with offices located at 100 N. 18th, Suite 300, Philadelphia, PA 19103.

“**FCPA**” means the Foreign Corrupt Practices Act of 1977, as amended.

“**GAAP**” means United States generally accepted accounting principles.

“**Material Adverse Effect**” means (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company’s ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

“**1993 Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Subsidiary**” means any subsidiary of the Company as set forth on Schedule 4.1 and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

“**Transaction Documents**” means this Agreement, the Notes, and all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder

“**Transfer Agent**” means ComputerShare, the current transfer agent of the Company and any successor transfer agent of the Company.

**2. PURCHASE AND SALE OF NOTES**

**2.1 Notes.** Subject to the satisfaction or waiver of the terms and conditions of this Agreement, the Company agrees to sell to each Purchaser, and each Purchaser agrees to purchase from the Company on the Closing Date, a promissory note in the principal amount designated on such Purchaser’s signature page attached hereto (each, a “**Note**”, and collectively, the “**Notes**”). Each such Note shall (i) be dated the date of issuance, (ii) bear interest from such date at the rate of six percent (6%) per annum, (iii) mature upon the earlier to occur of (x) one year from the date of issuance or (y) the consummation of the Company’s initial public offering, and (iv) be substantially in the form of Exhibit A hereto. Notwithstanding anything to the contrary contained herein, the parties agree that up to \$7,500, representing legal fees of the Purchasers for this Agreement and the transactions related thereto, shall be deducted from the aggregate purchase price to be paid by the Purchasers to the Company at the Closing.

**2.2 Shares.** The Company agrees to issue each Purchaser that purchases a Note hereunder 33,333 shares of Company common stock for each \$250,000 in principal amount of the Note issued to such Purchaser hereunder (the “**Shares**”).

**3. CLOSING.** Subject to the terms and conditions hereof and on the basis of the representations and warranties set forth herein, the closing of the purchase and sale of the Note and the Shares (the “**Closing**”) shall take place on the date when all of the Transaction Documents have been executed and delivered by the applicable parties and the other conditions to the Closing set forth in Sections 6 and 8 have been satisfied or waived (or such later date as is mutually agreed to by the Company and the Purchasers (such date referred to in this Agreement as the “**Closing Date**”). Each Purchaser understands and acknowledges that this subscription is part of a proposed placement by the Company of up to \$2,000,000 of Notes (the “**Offering**”). During the Offering, funds will be held in an escrow account established by the Company and the placement agent for the Offering and released on the Closing Date. If a subscription is not accepted, whether in whole or in part, the subscription funds held therein will be returned promptly to the Purchaser without interest or deduction. The consummation of the transactions contemplated herein for all Closings shall take place electronically via email, upon the satisfaction of all conditions to Closing set forth in this Agreement.

**4. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.** The Company hereby represents and warrants to the Purchasers that the statements in the following paragraphs of this Section 4 are all true and complete immediately prior to the Closing Date:

**4.1 Subsidiaries.** All of the direct and indirect subsidiaries of the Company are set forth on Schedule 4.1. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

**4.2 Organization, Good Standing, Corporate Power and Qualification.** The Company has been duly incorporated and organized, and is validly existing in good standing, under the laws of the State of Delaware. The Company has the requisite corporate power and authority to enter into and perform this Agreement.

**4.3 Due Authorization; Enforcement.** All corporate action on the part of the Company necessary for the authorization, execution, delivery of, and the performance of all obligations of the Company under this Agreement and the Note has been taken or will be taken prior to the Closing Date, and this Agreement constitutes, and the Note when executed and delivered will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or others laws of general application relating to or affecting the enforcement of creditors’ rights

generally and (ii) the effect of rules of law governing the availability of equitable remedies.

**4.4      No Conflicts.** The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Notes and Shares and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

---

3

**4.5      Filings, Consents and Approvals.** The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than such filings, if any, as are required to be made under applicable state securities laws (collectively, the "**Required Approvals**").

**4.6      Compliance.** Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case of (i), (ii) and (iii) as could not have or reasonably be expected to result in a Material Adverse Effect.

**4.7      Valid Issuance of Stock.** The Shares upon issuance will be duly and validly issued, fully paid and nonassessable, free and clear of all liens other than restrictions on transfer provided for in the Transaction Document. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement.

**4.8      Capitalization.** The Company is authorized to issue 100,000,000 shares of Common Stock of which, as of the date of this Agreement, (i) 2,303,053 shares were issued and outstanding, and (ii) 19,356,192 shares are reserved for issuance pursuant to securities (other than the Shares) exercisable or exchangeable for, or convertible into, shares of Common Stock (the "**Existing Securities**"). On or about the date hereof, the Company has filed a registration statement on Form S-1 with the SEC (as defined below) for the offering of 3,025,000 shares of Common Stock (plus an over-allotment option of 226,875 shares of Common Stock) at a price range of between \$4.50 and \$5.50, which share amount and price range is subject to change. The Company is not authorized to issue any classes of capital stock other than Common Stock and preferred stock. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except for the Existing Securities and except as a result of the purchase and sale of the Shares, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Notes and the Shares will not obligate the Company to issue Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no outstanding securities or instruments of the Company or any subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary.

**4.9      Solvency.** Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Notes and Shares hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. As of the date hereof, there is no outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "**Indebtedness**" means (x) any liabilities for borrowed money or amounts owed by the Company in excess of \$50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others to third parties, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$100,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

---

4

**4.10      Tax Status.** Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

**4.11      Foreign Corrupt Practices.** Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

**4.12** **Rule 144(i).** The Company is not an issuer under Rule 144(i) of the 1933 Act.

**4.13** **Certain Fees.** Except for pursuant to that certain engagement letter with Aegis Capital Corp., no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. Other than for Persons engaged by any Purchaser, if any, the Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

**5.** **REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF PURCHASERS.** Each Purchaser hereby represents and warrants to, and agrees with, the Company, that:

**5.1** **Authorization.** This Agreement constitutes such Purchaser's valid and legally binding obligation, enforceable in accordance with its terms except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) the effect of rules of law governing the availability of equitable remedies. Such Purchaser represents that such Purchaser has full power and authority to enter into this Agreement.

**5.2** **Purchase for Own Account.** The Shares will be acquired for investment for such Purchaser's own account, not as a nominee or agent, and not with a view to the public resale or distribution thereof within the meaning of the 1933 Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same.

**5.3** **Disclosure of Information.** Such Purchaser has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the Shares. Such Purchaser further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Shares and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to such Purchaser or to which such Purchaser had access.

**5.4** **Investment Experience.** Such Purchaser understands that the purchase of the Shares involves substantial risk. Such Purchaser (i) has experience as an investor in securities of companies in the development stage and acknowledges that such Purchaser is able to fend for himself, can bear the economic risk of such Purchaser's investment in the Shares and has such knowledge and experience in financial or business matters that such Purchaser is capable of evaluating the merits and risks of this investment in the Shares and protecting its own interests in connection with this investment and/or (ii) has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables such Purchaser to be aware of the character, business acumen and financial circumstances of such persons.

**5.5** **Accredited Purchaser Status.** The Purchaser is an "accredited investor" within the meaning of Regulation D promulgated under the 1933 Act.

**5.6** **Restricted Securities.** Such Purchaser understands that the Shares are characterized as "restricted securities" under the 1933 Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under the 1933 Act and applicable regulations thereunder such securities may be resold without registration under the 1933 Act only in certain limited circumstances. In this connection, such Purchaser represents that such Purchaser is familiar with Rule 144 of the U.S. Securities and Exchange Commission (the "**SEC**"), as presently in effect, and understands the resale limitations imposed thereby and by the 1933 Act. Such Purchaser understands that the Company is under no obligation to register any of the securities sold hereunder. Such Purchaser understands that no public market now exists for the Shares and that it is uncertain whether a public market will ever exist for the Shares.

**5.7** **No Solicitation.** At no time was such Purchaser presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general or advertising or solicitation in connection with the offer, sale and purchase of the Shares.

**5.8** **Further Limitations on Disposition.** Without in any way limiting the representations set forth above, such Purchaser further agrees not to make any disposition of all or any portion of the Shares unless and until:

(a) there is then in effect a registration statement under the 1933 Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(b) such Purchaser shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and, at the expense of the Company, with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such securities under the 1933 Act.

**5.9** **Legends.**

(a) It is understood that the certificates evidencing the Shares will bear the legends set forth below:

*THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASER SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.*

(b) Any legend required by any state securities laws.

**5.10** **Tax Liability.** Such Purchaser has reviewed with its own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. Such Purchaser relies solely on such advisors and not on any statements or representations of the Company, the Company's counsel, or any of the Company's agents. It understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

**6.** **CONDITIONS TO PURCHASERS' OBLIGATION AT CLOSING.** The obligations of each Purchaser under Section 2 of this Agreement are subject to the fulfillment or waiver, on or before the Closing Date, of each of the following conditions, the waiver of which shall not be effective against any Purchaser if such Purchaser does not consent to such waiver, which consent may be given by written, oral or telephone communication to the Company, its counsel or to counsel of such Purchaser:

**6.1 Representations and Warranties True.** Each of the representations and warranties of the Company contained in Section 4 shall be true and complete on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

**6.2 Performance.** The Company shall have performed and complied with all agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Closing Date and shall have obtained all approvals, consents and qualifications necessary to complete the purchase and sale described herein;

**6.3 Deliveries.** On or prior to the Closing Date, the Company shall have delivered or cause to be delivered to each Purchaser the following:

- (a) This Agreement duly executed by the Company;
- (b) a Note, duly executed by the Company in favor of such Purchaser;
- (c) a legal opinion of Company Counsel, in customary form reasonably acceptable to the Purchasers.

**6.4 Securities Exemptions.** The offer and sale of the Shares to the Purchasers pursuant to this Agreement shall be exempt from the registration requirements of the 1933 Act, the qualification requirements of applicable state securities laws.

## 7. OTHER AGREEMENTS AND COVENANTS OF THE PARTIES.

**7.1** Upon the Closing, the Company shall deliver to each Purchaser the Shares, at the option of such Purchaser, either by: (i) a book entry confirmation from the Transfer Agent confirming delivery of such Purchaser's Shares, delivered no later than three days prior to the closing date of the Company's initial public offering, or (ii) physical delivery of a certificate evidencing such Shares, registered in the name of such Purchaser delivered within two business days of such election by the Purchaser; provided that if such Purchaser elects delivery of the Shares via book entry confirmation from the Transfer Agent and such book entry confirmation is not received by such Purchaser on or prior to December 31, 2021, the Company shall deliver a certificate evidencing the Shares to such Purchaser by no later than January 4, 2022. For the avoidance of doubt, each Purchaser shall be deemed to be the holder of the Shares on the Closing Date regardless of the delivery of the book entry confirmation or physical certificate.

**7.2 Reservation of Common Stock.** As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Shares pursuant to this Agreement.

**7.3 Blue Sky Filings.** The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Shares for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

**8. CONDITIONS TO THE COMPANY'S OBLIGATIONS AT CLOSING.** The obligations of the Company to Purchasers under this Agreement are subject to the fulfillment or waiver on or before the Closing Date of each of the following conditions by the Purchasers:

**8.1 Representations and Warranties.** The representations and warranties of each Purchaser contained in Section 5 shall be true and complete on the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date.

**8.2 Payment of Purchase Price.** Each Purchaser shall have delivered to the Company the purchase price specified in Section 2 for such Purchaser in accordance with the provisions of Section 2.

**8.3 Securities Exemptions.** The offer and sale of the Shares to the Purchasers pursuant to this Agreement shall be exempt from the registration requirements of the 1933 Act and the registration and/or qualification requirements of all applicable state securities laws.

## 9. GENERAL PROVISIONS.

**9.1 Notices.** All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable overnight air courier service with charges prepaid, or (iv) transmitted by hand delivery or email, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery or delivery by email, with accurate confirmation generated by the transmitting email machine, at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received) or (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur. The addresses for such communications shall be: (i) if to the Company, to: Volcon, Inc., Attention: Greg Endo, Chief Financial Officer, email: greg@volcon.com, with a copy by email only to: Schiff Hardin LLP, Attention: Cavas Pavri, email: cpavri@schiffhardin.com, and (ii) if to the Purchasers, to the one or more addresses and email addresses indicated on the signature pages hereto.

**9.2 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without giving effect to that body of laws pertaining to conflict of laws.

**9.3 Counterparts.** This Agreement 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.

**9.4 Titles and 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. Unless otherwise specifically stated, all references herein to "sections" and "exhibits" will mean "sections" and "exhibits" to this Agreement.

**9.5 Amendments and Waivers.** Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Purchasers. Any amendment or waiver effected in accordance with this Section shall be binding upon each holder of any Notes and Shares at the time outstanding, each future holder of such securities, and the Company; provided, however, that no condition set forth in Section 6 may be waived with respect to any Purchaser who does not consent thereto. No delay or failure to require

performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

**9.6 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. Notwithstanding the forgoing, if the value of this Agreement based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

**9.7 Entire Agreement.** This Agreement, together with all exhibits and schedules hereto, and the Note entered into pursuant hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings duties or obligations between the parties with respect to the subject matter hereof.

**9.8 Further Assurances.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

**9.9 Termination.** This Agreement may be terminated by the Company or by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before the fifth (5th) business day following the date hereof; provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties); provided further, that the Company's right to terminate the Agreement pursuant to this Section 9.9 shall be conditioned on the Company having returned the subscription funds of any Purchaser that were received in escrow but not accepted in accordance with Section 3.

**9.10. Survival.** Notwithstanding anything to the contrary set forth herein, the Company's obligation to return funds to each Purchaser whose subscription funds are received in escrow but not accepted in accordance with Section 3 shall survive the termination of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Note Purchase Agreement as of the date first written above.

**THE COMPANY:**

**VOLCON, INC.**

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

Its:

[Signature Page to Note Purchase Agreement]

[PURCHASER SIGNATURE PAGES TO NOTE PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Note Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: \_\_\_\_\_

Signature of Authorized Signatory of Purchaser: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Email Address of Authorized Signatory: \_\_\_\_\_

Facsimile Number of Authorized Signatory: \_\_\_\_\_

Address for Notice to Purchaser:

Address for Delivery of Shares to Purchaser (if not same as address for notice):

Subscription Amount: \$ \_\_\_\_\_

Shares: \_\_\_\_\_

---

SCHEDULE 4.1

Subsidiaries

Volcon ePowersports, LLC, a Colorado limited liability company (wholly owned)  
Volcon ePowersports, LLC, a Delaware limited liability company (wholly owned)

Subsidiaries

Volcon ePowersports, LLC, a Colorado limited liability company (wholly owned)  
Volcon ePowersports, LLC, a Delaware limited liability company (wholly owned)





**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the inclusion in this Registration Statement on Form S-1 of our report dated April 30, 2021, except for the first paragraph of note 5, as to which the date is August 19, 2021, with respect to the audited financial statements of Volcon, Inc. as of December 31, 2020 and the related statements of operations, changes in stockholders' equity and cash flow statement for the period from February 21, 2020 (inception) through December 31, 2020. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

We also consent to the references to us under the heading "Experts" in such Registration Statement.

/s/ *MaloneBailey, LLP*  
www.malonebailey.com  
Houston, Texas  
September 10, 2021